## **Contents**

Pref	face		χv
Abo	About the Authors		xvii
Воо	k Citat	ions	xxi
		Part One Introduction to <i>The Law of Tax-Exempt Healthcare</i> Organizations	
1	Tax-E	xempt Healthcare Organizations—An Overview	3
	§ 1.1	Constitutional Law Perspective 5	
	§ 1.2	Defining Tax-Exempt Organizations 6	
	§ 1.3	Rationales for Tax Exemption 9	
	§ 1.4	Categories of Tax-Exempt Healthcare Organizations 13	
	§ 1.5	Charitable Healthcare Organizations 14	
	§ 1.6	The Law of Charitable Trusts 16	
	§ 1.7	Relief of Poverty 16	
	§ 1.8	Promotion of Health 19	
	§ 1.9	Social Welfare Organizations 20	
2	Advan	tages and Disadvantages of Tax Exemption	23
	§ 2.1	Source of Tax Exemption 23	
	§ 2.2	Advantages of Tax Exemption 27	
	§ 2.3	Disadvantages of Tax Exemption 30	
	§ 2.4	Alternatives to Tax-Exempt Status 32	
	§ 2.5	No Contract, Third-Party Beneficiaries, Right of Action,	
		or Charitable Trust 34	
	§ 2.6	Small Employer Insurance Tax Credit 37	
3	Critici	sms of Tax Exemption	39
	§ 3.1	Criticisms in General 40	
	§ 3.2	Criticisms of Tax Exemption for Healthcare Organizations 43	
	§ 3.3	Commerciality Doctrine 56	

# Part Two Fundamental Exempt Organization Principles Applied to Healthcare Organizations

4	Private	e Inurement, Private Benefit, and Excess Benefit Transactions	71
	§ 4.1	Essence of Private Inurement 72	
	§ 4.2	Requisite Insider 77	
	§ 4.3	Physicians as Insiders 84	
	§ 4.4	Private Inurement—Scope and Types 86	
	§ 4.5	Private Inurement Per Se 104	
	§ 4.6	Essence of Private Benefit 107	
	§ 4.7	Private Inurement and Private Benefit Distinguished 113	
	§ 4.8	A Case Study 113	
	§ 4.9	Excess Benefit Transactions 116	
5	Public	Charities and Private Foundations	137
	§ 5.1	Public Institutions 138	
	§ 5.2	Publicly Supported Organizations—Donative Entities 143	
	§ 5.3	Publicly Supported Organizations—Service	
		Provider Organizations 150	
	§ 5.4	Comparative Analysis of the Two Categories of Publicly	
		Supported Charities as Applied to Healthcare Organizations 155	
	§ 5.5	Supporting Organizations 156	
	§ 5.6	Recognition of Change in Public Charity Status 172	
	§ 5.7	Relationships Created for Avoidance Purposes 172	
	§ 5.8	Income Attribution Rules 173	
	§ 5.9	Reliance by Grantors and Contributors 173	
	§ 5.10	Private Foundation Rules 175	
6	Comm	nunity Benefit	179
	§ 6.1	Community Benefit and Operation for Charitable Purposes 179	
	§ 6.2	The Traditional Community Benefit Standard 180	
	§ 6.3	The New Community Benefit Standard 183	
7	Lobby	ing and Political Activities	193
	§ 7.1	Legislative Activities Limitation 193	
	§ 7.2	Business Expense Deduction Rules and Lobbying 205	
	§ 7.3	Federal Disclosure of Lobbying 206	
	§ 7.4	Political Activities Limitation 209	
	§ 7.5	Business Expense Deduction Rules and Political Activities 218	
	§ 7.6	Internet Activities 219	
	§ 7.7	Public Policy Advocacy Activities 222	
	§ 7.8	Political Activities of Social Welfare Organizations 223	
	§ 7.9	Constitutional Law Considerations 225	

# PART THREE Tax Status of Healthcare Provider and Supplier Organizations

8	Hospit	als	229
	§ 8.1	Federal Tax Law Definition of Hospital 229	
	§ 8.2	Private Charitable Hospitals 234	
	§ 8.3	Public Hospitals 238	
	§ 8.4	Religious Hospitals 238	
	§ 8.5	Proprietary Hospitals 240	
9	Manag	ged Care Organizations	243
	§ 9.1	Introduction 243	
	§ 9.2	Health Maintenance Organizations 245	
	§ 9.3	Commercial-Type Insurance Providers 279	
	§ 9.4	Preferred Provider Organizations 287	
	§ 9.5	Recent Developments 289	
10	Home	Health Agencies	293
-		Freestanding Home Health Agencies 293	
	_	Hospital-Based Home Health Agencies 299	
		Private Duty Nursing Companies 300	
44	Цата	n for the Area	202
11		s for the Aged Introduction 303	303
	U	Overview of Tax Exemption for Homes for the Aged 303	
	-	Specific Types of Healthcare Facilities for the Aged 307	
		Other Considerations 310	
12		kempt Physician Organizations	313
	_	Tax-Exempt Clinics 313	
	§ 12.2	Teaching Hospital Faculty Organizations 319	
13	Other	Provider and Supplier Organizations	325
	§ 13.1	Blue Cross and Blue Shield Associations 325	
	§ 13.2	High-Risk Individuals Healthcare Coverage Organizations 335	
	§ 13.3	Qualified Health Insurance Issuers 336	
	§ 13.4	Health Insurance Exchanges 337	
	§ 13.5	Accountable Care Organizations 339	
		Part Four	
		Tax Status of Health-Related Organizations	
14	Develo	opment Foundations	355
-		Basic Concepts 355	
	_	Other Considerations 361	

