# TAX LAW OF ASSOCIATIONS

BRUCE R. HOPKINS

Author of The Law of Tax-Exempt Organizations, 9th Edition

# The Tax Law of Associations

# Bruce R. Hopkins



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Published by John Wiley & Sons, Inc., Hoboken, New Jersey.

Published simultaneously in Canada.

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# Library of Congress Cataloging-in-Publication Data:

Hopkins, Bruce R.

The tax law of associations / by Bruce R. Hopkins.

p. cm.

Includes bibliographical references and index.

ISBN-13: 978-0-471-77153-1 (cloth: acid-free paper)

ISBN-10: 0-471-77153-8 (cloth: acid-free paper)

- 1. Nonprofit organizations—Taxation—Law and legislation—United States.
- 2. Associations, institutions, etc.—Taxation—Law and legislation—United States. I. Title. KF6449.H665 2006

343.7305'266-dc22

2006008033

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1

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This book is dedicated to all who lead and manage the associations I am privileged to represent.

# About the Author

Bruce R. Hopkins is the country's leading authority on the law of tax-exempt organizations and is a lawyer with the firm Polsinelli Shalton Welte Suelthaus PC. He is also the author of 19 books, including The Law of Tax-Exempt Organizations, Eighth Edition; Planning Guide for the Law of Tax-Exempt Organizations; The Tax Law of Unrelated Business for Nonprofit Organizations; Nonprofit Law Made Easy; 650 Essential Nonprofit Law Questions Answered; The Law of Fundraising, Third Edition; Private Foundations: Tax Law and Compliance, Second Edition; The Tax Law of Charitable Giving, Third Edition; The Law of Intermediate Sanctions; and The Law of Tax-Exempt Healthcare Organizations, Second Edition; all published by John Wiley & Sons. Mr. Hopkins also writes the monthly newsletter Bruce R. Hopkins' Nonprofit Counsel, also published by John Wiley & Sons.

# **Preface**

A lawyer with a fulltime tax-exempt organizations practice, spanning many years (decades), is privileged to represent several categories of exempt organizations, including colleges, universities, and schools; health care institutions; churches and other religious organizations; other public charities; private foundations; advocacy organizations; associations; social clubs; and fraternal and veterans' organizations. Lawyers in this circumstance may also have the opportunity to serve a cemetery company, a crop operations financing organization, or a state-sponsored workers' compensation entity. Each exempt organization presents unique problems, issues, and forms of gratification (particularly if the problems and issues are satisfactorily resolved).

Tax-exempt organizations lawyers (or, if you will, nonprofit lawyers) know better than to publicly favor one type of exempt organization client over another. Yet favorites are inevitable, because of the nature of the work generated (depth, complexity, variety) and/or the individuals involved (personalities, intelligence, challenges).

Take, for example, associations. The exempt organizations lawyer will find, at these organizations, interesting, energetic, dedicated, and motivated individuals (on the board and on the staff), who preside over a dazzling array of substantive questions and issues of law. As to the latter, the entire panoply of the law of tax-exempt organizations is presented: eligibility for exemption, private inurement, legislative activities, political activities, related foundations, for-profit subsidiaries, partnerships and other joint ventures, annual reporting issues, unrelated business rules, and more. And that is just the federal tax law. A lawyer representing an association and/or affiliated entity can also feast on law concerning antitrust, campaign finance, charitable solicitation, contracts, employee benefits, insurance, intellectual property, and a host of other issues.

\* \* \*

Your author has had, and is having, the pleasure of writing and updating (through editions and supplements) *The Law of Tax-Exempt Organizations*. Some subjects in that book are too expansive to be contained within its pages, generating other law books, such as those directly relating to private foundations and the unrelated business rules. So, too, with the matter of associations. There is a chapter in the exempt organizations book on these entities (business leagues), but it has proved to be insufficient. There was so much more to explore and analyze.

### PREFACE

Thus, this book. Here, the association executive, board member, lawyer, accountant, and anyone else interested in the tax law of associations will find full discussions of topics common (and often unique) to tax-exempt associations: the concept, evolution, forms, and roles of associations (Chapter 1); requirements for tax exemption (Chapter 2); private inurement, private benefit, and excess benefit transactions (Chapter 3); lobbying and political campaign activities (Chapter 4); the unrelated business rules (Chapter 5); for-profit subsidiaries and limited liability companies (Chapter 6); partnerships and joint ventures (Chapter 7); association-related foundations (Chapter 8); charitable giving and fundraising (Chapter 9); annual reporting and disclosure requirements (Chapter 10); and non-tax association law (Chapter 11). There is even a little bit of history.

\* \* \*

The Internal Revenue Service, a few years ago, embarked on an ambitious project to examine, on a statistical analysis basis, the entire tax-exempt sector. The agency conceived of the sector as consisting of around 40 market segments; the plan was to analyze each one and use the resulting data to support regulation projects, examination criteria, public and private rulings, and perhaps proposed legislation. Summary data from these analyses was to be made public, the first in early 2004. The project has not been faring well, with IRS resources diverted to other ends.

One of the first of the market segment studies concerned business leagues. When this book was conceived, there was to be an epilogue, which was to be based on the market segment analysis of the nation's tax-exempt associations. As of mid-2006, that report has not materialized; the same fate befell the epilogue. Perhaps, some day, that analysis will emerge and when it does it will be incorporated into this book, in a supplement, cumulative supplement, or edition.

\* \* \*

This book is infused with (and, in part, stimulated by) admiration and appreciation for those who lead and manage associations. Your author has been representing associations for nearly four decades, and is grateful for the tough legal problems, all the air travel, and sheer fun. Association conventions, conferences, seminars, and board meetings generate many memorable occurrences, some of which ought not to be recounted here. Association representation can even lead to marriage.

\* \* \*

I wish to express my deep and sincere thanks for the help and support on this project provided by senior editor, Susan McDermott, and senior production editor, Kerstin Nasdeo.

> BRUCE R. HOPKINS June, 2006

# The Tax Law of Associations

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