2026-2027 Edition Highlights

he 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:

- On June 5, 2026, the IRS released Notice 2026-36, announcing the Service's intent to issue proposed regulations under Section 4960 pertaining to the tax on excess tax-exempt organization executive compensation. The One Big Beautiful Bill Act ("OBBBA") expanded the scope of Code Section 4960 by broadening the definition of a "covered employee." The notice anticipates that the proposed regulations will address the effective date of the amendment to the definition of "covered employee" made by OBBBA Section 70416 and will also propose exceptions to the definition of "covered employee" that are similar to the limited hours and nonexempt funds exceptions in the existing Section 4960 regulations.

  Notice 2026-36 states that the Treasury and IRS interpret the OBBBA's effective-date provision of December 31, 2025 to broaden the definition of covered employee only for taxable years of an applicable tax exempt organization (ATEO) beginning after December 31, 2025, and to retain the prior definition of covered employee for taxable years beginning on or before December 31, 2025, including for purposes of determining for a taxable year beginning after December 31, 2025, whether a former employee was a covered employee in a taxable year beginning on or before December 31, 2025. The post-OBBBA definition of "covered employee" includes only: any individual who was an employee of an ATEO in any taxable year beginning after December 31, 2016, and on or before December 31, 2025, if the individual was a covered employee for the taxable year under prior law; and any individual who is an employee of an ATEO in any taxable year beginning after December 31, 2025, subject to any exceptions provided in future guidance. Notice 2026-36 confirms that the forthcoming regulations are expected to include covered employee exceptions for limited hours and nonexempt funds, but not a limited services exception, as it is no longer relevant under the expanded definition. The limited services exception will not be included in the regulations, because the concern that motivated that exception—the displacement of an employee who would otherwise have been one of the five highest-compensated employees—is no longer relevant under the OBBBA definition of covered employee. (Discussion at § 4:19)
- Executive Order 14168 (2025) rescinded Executive Order 13988, declaring that "[i]t is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality. Under my direction, the Executive Branch will enforce all sex-protective laws to promote this reality." (Discussion at § 5:10)
- Rev. Proc. 2026-8, 2026-4 I.R.B. 380, supersedes Rev. Proc. 80-27, effective January 20, 2026, and sets forth updated procedures to obtain recognition of exemption from federal income tax on a group basis for organizations described in I.R.C. § 501(c) that are affiliated with and under the general supervision or control of a central organization. The new procedure modernizes the rules and procedures for obtaining and maintaining tax-exempt status for group exemption letters covering groups of affiliated organizations under IRC Section 501(c), representing the first comprehensive overhaul of group exemption letters in more than 45 years. The revenue procedure relieves each subordinate organization included in a group exemption letter from filing its own application for recognition of exemption. In a

notable departure from Notice 2020-36, the matching requirement was softened: subordinate organizations still must be described in the same paragraph of Section 501(c) as one another, but they do not have to match the central organization's paragraph. Additionally, unlike Notice 2020-36, Rev. Proc. 2026-8 does not include a foundation classification requirement. Rev. Proc. 2026-8 provides additional flexibility for establishing general supervision or control over a subordinate organization, such as through a written agreement between the central organization and a subordinate organization. Rev. Proc. 2026-8 retains the rule that a central organization must have at least five subordinate organizations to obtain a group exemption letter. However, only one subordinate organization is needed to maintain an existing letter. Further, a new subordinate organization added within 27 months of its formation can be recognized as exempt from its date of formation, rather than the date it was added to the group. Rev. Proc. 2026-8's requirements apply to group exemption letters applied for after January 20, 2026. The IRS has provided a transition period for preexisting group exemption letters and preexisting subordinate organizations, until January 22, 2027, to comply with Revenue Procedure 2026-8. (Discussion at § 7:4)

