

39TH ANNUAL
**NONPROFIT ORGANIZATIONS
INSTITUTE**



FUNDAMENTALS
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INSTITUTE
January 13–14, 2022

Four Seasons Hotel ■ Austin, Texas

**Professional Opinions
and
Tax-Exempt
Organizations**

Ofer Lion
Seyfarth Shaw LLP
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Davis Wright Tremaine LLP

THE
AGENDA

- Overview - Tax opinions in the Exempt Organizations practice
- Chapter 42 – Protecting your client from Chapter 42 excise taxes
 - Statutes and Regulations
 - Parks v. Commissioner
- Circular 230 – Rules of Engagement – Federal Tax Practice
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- Tax return preparer penalties
- ASC 740 (Formerly FIN 48) (a brief by non-accountants)
- Comfort levels
- Form 1023-EZ

Contexts for Rendering Exempt Organizations Tax Opinions

- Chapter 42 Excise Tax Protection Opinions –
 - Manager's reliance on a reasoned written legal opinion of counsel
 - private foundation excise taxes – self-dealing, jeopardizing investments, taxable expenditures, PRIs, etc.
 - public charity excess benefit transactions - e.g., was the rebuttable presumption established?
 - Private foundation first-tier taxes
 - Excess business holdings, jeopardizing investments, taxable expenditures

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Contexts for Rendering Exempt Organizations Tax Opinions

- Tax Consequences Opinions – likelihood regarding expected tax consequences
 - Whether income is UBTI
 - Whether one line of business is in the same “silo” as another line of business
 - Whether amounts paid to an employee constitute “remuneration” under the new tax on “excess” executive compensation
 - Joint ventures – Redlands / St. David's

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Contexts for Rendering Exempt Organizations Tax Opinions

- Contractual Condition Opinions – opinion of counsel required by contract as a closing condition, e.g., no adverse effect on Section 501(c)(3) status
- Third-Party Inducement / Escape Hatch Opinions – e.g., right to terminate JV with for-profit if counsel opines that exempt status of exempt partner is at risk
- Borrower's Counsel in Tax-Exempt Bond Financings – Section 501(c)(3) status; unrelated trade or business
- ASC 740-10 (formerly FIN 48) Opinions – Disclosure of uncertain tax positions: more likely than not

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Opinions for Chapter 42 Excise Tax Protection

- Private foundation manager excise taxes; reliance on reasoned written opinion of counsel:
 - Section 4941 self-dealing
 - Section 4944 jeopardizing investments
 - Section 4945 taxable expenditures

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