	-	Case Study 362 A Potential Alternative 363	
15	§ 15.1 § 15.2	Single-Parent Title-Holding Companies 366 Multi-Parent Title-Holding Companies 369 Unrelated Business Considerations 371	365
16	§ 16.1 § 16.2 § 16.3 § 16.4 § 16.5	Establishing a Subsidiary 374 Financial Considerations 378 Attribution of Subsidiary's Activities to Exempt Parent 383 Asset Accumulations 387 Effect of For-Profit Subsidiaries on Public Charity Status 388 Subsidiaries in Partnerships 390	373
17	§ 17.1	ot and Nonexempt Cooperatives  Cooperative Hospital Service Organizations 393  Subchapter T Cooperatives 403	393
18	§ 18.1 § 18.2 § 18.3	Business Leagues in General 405 Healthcare Trade Associations 412 Certification Organizations and Peer Review Boards 413 Legislative Activities of Business Leagues 417	405
19	§ 19.1 § 19.2 § 19.3 § 19.4	Health-Related Organizations Physician Referral Services 431 Nurse Registries 432 Charitable Risk Pools 435 Hospital Management Services Organizations 436 Regional Health Information Organizations 442  PART FIVE Organizational Issues	431
20	§ 20.1	care Provider Reorganizations Some Basics about Reorganizations 447 Parent Holding Corporations 449	447
21	§ 21.1 § 21.2	rs and Conversions  Mergers and Consolidations between Exempt Healthcare Organizations 457  Mergers and Consolidations between Exempt and Nonexempt Healthcare Organizations 460  Conversion from Exempt to Nonexempt Status 461	457

	§ 21.4 Conversion from Nonexempt to Exempt Status 472 § 21.5 Joint Operating Agreements 476	
22	Partnerships and Joint Ventures § 22.1 Tax Law Fundamentals 485 § 22.2 Tax-Exempt Healthcare Entities in Partnerships 490 § 22.3 Partnerships and Tax Exemption 493 § 22.4 Limited Liability Companies as Exempt Organizations 496 § 22.5 Information Reporting 499 § 22.6 Joint Ventures 500 § 22.7 Partnerships, Joint Ventures, and Private Inurement 503 § 22.8 Partnerships, Joint Ventures, and Per Se Private Inurement 504 § 22.9 Whole-Hospital Joint Ventures 505 § 22.10 Provider-Sponsored Organization Joint Ventures 524 § 22.11 Ancillary Services Joint Ventures 524 § 22.12 Single-Member Limited Liability Companies 543	485
23	<ul> <li>Integrated Delivery Systems</li> <li>§ 23.1 Introduction 547</li> <li>§ 23.2 Tax Status of IDS Organizations 548</li> <li>§ 23.3 Physician Practice Acquisitions 570</li> </ul>	547
	PART SIX Operational Issues	
24	Tax Treatment of Unrelated Business Activities § 24.1 Introduction 577 § 24.2 Definition of Trade or Business 579 § 24.3 Definition of Regularly Carried On 588 § 24.4 Definition of Substantially Related 592 § 24.5 Application of Substantially Related Test to Healthcare Organizations 599 § 24.6 Definition of Patient 604 § 24.7 Gift Shops, Cafeterias, and Coffee Shops 606 § 24.8 Fitness Centers 608 § 24.9 Parking Facilities 609 § 24.10 Temporary Residential Facilities 610 § 24.11 Pharmacy, Medical Supplies, and Services Sales 611 § 24.12 Laboratory Testing Services 614 § 24.13 Medical Research 617 § 24.14 Medical Office Buildings 622 § 24.15 Transactions between Related Organizations 623 § 24.16 Services for Small Hospitals 626 § 24.17 Corporate Sponsorships 627 § 24.18 Other Exceptions to Unrelated Income Taxation 630	575

