

Taxation of Exempts

January/February 2019
Volume 30, No. 4

ARTICLES

SOCIAL MEDIA AND CROWDFUNDING—
LEGAL ISSUES FOR SECTION
501(c)(3) ORGANIZATIONS **04**

CHRISTOPHER M. HAMMOND

INTERNATIONAL CHARITABLE GIVING WITH
“DUAL QUALIFIED ENTITIES” **17**

CHRISTOPHER MORAN

PRIVATE FOUNDATIONS CAN NOW OWN 100%
OF BUSINESS ENTERPRISE **22**

RICHARD L. FOX

WHEN TO CONSOLIDATE A
NOT-FOR-PROFIT'S INTEREST IN
LOW-INCOME HOUSING PROJECTS **33**

JOSEPH KANJAMALA

IS IT A GRANT OR A CONTRIBUTION?
FASB HAS NOW MADE IT CLEARER **38**

JOHN D'AMICO

COLUMNS

RECENT DEVELOPMENTS **42**

Taxation of Exempts

Editors-in-Chief

Joseph E. Lundy
Schnader Harrison Segal & Lewis
Philadelphia, PA

Sharon W. Nokes
The Pew Charitable Trusts
Washington, DC

Board of Advisors

Ronald Aucutt
McGuire Woods, LLP
McLean, VA

Wendell R. Bird
Bird & Loechl
Atlanta, GA

Milton Cerny
McGuireWoods LLP
Washington, DC

Thomas E. Chomicz
Quarles & Brady LLC
Chicago, IL

Gregory L. Colvin
Silk, Adler & Colvin
San Francisco, CA

Dominic L. Daher
University of San Francisco

Harvey P. Dale
New York University School of Law
Cadwalader, Wickersham & Taft
New York, NY

William A. Dylewsky
Dylewsky & Goldberg
Stamford, CT

Joseph E. Greif
Neimark & Nadel
Washington, DC

D. Greg Goller
KPMG
Washington, DC

Barry J. Hart
Of Counsel
K&L Gates LLP
Washington, DC

Deborah A. Herrington
Deloitte & Touche LLP
Stamford, CT

Frances R. Hill
University of Miami School of Law
Coral Gables, FL

Bruce R. Hopkins
Bruce R. Hopkins Law Firm, LLC
Kansas City, MO

Christopher M. Jedrey
McDermott, Will & Emery
Boston, MA

Elizabeth J. Kingsley
Harmon, Curran, Spielberg &
Eisenberg, LLP

Washington, DC

Barbara L. Kirschten
Wilmer, Cutler & Pickering
Washington, DC

James J. Knicely
Knicely & Associates
Williamsburg, VA

Michael S. Kutzin
Goldfarb & Abrandt
New York, NY

Stuart J. Lark
Holme Roberts & Owen, LLC
Colorado Springs, CO

Deborah M. Lerner
Willig, Williamson & Davidson
Philadelphia, PA

Jerry J. McCoy
Washington, DC

Suzanne Ross McDowell
Steptoe & Johnson LLP
Washington, DC

Douglas M. Mancino
Seyfarth Shaw LLP
Los Angeles, CA

Patrick D. Martin
Nixon Peabody LLP
Rochester, NY

David S. Rhine
BDO Seidman
New York, NY

Laura M. Rivkin
N.J. Dept. of Education
Trenton, NJ

Celia Roady
Morgan, Lewis & Bockius
Washington, DC

Stephen Schwarz
Hastings College of Law
San Francisco, CA

John C. Stophel
Chambliss, Bahner & Stophel, P.C.
Chattanooga, TN

Scott Taylor
University of New Mexico
School of Law
Albuquerque, NM

Jeffery L. Yablon
Pillsbury Winthrop Shaw Pittman LLP
Washington, DC

Editorial Staff

Managing Editor
Daniel E. Feld, J.D.
dan.feld@tr.com

**Director, International
Tax & Journals**
Robert Gallagher, J.D., CPA

**Senior Graphic Designer
and Cover**
Christiane Bezerra

**VP, Editorial,
Knowledge Solutions**
Nancy S. Hawkins, J.D.

Advertising Representatives
Thomson Reuters
Terry Storholm
Advertising Sales Director
610 Opperman Drive, D5-S896
Eagan, MN 55123
Phone: (651) 687-7327
Fax: (651) 687-7374
E-Mail:
terry.storholm@thomsonreuters.com

Subscriptions
1-800-950-1216, ext. 1

Please Visit Our Website
tax.tr.com/CheckpointJournals

Taxation of Exempts (EOTJ) (ISSN 1043-0539) is published bimonthly by Thomson Reuters/Tax & Accounting, 121 River Street, Hoboken, NJ 07030. Subscriptions: \$455 per year. Call: (800) 323-8724. Also available on the Internet on Thomson Reuters Checkpoint®. One user license for one year: \$485.