- In Priv. Ltr. Rul. 202550033, the Service ruled that an organization dedicated to providing holistic support to amplify the brand and marketing effectiveness of up and coming leading social-impact focused non-profit and start-up organizations was not organized or operated exclusively for § 501(c)(3) exempt purposes. Notably, although the organization may serve some charitable purposes when providing consulting services to nonprofits, it also served the private interests of the for-profit organizations it consulted for—which constitutes a substantial non-exempt purpose. (Discussion at § 7:5)
- In Priv. Ltr. Rul. 202635015, the Service ruled that an organization, which was formed to monitor and influence legislation affecting the preservation and continued care of a region's beaches, bays, and public access and which was currently exempt as a § 501(c)(4) social welfare organization, did not also qualify for exempt status under § 501(c)(3). Notably, the organization failed § 501(c)(3)'s organizational test because the organization's purposes were not limited to § 501(c)(3) exempt purposes, but rather furthered both § 501(c)(3) and § 501(c)(4) purposes. Additionally, the organization was not operated exclusively for exempt purposes under § 501(c)(3) because the organization's activities—including free sailing at a local sailing center—only served public interests in cursory manner as a byproduct of furthering its members' private interests. (Discussion at § 7:5)
- In Priv. Ltr. Rul. 202536030, the Service ruled that a labor organization, whose § 501(c)(5) exemption previously was automatically revoked because the organization did not file a Form 990 for three consecutive years, did not qualify for exemption under § 501(c)(3) since the organization failed § 501(c)(3)'s operational test. Notably, the organization was formed to negotiate and enforce collective bargaining agreements, which did not further educational or charitable purposes, and its membership was limited to professional, secretarial, paraprofessionals, and aides employed by the school district, which did not represent a charitable class. (Discussion at § 7:17)
- In *Milk Saving Starving Children Foundation v. Commissioner of Internal Revenue*, T.C. Memo. 2026-1, T.C.M. (RIA) P 2026-001 (2026), the IRS was granted summary judgment on a 501(c)(3) organization's declaratory judgment action challenging the Service's final adverse determination revoking taxpayer's tax-exempt status. The organization, which sought to raise money to purchase rice, soy, and/or powdered milk and to solicit these products from their manufacturers so that the milk could be distributed world-wide to starving children, did not operate exclusively for exempt purposes. Rather, in addition to any charitable activities, the organization also engaged extensively, and seemingly primarily, in

commercial activities such as purchasing and renovating its property, renting out an addition to the property to unrelated commercial businesses, and using the property to operate a coffee shop. (Discussion at § 7:38)

- In Priv. Ltr. Rul. 202537004, the Service concluded that an organization with a mission to provide an inclusive and affordable space for artists to create art, network, and sell their art—with the goal of assisting "artists in turning their passion into a paycheck"—was not operated exclusively for an exempt purpose under Reg. §§ 1.501(c)(3)-1(c)(1) and 1.501(c)(3)-1(d)(1)(ii). Rather, the organization was engaged in the substantial nonexempt activity of providing a market for artists, thus furthering their private interests. Additionally, the organization did not provide any educational activities to the public. (Discussion at § 8:4)
- In Priv. Ltr. Rul. 202508005, the Service ruled that an organization formed to strengthen, promote, and otherwise support tax exempt charitable organizations and the communities and individuals they serve by primarily coordinating the use of the names, images, and likenesses (NIL) of intercollegiate athletes with whom the organization contracted was not operated exclusively for exempt purposes under § 501(c)(3). Rather, the primary beneficiary of the organization's activities will be the college's athletes since the organization's funds will be used to pay the athletes—who are not a recognized charitable class—for their NIL and NIL services after the terms of their agreement are met. Accordingly, the organization would be serving a private rather than public interest because most of the organization's benefits and resources would primarily flow to the athletes for their NIL and NIL services, which is not clearly incidental to the overriding public benefit. (Discussion at § 8:4)
- The One, Big, Beautiful Bill Act (OBBBA) of 2025, Pub. L. No. 119-21 (July 4, 2025), added new rules for charitable deductions under IRC § 170, affecting both individuals and corporations, for tax years beginning after 2025. In the case of individual taxpayers, charitable contributions are deductible only to the extent the aggregate contributions exceed 0.5% of the taxpayer's "contribution base" (i.e., the taxpayer's adjusted gross income computed without regard to any net operating loss carryback for the tax year) for the taxable year. Moreover, the tax benefit for top earners is now capped at 35 cents per dollar of itemized deductions, down from 37 cents. In the case of corporate taxpayers, charitable contributions are deductible only to the extent they exceed 1% of the corporation's taxable income for the taxable year and do not exceed 10% of the corporation's taxable income for the taxable year.
- On May 13, 2026, the IRS announced a time-limited settlement opportunity for eligible taxpayers involved in conservation or historic preservation easement disputes with the IRS. Under the new offer initiative, which follows previous, similar settlement initiatives, nearly 450 cases will no longer be required to make an upfront payment of the settlement amount, and instead the liability will be subject to post-settlement collection. Separately, as many as 500 cases where prior settlement offers expired or were rejected by the taxpayer will have the renewed ability to settle their cases. The offer will also be extended to as many as 175 cases that did not previously have the opportunity to participate in an IRS settlement initiative. *See* IR-2026-65, 2026 WL 1309516 (May 13, 2026). (Discussion at § 8:10)
- In 2023, the IRS warned high-income taxpayers to watch for promotions involving exaggerated art donation deductions and identified red flags taxpayers and their advisors should look out for. According to the IRS, unscrupulous promoters encourage taxpayers to buy artworks, often at a discounted price (which may include additional services from the promotor such as storage, shipping, and arranging for appraisal and donation of the artwork)—with a promise that the art is worth significantly more than the purchase price. The promoters would suggest the

