# 2025-2026 Edition Highlights

Beginning with this 2025-2026 Edition, subscribers will receive an annual pamphlet set to replace any relevant revised content within the respective volumes of Nonprofit Organizations: Law and Taxation. Please note that with the change in the book's frequency, from shipping twice per year to once per year, the invoice may reflect a higher price per release. However, this is due to redistributing the same total price over the new release schedule, which comprises the same yearly content.

The following is a summary of recent court decisions, statutes, IRS rulings, and other legal and/or reporting issues of current relevance that significantly impact nonprofit organizations.

The One Big Beautiful Bill Act of 2025, P.L. 119-21, 139 Stat. 223 § 70416 (July 4, 2025), revised the definition of a covered employee under Section 4960(c)(2) to mean any employee of an applicable tax-exempt organization (or any predecessor of such an organization) and any former employee of such an organization (or predecessor) who was such an employee during any taxable year beginning after December 31, 2016. This revised definition of "covered employee" applies to tax years beginning after December 31, 2025. (Discussion at § 4:19, note 1)

The One Big Beautiful Bill Act (OBBBA) of 2025, P.L. 119-21, 139 Stat. 221 § 70415, July 4, 2025, amended § 4968's excise tax on the investment income of private colleges and universities distributed after July 4, 2025. Effective January 1, 2026, the excise tax under Section 4968 will be: (1) 1.4% in the case of an institution with a student adjusted endowment of at least $500,000, and not in excess of $750,000; (2) 4% in the case of an institution with a student adjusted endowment in excess of $750,000, and not in excess of $2,000,000; and (3) 8% in the case of an institution with a student adjusted endowment in excess of $2,000,000.

Under the OBBBA, the term "applicable educational institution" means an eligible educational institution (as defined in Section 25A(f)(2)) as an institution: (1) which had at least 3,000 tuition-paying students during the preceding taxable year; (2) more than 50% of the tuition-paying students of which are located in the United States; (3) the student adjusted endowment of which is at least $500,000; and (4) which is not described in the first sentence of Section 511(a)(2)(B) (relating to State colleges and universities). (Discussion at § 19:31, note 7)

The Service issued final regulations concerning the § 170(h)(7) "statutory disallowance rule" enacted under the SECURE 2.0 Act of 2022, which disallows a federal income tax deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022, if the amount of the contribution exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis. See T.D. 9999, 2024-30 I.R.B. 72. (Discussion at § 8:10, note 21)

Final regulations issued in T.D. 9981 clarify the definition of "control" proposed in the 2016 proposed regulations for purposes of § 509(f)(2), explaining that control exists if one or more persons described in Reg. § 1.509(a)-4(f)(5)(i)(A), (B), or (C) hold 50% or more of the total voting power of the governing body or have the right to exercise veto power over the actions of the governing body. The final regulations also incorporate language from Reg. § 1.509(a)-4(j)(1) to make clear that even if persons do not have control by virtue of having 50% or more of the voting power or a veto power, all pertinent

facts and circumstances will be taken into consideration in determining whether such persons do in fact directly or indirectly control the governing body of a supported organization. (Discussion at § 9:20, note 2)

The IRS issued updated samples and new samples for additional types of CRUTS in Rev. Proc. 2005-59, 2005-34 I.R.B. 412. (Discussion at § 8:26, note 1)

The IRS and the Treasury Department issued proposed regulations on donor advised funds (DAFs), providing guidance regarding DAFs and taxable distributions, and generally applying to certain organizations, including community foundations and other charitable organizations that maintain one or more DAFs, and to other persons involved with the DAFs, including donors, donor-advisors, related persons, and certain fund managers. Notably, the proposed regulations, in accordance with § 4966(d)(2)(A), would define a DAF as a fund or account (1) that is separately identified by reference to contributions of a donor or donors, (2) that is owned and controlled by a sponsoring organization, and (3) with respect to which at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor. (Discussion at § 8:27)

The IRS ruled that name, image, and likeness (NIL) collectives for collegiate student-athletes would not serve an exempt purpose under § 501(c)(3). Rather, such an organization would be serving the private interests of the student athletes—a substantial nonexempt purpose—in many cases. (Discussion at § 7:31)