Editorial and advertising inquiries: Thomson Reuters/Tax & Accounting, 121 River Street, Hoboken, NJ 07030, Telephone: (201) 536-4963, Fax (201) 536-4461. Send correspondence relating to subscriptions and all other business matters to Thomson Reuters Tax & Accounting, P.O. Box 115008, Carrollton, TX. 75011-5008.

©2018 Thomson Reuters/Tax & Accounting. Thomson Reuters, Checkpoint, and the Kinesis logo are trademarks of Thomson Reuters and its affiliated companies. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. Requests to reproduce material contained in this publication should be addressed to Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, (978) 750-8400, FAX (978) 750-4744. Requests to publish material or to incorporate material into computerized databases or any other electronic form, or for other than individual or internal distribution, should be addressed to Thomson Reuters Tax & Accounting, P.O. Box 115008, Carrollton, TX 75011-5008, (800) 323-8724. This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal or accounting advice or other expert assistance is required, the services of a competent professional person should be sought.

POSTMASTER: Send address changes to Taxation of Exempts, P.O. Box 115008 Carrollton, TX 75011-5008. Periodicals postage paid at Hoboken, NJ, and at additional mailing offices.

The views expressed herein may not be concurred in by editors or members of our editorial board.



THOMSON REUTERS®

How did I make my multi-tier entity research process less manual and more accurate?



Award-winning Thomson Reuters Checkpoint™ State Clear Comply helps get answers to complex state compliance questions and track filing obligations for multi-tier business entities. Now you can easily generate comprehensive reports that identify nexus flow-up obligations as well as direct state filing obligations for each entity, including Partnership, S Corporation and C Corporation returns, composite returns and non-resident withholding. It's just what you need to minimize the risk of missed filings and shave hours off your state compliance work.

Visit tax.tr.com/statecomply



Winner
2017 Silver Stevie® Award
New Product or Service of the Year —
Business Information



Winner
2017 Bronze Stevie® Award
Business-to-Business Products

//CODiE//
2017 SIIA CODiE WINNER



SOCIAL MEDIA AND CROWDFUNDING— LEGAL ISSUES FOR SECTION 501(c)(3) ORGANIZATIONS

CHRISTOPHER M. HAMMOND

The use of social media and crowdfunding by Section 501(c)(3) tax-exempt organizations can create legal issues for the organizations, including the risk of violating (1) the federal tax law prohibition of political campaign intervention and (2) state fundraising regulations.

Over the better part of the last decade, both the nonprofit ecosystem and the traditional nonprofit's life cycle have been significantly impacted by the proliferation of social media. At its core, social media is the epitome of hyper-efficient mass-networking and mass-promotion. According to the Pew Research Center, 69 percent of the public uses some form of social media,¹ with such usage being predominately associated with eight different platforms.² Moreover, the median American uses three of these eight platforms and many users visit multiple sites daily.³

Use of social media by nonprofit organizations

Certainly, social media is also utilized by nonprofit organizations, including organizations that are tax-exempt via Section 501(c)(3).⁴ For example, National Geographic Society has over 45 million "Likes" on Facebook, while Amnesty International USA has over 4 million followers on Twitter and National Public Radio has over 1 million followers on Instagram. Even much smaller organizations are able to garner strong support in their local communities through these 24/7/365 mediums of networking and promotion.

However, the use of social media creates a newer form of a longstanding problem for these organizations that are strictly regulated by the IRS and other governmental arms: attribution. As a result of this problem, a nonprofit organization may be held accountable for the actions of individuals when they rush to "press send" or "post" without considering the issue. For many individuals—and ostensibly all organizational leaders—it may be the case that social media musings are actually interpreted by the IRS and other regulators to be on behalf of the organizations themselves. In several areas of the law, this attribution can have serious ramifications for nonprofit organizations.

The purposes of this section of the article are to highlight a dangerous area of the law in which organizations experience problematic attribution and to describe ways in which this unwanted attribution may be avoided or, if necessary, mitigated.

General prohibition of political campaign intervention. A practitioner need not look far to review the Code's position on political campaign intervention by 501(c)(3) organizations. Within Section 501(c)(3) itself, the Code provides that an entity may only obtain and maintain such exemption if it "does not participate in, or intervene in (including

CHRISTOPHER M. HAMMOND, Esq., is an Associate in the Columbus, Ohio office of Dinsmore & Shohl LLP.

Also available as part of the eCourse

[2019 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the
36th Annual Nonprofit Organizations Institute session

"Outcome Based Philanthropy: Thinking About and Measuring Impact in an Increasingly
Complex World"