	§ 24.19	Internet Activities 641	
	•	Revenue from Controlled Organizations 644	
	_	Unrelated Debt-Financed Income 648	
	§ 24.22	Specific Deduction 652	
	§ 24.23	Computation of Unrelated Business Taxable Income 653	
	§ 24.24	The Commerciality Doctrine 655	
25	Physic	cian Recruitment and Retention	657
	U	Introduction 657	
	_	The IRS Position 660	
	§ 25.3	The OIG Position 661	
	§ 25.4	Guidelines for Analyzing Recruitment and Retention Techniques	662
	-	Specific Recruitment and Retention Techniques 663	
	§ 25.6	Hermann Hospital Closing Agreement 679	
	§ 25.7	Physician Recruitment Revenue Ruling 692	
26	Charit	y Care	711
	•	Introduction 712	
		The Financial Ability Standard 712	
		The Community Benefit Standard 713	
		The Emergency Room Exception 716	
	-	Legal Challenges to Hospital Charity Care Practices 717	
		Definitional and Reporting Issues 719	
		IRS Compliance Check and Form 990 Redesign 725	
		Federal Legislative Initiatives 727	
		Charity Care and National Health Reform 731	
		Additional Statutory Requirements for Hospitals 732	
	§ 26.11	The Constitutionality of the Affordable Care Act 749	
27		er Classification and Employment Taxes	757
		Federal Employment Taxes 758	
		Employees and Independent Contractors Distinguished 759	
	-	The Common-Law Factors 761	
	U	Safe Harbors 762	
	_	Classification of Healthcare Workers 764	
		Coordinated Issue Papers 768	
	§ 27.7	Medical Residents and the Student Exception 774	
28		ensation and Employee Benefits	777
	_	The Reasonable Compensation Standard 778	
		Hospital–Physician Compensation Arrangements 781	
		Executive Compensation 784	
	_	Board Compensation 791	
	_	Overview of Employee Benefits Law 792	
	§ 28.6	Deferred Compensation in General 796	

29	Medicare and Medicaid Fraud and Abuse and Its Effect on Exemption		
	§ 29.1	The Conflict and Confluence of Tax Policy and Health Policy 803	
	§ 29.2	Fraud and Abuse Violations as a Basis for Revocation of Exemption 808	
	§ 29.3	Hospital Incentives to Physicians 811	
30	§ 30.1	Overview of Qualified 501(c)(3) Bonds 814	813
	§ 30.3	Overview of the Qualified 501(c)(3) Bond Issuance Process 824 Disqualification of Tax-Exempt Bonds 826 Internal Revenue Service Developments 831	<b>t</b>
31	Fundra	aising Regulation	835
	-	State Law Regulation 836 Federal Law Regulation 848	
32		Healthcare Organizations	873
	U	Introduction 873 Application of the Substantial Private Benefit Prohibition 874	
	-	Application of the Substantial Private Benefit Prohibition 874 Application of Unrelated Business Income Rules 874	
		Physician Recruitment and Retention in Rural Areas 877	
33	Gover	nance	879
	U	Introduction 880	
	§ 33.2	Overview of Common Law and Statutory Duties of Officers and Directors 880	
	§ 33.3	Good Governance Practices 891	
	§ 33.4	Conflicts of Interest 897	
	_	Board Oversight of Executive Compensation 900	
	-	Government Oversight of Executive Compensation 901	
	_	Federal Legislative Initiatives 906	
	9 33.8	State Regulatory Enforcement of Corporate Responsibility Obligations 907	
		Part Seven	
	O	btaining and Maintaining Exempt Status for Healthcare Organizations	
34	_	otion and Public Charity Recognition Processes	913
		Exemption Recognition Process 916	
	-	Application Disclosure Requirements 928  Special Requirements for Charitable Healthcare Organizations	020
	§ 34.4	Special Requirements for Charitable Healthcare Organizations Special Requirements for Health Insurance Issuers 937 Public Charity Status 937	930

	§ 34.6	Group Exemption 939	
	§ 34.7	Integral Part Doctrine 944	
	§ 34.8	Procedure Where Determination Is Adverse 949	
35	Mainte	enance of Tax-Exempt Status and Avoidance of Penalties	953
	§ 35.1	Material Changes 954	
	§ 35.2	Changes in Form 956	
	§ 35.3	Annual Reporting Requirements 958	
	§ 35.4	Redesigned Annual Information Return 965	
	§ 35.5	Disclosure Requirements 979	
	§ 35.6	IRS Disclosure to State Officials 986	
	§ 35.7	Form 990 and Community Benefit 988	
	§ 35.8	Reporting of Noncash Gifts in General 988	
36	IRS A	udits of Healthcare Organizations	1003
	§ 36.1	IRS Audits in General 1003	
	§ 36.2	Audit Procedures 1007	
	§ 36.3	Hospital Audit Guidelines 1011	
	§ 36.4	IRS Compliance Check Projects 1022	
	§ 36.5	Revocation of Exemption and Closing Agreements 1037	
Abo	out the	Companion Website	1043
Inde	ex		1045