In Ltr. Rul. 202403019, the Service ruled that an organization formed to provide benefits to its members, who included business owners, their employees, local city leaders, and board members, did not qualify for tax-exempt status under § 501(c)(3). The organization's activities, which included workshops, member meetings, appreciation events, meetings with local merchants, annual dinners, and new business ribbon cuttings, served the private interests of the organization's members' rather than a public interest. (Discussion at § 7:5, note 2)

In Ltr. Rul. 202403013, the Service ruled that an organization whose purpose was to enhance the sport of hunting and fishing by providing unlimited recreational hunting and fishing for the organization's members and their immediate families did not qualify for § 501(c)(3) tax-exempt status. Notably, although some of the organization's activities were educational in nature, such as hunter safety training sessions, its property was primarily used by its members for recreational purposes, which did not serve exclusively charitable or educational purposes. (Discussion at § 7:5, note 2)

In Ltr. Rul. 202402012, the Service ruled that a gaming club, whose mission was to grow the community dedicated to a specific game by holding wargaming tournaments and other related events, operated for substantial nonexempt recreational and social purposes and so was precluded from exemption under § 501(c)(3); additionally, the organization was not a qualified amateur sports organization under § 501(j)(2) because it did not foster national or international amateur sports competition or support and develop amateur athletes for national or international competition in sports, but rather provided persons of all ages the opportunity to participate in its gaming activities for recreational and social purposes. (Discussion at § 7:5, note 2)

In Ltr. Rul. 202434013, the service ruled that a nonprofit corporation formed to manage the operations and maintenance of a condominium building did not qualify for § 501(c)(4) exempt status because the corporation was operated exclusively for the private benefit of its members rather than for the benefit of the community as a whole. (Discussion at § 7:5, note 2) In Ltr. Rul. 202414009, the Service ruled that an organization formed as a mutual benefit association and operated as a road association to

maintain a private roadway did not qualify for § 501(c)(4) tax-exempt status because the organization operated exclusively for the private benefit of its members rather than for the benefit of the community as a whole. (Discussion at § 7:5, note 2)

In Ltr. Rul. 202420028, the Service ruled that an organization formed to promote venture capital and angel investing in a specific state, to foster increased education and exposure to entrepreneurship and investing in the venture capital asset class, and to increase the diversity of participants in the venture capital entrepreneurship ecosystems of the state did not operate as a business league under § 501(c)(6). Rather, the organization was primarily providing services to individual persons consisting of its members and early stage technology companies. (Discussion at § 7:18, note 21)

In Ltr. Rul. 202403014, the Service ruled that a corporation whose primary purpose was to provide a low-cost dating/matchmaking service to the general public on a subscription basis did not qualify for exempt status under § 501(c)(7). The Service noted that the service provided by the organization was similar to for-profit entities that conduct similar services; the members' only relationship with the organization was the receipt of services that were not in the nature of pleasure, recreation, and other nonprofitable purposes under § 501(c)(7); and the organization was primarily engaged in the business of selling services to the general public for a fee and the membership was merely a guise to allow an unlimited number of individuals to use the organization's match making services to generate income from transactions with the general public. (Discussion at § 7:19, note 10; § 23:8, note 4)

In Dunn v. Solomon Foundation, 2025 WL 2671508 (Ky. 2025), the Supreme Court of Kentucky ruled that a nonprofit entity with two member churches, one in Texas and one in Arizona, whose exclusive purpose was to advance Restoration Movement Christian Churches, and which was categorized as a public charity and considered a church extension fund as well as an integrated auxiliary of a church, was not itself, as an institution, a church, religious sect, society, or denomination for the purpose of a property tax exemption under the state constitution. (Discussion at § 2:27, note 2; § 16:25, note 1; § 21:20, note 1)

In Moore v. United States, 66 F.4th 991 (Fed. Cir. 2023), in an action brought by a male employee of the Securities and Exchange Commission alleging that two female coworkers with the same jobs were paid more for the same work in violation of the Equal Pay Act, the court ruled that a prima facie Equal Pay Act case does not require a showing that a pay differential is either historically or presently based on sex. (Discussion at § 5:11, note 7)

In Grand Canyon University v. Cardona, 121 F.4th 717 (9th Cir. 2024), the Ninth Circuit determined that the Education Department invoked the wrong legal standards in concluding that the university did not meet Reg. § 1.501(c)(3)-1(c)(1) operational test's requirement that both the primary activities of the organization and its stream of revenue benefit the nonprofit itself; rather, the Education Department relied on IRS regulations that imposed requirements that went well beyond the HEA's requirements and instead implemented a portion of § 501(c)(3) that lacked a counterpart in the definition of the term "nonprofit" under HEA § 103(13). The correct HEA standards required the Education Department to determine (1) whether GCU was owned and operated by a nonprofit corporation, and (2) whether GCU satisfied the no-inurement requirement. (Discussion at § 7:5, note 3)

