

PARKS & TRAILS NEW YORK CONFERENCE ROUND TABLE

**AN OVERVIEW OF SELECTED PROVISIONS OF THE INTERNAL
REVENUE CODE THAT REGULATE THE ACTIVITIES OF
SECTION 501 (c) (3) ORGANIZATIONS**

Background of Section 501(c)(3) status.

What does 501(c)(3) status mean to the organization?
Why 501(c)(3)?
Public charity vs. private foundation.

IRC Section 501(c)(3) (Exemption from federal income tax).

In order to be exempt from federal tax under Section 501(c)(3) of the Internal Revenue Code, an organization must satisfy the following requirements:

1. The organization must be organized and operated exclusively for one or more exempt purposes.
2. No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual.
3. No substantial part of the activities of the organization may be carrying on propaganda, or otherwise attempting to influence legislation.
4. The organization may not participate in, or intervene in, any political campaign on behalf of or in opposition to any candidate for public office.
5. The organization must serve a public rather than a private purpose.
6. The organization may not operate for illegal purposes or engage in activities which are contrary to a clearly established public policy.

IRC Section 170 (Charitable deduction).

Quid pro quo limitations.
Substantiation requirements.

IRC Sections 511 through 514 (Unrelated business income tax).

Tax applies to the net income of an exempt organization which is attributable to:

1. A trade or business,
2. which is regularly carried on, and
3. which is not substantially related to the organization's exempt purpose.

IRC Section 4958 (Intermediate sanctions).

Excise tax imposed upon "insiders" for excess benefit transactions.
Excise tax may also be imposed upon "managers" who knowingly permit the organization to engage in an excess benefit transaction.

IRC Section 6104 (Public disclosure).

Exemption application (Form 1023)
Annual Returns (Form 990 or Form 990-EZ (three years))

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FIDUCIARY DUTIES OF DIRECTORS AND OFFICERS

Duties:

Broadly stated, the fiduciary duties of directors and officers are threefold:

1. Duty of care;
2. Duty of loyalty; and
3. Duty of obedience.

Duty of care:

Section 717 (a) of the Not-for-Profit Corporation Law provides in relevant part as follows: “Directors and officers shall discharge the duties of their respective positions in **good faith** and with the care **an ordinarily prudent person** in a like position would exercise under similar circumstances.” [Emphasis added.]

Duty of loyalty:

Directors and officers are charged with the duty to act in the interest of the corporation. Where the interest of the corporation conflicts with the personal interest of a director or officer, the interest of the corporation must prevail.

Duty of obedience:

Under the duty of obedience, directors and officers are obliged in the performance of their duties to obey the law and the provisions of the corporation’s organizational documents and policies.

Conflict of Interest Policy:

Section 715-a of the Not-for-Profit Corporation Law requires the corporation to establish and maintain a conflict of interest policy and prescribes the essential matters that the policy must address. The statute does not prohibit interested party transactions. Such a transaction may proceed so long as it is determined that the proposed transaction is fair and reasonable and in the best interest of the corporation. Key provisions of the conflict of interest policy: definitions of “related party” and “related party transaction”; disclosure requirements; process for applying the fair and reasonable standard; and documentation of the process.

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SELECTED OTHER TOPICS

New York State and Local Sales and Use Taxes

- Exemption (Form ST-119.2)
- Purchases by the organization (Form ST-119.1)
- Sales by the organization

New York State Corporate Income Tax

- Exemption (Form CT-247)
- Necessary at dissolution

Registration with the New York Attorney General

- Attorney General oversight of charities
- Estates, Powers and Trusts Law Section 8-1.4
- Executive Law Section 172
- Form CHAR410
- Annual reporting requirements (Form CHAR500)
- Use of professional fundraisers
- Commercial co-venturers

Personal Liability of Directors and Officers

- Generally
- Derivative actions
- New York Not-for-Profit Corporation Law Section 720-a
 - Application
 - Burden of proof
- Directors' and Officers' Liability Insurance
 - Statutory indemnification
 - Why insurance?
- Responsible person liability
 - Employment taxes
 - Sales taxes

Employee vs. Independent Contractor

- Employment taxes
- Unemployment insurance