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OUTLINE FOR NATIONAL BUSINESS INSTITUTE SEMINAR APRIL 25, 2008

HOW TO KEEP TAX EXEMPT ORGANIZATIONS IN COMPLIANCE

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CURRENT CASE LAW AND LEGISLATIVE UPDATES

IMPACTING THE TAX-EXEMPT ORGANIZATION

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A. Federal Law.

2007 saw many fewer changes than 2006, when the Pension Protection Act, which included many provisions applicable to tax-exempt organizations, was enacted. Although Senator Grassley is now the ranking member of the Senate Finance Committee rather than the Chairman, he continues his interest in tax-exempt organizations. Most recently, he circulated a draft of potential reforms aimed at 501(c)(3) hospitals, including limiting joint ventures with for-profit entities, application of some Sarbanes Oxley governance reform and requiring minimum charity care standards. Discussions on the proposals continue, but other aspects of the economy are taking more of Congress' attention now, and it is unlikely significant reforms of the laws on tax-exempt organizations will emerge this year.

As noted, the Form 990 is extensively revised for 2008, and even small tax-exempt organizations, with gross receipts of \$25,000 or less per year, will be required to file an electronic notice of "e-post card" for tax year 2007 and going forward. Those are due on the 15<sup>th</sup> day of the fifth month after the close of the tax year. So for those organizations with tax year ending December 31, it would be due May 15. Mark your calendars. The IRS has good information on this on its website: [www.irs.gov](http://www.irs.gov) . **It is important to note that organizations that fail to file for three years in a row will have their exempt status revoked by the IRS.**

B. State Law.

The New Hampshire legislature passed one minor statutory change affecting charitable organizations: The requirement that car insurers not refuse a policy to an individual because the person acts as a volunteer driver for an organization such as Meals on Wheels, or other charitable organization, as defined in RSA 7:21. RSA 412:17-a. This prohibition on discrimination against those who volunteer to drive for charitable organizations is designed to allow individuals who volunteer for organizations and

transport individuals or goods without compensation, beyond reimbursement for expenses, to no longer be subject to denial of insurance because of that activity. This law went into effect January 1, 2008. All organizations with volunteers who do drive for the entity should be careful about maintaining a list of all volunteer drivers, in order to make sure that they can take advantage of this new statute. Having a list of volunteers also enables them to take advantage of the limitations on liability in Chapter 508.

The activity in the New Hampshire Supreme Court on charities has been primarily in the area of property tax exemptions. As noted above, the New Hampshire property tax law exempts the real estate owned by charitable organizations, as defined in that statute. RSA 7:23,V provides:

“The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.”

That statute also defines the term “charitable,” and it is important to note that that definition is narrower than the definition under the Internal Revenue Code.

“The term ‘charitable’ as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well being of the general public, or a substantial and indefinite segment of the general public that includes residents of the State of New Hampshire, with no pecuniary profit or benefit to its officers or members, or

any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization "charitable" for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of 'charitable' under the common law of New Hampshire."

RSA 7:23-1.

In Eldertrust of Florida, Inc. v. Town of Epsom, 154 N.H. 693 (2007), the New Hampshire Supreme Court enunciated four factors that an organization must satisfy in order to meet the requirements for a property tax exemption under New Hampshire law. Those four factors are:

"Whether: (1) the institution or organization was established and is administered for a charitable purpose; (2) an obligation exists to perform the organization's stated purpose to the public rather than simply to members of the organization; (3) the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and (4) any of the organization's income or profits are used for any purpose other than the purpose for which the organization was established. Under the fourth factor, the organization's officers or members may not derive any pecuniary profit or benefit."

Eldertrust at 697-698.

In the Eldertrust case, the Court went on to analyze very carefully the facts of the case involving a § 501(c)(3) organization that provides retirement housing for elderly persons. The Court affirmed the Superior Court decision granting the charitable property tax exemption. The Supreme Court found, after extensive analysis, that the organization had met all four of the factors. However, the Supreme Court also notes that this was a

“particularly close case” and called upon the Legislature to amend the statute, if it disagreed with the outcome in that case. Id. at 706.

In Town of Peterborough v. The McDowell Colony, Inc., 157 N.H. 1 (2008), the Supreme Court applied the Elder-Trust criteria again, to hold that The MacDowell Colony, a large charitable organization located in that community, is entitled to a charitable tax exemption under New Hampshire law, although it provides direct benefits to a very select group of elite artists. The Court held that the purpose of promoting the arts was sufficient, even if the artists had no obligation to produce art.

The lesson for charitable organizations in New Hampshire is to pay close attention to meeting the requirements stated in the Eldertrust case, reflecting New Hampshire law. It is not enough to be tax exempt pursuant to IRS determination. An organization must also meet the requirements under New Hampshire state law, which are narrower, in order to be entitled to a property tax exemption.