purchaser wait at least one year before donating the art and to claim a tax deduction for an inflated fair market value far higher than what they paid. Red flags identified by the IRS include buying multiple works by the same artist that have little to no market value outside of what the promoter might be advertising; and promoters using specific appraisers who provide faulty appraisals that may not address the value characteristics such as rarity, age, quality, condition, stature of the artist, price paid, and quantity purchased. *See* IR-2023-185, 2023 WL 6479845 (Oct. 5, 2023). (Discussion at § 8:10)

- In April 2026, the Treasury announced a Form 990 transparency initiative aimed at exposing hidden funding and strengthening oversight of 501(c)(3) organizations. Under this initiative, the IRS plans to revise Form 990 to improve transparency, tax administration, and reporting on certain activities of 501(c)(3) organizations, including government contracts, government grants, and fiscal sponsorship arrangements. Treasury and the IRS expect to publish proposed regulations and provide an opportunity for public comment before any reporting changes are finalized, and will consider the administrative feasibility, proportionality, and reporting burden as the proposal is developed. *See* Treas. SB-0470, 2026 WL 1198703 (April 23, 2026). (Discussion at § 9:29)
- In *National Religious Broadcasters v. Bessent*, 827 F. Supp. 3d 967 (E.D. Tex. 2026), churches and religious-practice groups sued the IRS, alleging that the Johnson Amendment to I.R.C. 501(c)(3), which granted an income-tax exemption to certain religious organizations but rendered an organization ineligible for exemption if the organization participated or intervened in a political campaign, violated the plaintiffs' First Amendment rights to freedom of speech and free exercise of religion and violated the Religious Freedom Restoration Act. Although the IRS subsequently joined the plaintiffs in moving for entry of consent judgment, based on the Trump Administration's position that "bona fide communications internal to a house of worship, including communications between the house of worship and its congregation in connection with religious services and communicated through customary channels on matters of faith, do not constitute the type of political campaign intervention prohibited under current law" and that "[s]uch communications are distinguishable from broader political activity and are consistent with longstanding protections for religious exercise," the district court for the Eastern District of Texas dismissed the case for lack of jurisdiction under the Tax Anti-Injunction Act or Declaratory Judgment Act. Subsequently, the Treasury Department announced plans to develop and issue additional guidance on the application of the Johnson Amendment to religious organizations. *See* Treasury and IRS to Provide Guidance to Religious Organizations, Treas. SB-0432, 2026 WL 1198666 (April 3, 2026). (Discussion at § 16:2)

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