



Nonprofit Organizations

Attorneys in the Nonprofit Organizations Practice Area at Reid and Riege handle a wide variety of tax, corporate, fiduciary, endowment, financial, employment, insurance and regulatory issues for many types of nonprofit/tax-exempt organizations and their directors and officers.

Publications and Teaching

The firm has published a quarterly newsletter titled the *Nonprofit Organization Report* since 2000. The newsletter is currently circulated to over 6,000 readers nationwide. These newsletters are available on the firm's website, www.rrlawpc.com. Persons interested in being placed on the mailing list should contact the firm's Marketing Manager, Ms. Carrie L. Samperi, at csamperi@rrlawpc.com. In addition to the newsletter, members of the Practice Area regularly speak to industry and professional groups.

Cutting Edge Projects

Given the extensive corporate and tax law background of the attorneys in the Practice Area, we are well suited for activities such as, and have completed, several nonprofit to for-profit hospital, nursing home and social welfare organization conversions, as well as hospital system and social service agency insolvency/bankruptcy workouts. Some of the other "cutting edge" activities we have been involved with include: nonprofit/for-profit joint ventures; the use of single member "disregarded entity" limited liability companies; and low profit limited liability companies (L3C's).

We have extensive experience with the Uniform Prudent Management of Institutional Funds Act (UPMIFA), and consulted with the Financial Standards Accounting Board with respect to its response to UPMIFA under Generally Accepted Accounting Principles (GAAP) - specifically FAS 117-1. We have advised many boards about UPMIFA implementation, and have taught courses on the topic.

In today's rapidly changing legal environment, new and existing nonprofit organizations need the advice and counsel of lawyers fully experienced with IRS regulations and the state and federal laws that govern the operation of charities and other nonprofits.



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Our nonprofit attorneys also assist clients in the following areas:

Attorney General Investigations of Charities

The Charities Division of the Office of the Attorney General has a great deal of authority over charitable organizations and assets in Connecticut. Our lawyers have worked with the attorneys in this division on a wide variety of regulatory and investigatory matters, ranging from obtaining advance approval of a nonprofit to for-profit conversion, investigations of charges of malfeasance by a “whistleblower” and cy pres hearings involving endowment assets.

Charitable Bequests & Endowments

The term “endowment” is used very often and broadly in the nonprofit world to include any assets or funds not currently being expended or treated as expendable. However, from a legal perspective the term has a very precise meaning: a gift upon which the donor (during life or at death) has created restrictions as to the ability to spend the “corpus” or principal amount of the gift, and possibly the purposes for which the investment earnings may be expended within the organization to which the gift is made. Gifts not subject to restrictions of this type are not “endowments” in the legal sense.

While these principles are easy to articulate, in practice there are often serious and difficult questions that arise. These can include: the ability of the board of directors to use the funds for a desired purpose; litigation brought by heirs of a donor to recoup a gift; litigation brought by other charities that believe they should be the beneficiary of a gift; the ability of creditors to reach funds in a time of financial hardship; and the manner in which endowment assets are portrayed on financial statements prepared in accordance with generally accepted accounting principles.

Federal Tax Audits of Nonprofits

The IRS has been very active in the nonprofit sector in recent years, primarily because of its perception that abuse and fraud are rampant. We represent taxpayers in audits and investigations by the IRS at many different stages, and we take matters, where appropriate, to the courts or into a settlement process.

Fiduciary Duty & Liability

Increasing regulatory oversight and social demands and expectations have placed a great deal of pressure on nonprofit organizations and the members of their boards of directors. Reid and Riege’s Nonprofit attorneys have developed standard course materials that we use to advise and teach board members the basic duties imposed on them by law, and the procedural manner in which they can be sure these duties are fulfilled. We also have advised individual board members and entire

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boards confronting difficult situations in which their judgment could be questioned or after the fact liability asserted.

In providing this advice to boards, we commonly review existing, or recommend purchasing, directors and officer liability insurance policies, and encourage boards to be sure that the bylaws and charters of their organizations have up-to-date language that gives maximum protection and indemnification to directors and officers. We also are very familiar with the state and federal Volunteer Protection Acts, both of which can be of great value to board members.

Formation of Nonprofit Entities

The types of nonprofit/tax-exempt organizations we are familiar with include: title holding companies (§501(c)(2) organizations); charitable, scientific, religious or educational entities (§501(c)(3) organizations); social welfare organizations (§501(c)(4) organizations); trade associations (§501(c)(6) organizations); and private clubs (§501(c)(7) organizations). Each of these designations comes from the section of the Internal Revenue Code under which the organizations are recognized as tax-exempt. In the charitable organization arena (§501(c)(3) entities), our Nonprofit attorneys have a major presence in the health care field, working closely with the attorneys in our Health Care Practice Area.