In a departure from its earlier ruling in Oakbrook Land Holdings, in Valley Park Ranch, LLC v. Commissioner of Internal Revenue, Tax Ct. Rep. Dec. (RIA) 162.6, 2024 WL 1328847 (2024), the Tax Court held that the Service's regulation governing the contents of the extinguishment clause in conservation easement deeds was "procedur-

ally invalid" under the Administrative Procedure Act (APA). The Tax Court agreed with the LLC that, during the rulemaking process, Treasury failed to adequately respond to significant comments in violation of the APA's procedural requirements, including by failing to discuss or respond to comments made by the New York Landmark Commission or six other commentators regarding the extinguishment provision. (Discussion at § 8:10, note 21)

In Mayo Clinic v. United States, 997 F.3d 789 (8th Cir. 2021), the Eighth Circuit held that the taxpayer had to be an educational organization, i.e., a tax-exempt organization whose primary activity was education, to be eligible for unrelated business income tax (UBIT) exemption, and that a factual issue existed as to whether the taxpayer qualified as an educational organization, and thus was entitled to tax refund for taxes paid on certain passive income. (Discussion at § 9:5, note 3; § 21:17, note 3)

In Fellowship of Christian Athletes v. San Jose Unified School District Board of Education, 82 F.4th 664 (9th Cir. 2023), the Ninth Circuit ruled that the targeting of religious belief or conduct is not required for a government policy to violate the Free Exercise Clause; instead, favoring comparable secular activity is sufficient; the school district's policies for granting official recognition for school clubs were not generally applicable; the school district's decision to revoke the local chapter's status as an official student club was motivated by hostility toward the ministry's religious beliefs about marriage; the school district's "All-Comers Policy," prohibiting official student clubs from enacting discriminatory membership and leadership criteria, was neither neutral nor generally applicable; the plaintiffs were likely to succeed on merits of their free exercise claim; the plaintiffs faced irreparable injury in absence of a preliminary injunction barring district from denying local chapter status as official student club; and the balance of equities and public interest favored issuance of preliminary injunction. (Discussion at § 14:2, note 4)

In Valancourt Books, LLC v. Garland, 82 F.4th 1222 (D.C. Cir. 2023), the D.C. Circuit ruled that 17 U.S.C.A. § 407's requirement that physical copies of works be deposited with the Copyright Office was an uncompensated taking of private property that was prohibited under the Takings Clause. (Discussion at § 14:12, note 19)

In Woodring v. Jackson County, Indiana, 986 F.3d 979 (7th Cir. 2021), the Seventh Circuit ruled that a nativity scene on the front lawn of the county's historic courthouse complied with the Establishment Clause. Using the more historical framework required by the Supreme Court's decision in American Legion v. American Humanist Association, 588 U.S. 29 (2019) to gauge the constitutionality of the nativity scene, the court upheld the scene's constitutionality because it fit within a long tradition of using the nativity scene in broader holiday displays to celebrate the origins of Christmas—a public holiday. (Discussion at § 16:3, note 1)

In Oklahoma Annual Conference of the United Methodist Church, Inc. v. Timmons, 2023 OK 101, 538 P.3d 163 (Okla. 2023), the Supreme Court of Oklahoma clarified the procedural posture of the church autonomy doctrine, reaffirming that church autonomy is a bar to subject matter jurisdiction, overruling the holding in Doe that church autonomy is an affirmative defense. (Discussion at § 16:11, note 4)

In Brown v. Arizona, 82 F.4th 863 (9th Cir. 2023), on rehearing en banc, the Ninth Circuit ruled that a student who brought an action under Title IX against a university, seeking damages for student-on-student physical harassment by a male university football player and student, presented sufficient evidence to allow a reasonable fact-finder to conclude the university had substantial control over the context in which the football player assaulted her; that fact issues remained as to whether university officials had actual knowledge or notice of the player's violent assaults of female students;

and that fact issues remained as to whether the university's Title IX liaison acted with deliberate indifference to reports of the player's violence against female students. (Discussion at § 19:10, note 6)

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