

## Protecting Your Nonprofit Client: Opinions, Privilege, and Return Positions

© 2023 Locke Lord LLP  
[www.lockelord.com](http://www.lockelord.com)

David C. Gair  
Partner | Dallas  
[david.gair@lockelord.com](mailto:david.gair@lockelord.com)  
214-740-8528

February 9, 2024

1

## Nonprofit Tax Scams Over Years

- 1) Donor Advised Funds
- 2) Employee Stock Ownership Plans
- 3) Corporations Sole
- 4) Tax Exempt Accommodation Transactions
- 5) Excess Compensation
- 6) Conservation Easements



2

# Fisher & Sinnott Convictions

PRESS RELEASE

## Two Tax Shelter Promoters Found Guilty in Billion-Dollar Syndicated Conservation Easement Tax Scheme

Friday, September 22, 2023

Share >

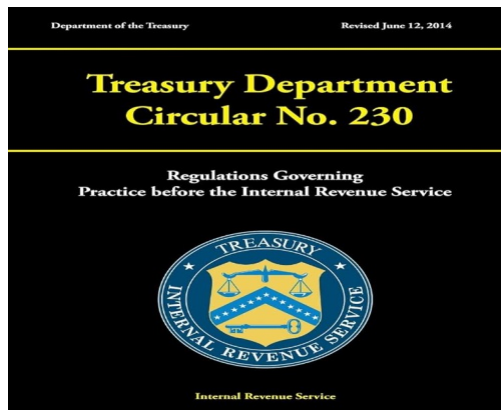
For Immediate Release

Office of Public Affairs

Defendants Sold Over \$1.3 Billion in Fraudulent Tax Deductions

3

# Tax Opinions



4

## Sample Areas Where Tax Opinions Are Important

1. UBIT and Unrelated Debt-financed Income
2. Excess Benefit Transactions
3. Self-Dealing – Disqualified Person Status and Specific Exemptions
4. Lobbying – 501(h)
5. Political Campaigning – 501(c)(3) and 501(h) election
6. Public Support Test– 509(a)(2)
7. Excess Business Holdings
8. Minimum Distributions for Private Foundations
9. Private Inurement issues in Non-Profit/For Profit Joint Ventures



5

## Why Should Client Get a Tax Opinion?

- Determine whether a tax position is legal or not (in opinion of advisor)
- If legal, what level of certainty can advisor provide that tax position is proper?
- If advisor is wrong, can client rely on the opinion to demonstrate reasonable cause to avoid penalties?

# Why?

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Protecting Your Nonprofit Client: Opinions, Privilege, and Return Positions

Also available as part of the eCourse

[2024 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the  
41<sup>st</sup> Annual Nonprofit Organizations Institute session

"Protecting Your Nonprofit Client: Opinions, Privilege, and Return Positions"