Structuring a nonprofit organization properly from the outset is crucial for the organization's future success. Reid and Riege's Nonprofit attorneys have developed a "turn-key" system for creating new 501(c)(2), 501(c)(3), 501(c)(4), 501(c)(6) and 501(c)(7) organizations, which include incorporating the new entity, drafting bylaws and a conflict of interest policy, securing an employer identification number and obtaining federal tax exemption. This system allows us to guide start-up exempt organizations efficiently and successfully through the process of submitting the new, more complex application for tax-exempt status recently released by the IRS.

Specific areas of concentration are as follows:

Churches and Synagogues

Religious organizations have a unique set of legal concerns and issues arising from the constitutional protections afforded them. While the civil law system (the IRS and the Attorney General) cannot regulate or be involved in religious issues and questions, they do have a great deal to say about many other aspects of these organizations. Our attorneys have represented Hindu, Buddhist, Jewish, Catholic and Protestant organizations in a wide variety of matters ranging from bylaw and charter revisions, endowment protection, clergy misconduct and employment discrimination claims, to tax planning.

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Private Clubs

Private clubs, which are exempt under Section 501(c)(7), have their own set of exemption standards and issues. Reid and Riege's Nonprofit attorneys have worked with country and social clubs on matters related to real estate sales and purchases, the creation of title holding companies to hold real estate, membership disputes and liquidations.

Social Welfare Organizations

Social welfare organizations are exempt from taxation under Section 501(c)(4), and have some similarities to Section 501(c)(3) entities. In some cases we have asked the IRS to grant Section 501(c)(4) status as an alternative if a Section 501(c)(3) ruling will not be forthcoming. More commonly, however, we create a Section 501(c)(4) organization as an affiliate of a Section 501(c)(3) organization that has an interest in lobbying, because Section 501(c)(4) organizations have no limits on lobbying and there are well articulated limitations on the amount of lobbying a Section 501(c)(3) organization can undertake.

Trade Associations

Trade associations, which are exempt under Section 501(c)(6), have their own set of exemption standards and issues. Our Nonprofit Organizations attorneys have worked with trade associations on a variety of issues ranging from formation of new trade associations, mergers of related associations and performing "legal audits" to be sure associations are staying within their exempt purposes.

Nonprofit Acquisitions & Mergers

Drawing on our years of experience as Business Law and Tax lawyers, we are uniquely qualified to guide nonprofit organizations through mergers, acquisitions and sales of assets. We help nonprofit organizations considering a merger to develop the most efficient and cost effective structure for combining boards, operations and staffs within the corporate culture of each organization. In the sales and acquisition context we also call on the other resources our firm has to offer including: bankruptcy and insolvency; real estate; employee benefits and pension; and environmental law.

Nonprofit Affiliations & Joint Ventures

We have created holding company structures to accommodate groups of related for-profit and nonprofit organizations, and guided clients through partnerships and joint ventures with other nonprofits and for-profits.

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Nonprofit Governance

In today's regulatory environment, it is essential that every nonprofit organization avoid investigation and scandal and protect its reputation and goodwill in the community by developing best practices in corporate governance. We have extensive experience working with boards of directors as they tackle this task – overhauling bylaws, reviewing contracts, agreements and employee policy manuals, adopting a conflict of interest policy, developing board committees and policies and refining the relationship between the board of directors and professional staff. Our practice also includes representing directors who find themselves engaged in disputes over control of the organization. We first attempt to mediate a resolution and pursue litigation if necessary.

Nonprofit to For-Profit Conversions

In the health care arena, nonprofit organizations facing insolvency may sell their assets to a for-profit venture, thereby preserving services for the community while obtaining a crucial infusion of financial resources. The nonprofit organizations that we guide through this process benefit from our years of experience as Business Law and Tax lawyers in the mergers and acquisitions context. We also call on other lawyers within the firm in the areas of bankruptcy and insolvency, real estate, employee benefits and pension and environmental law.

Unrelated Business Taxable Income

Our Nonprofit Organizations attorneys have taught courses and helped many nonprofit clients understand exempt function income and income that is derived from an unrelated business activity (UBIT). Our typical advice is that UBIT is fine if it produces revenue that can be used to support exempt activities, but that the activity producing the taxable income can and should be placed in a separate for-profit affiliate to be sure that exempt status is not lost. We also have guided clients through an analysis to determine whether or not income is UBIT.

We have written extensively on the “commerciality” doctrine, an admixture of principles that suggest that nonprofits should manage and operate their exempt activities in a “business-like” manner, and should actually seek opportunities to generate income from unrelated business activities. Our attorneys also interact regularly with the Internal Revenue Service on issues as varied as intermediate sanctions, unrelated business taxable income, prohibited transactions and private letter rulings.