RECENT FEDERAL TAX DEVELOPMENTS FOR NONPROFITS
CLS NATIONAL CONFERENCE: GENERAL COUNSEL FORUM
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This CLE briefs general counsel on notable federal tax developments affecting the nonprofit sector. The program covers recent federal tax legislation, proposed legislation, IRS priority guidance projects, group exemption procedures, the Form 990 transparency initiative, § 501(c)(4) "primary purpose" litigation, Form 990 Schedule B donor-disclosure litigation, religious exemption developments, political activity, federal funding developments, and broader public policy developments affecting the sector. This outline may be updated as new legal developments arise before the presentation.

1 RECENT AND PROPOSED FEDERAL LEGISLATION AFFECTING NONPROFITS

1.1 One Big Beautiful Bill Act

- The One Big Beautiful Bill Act was signed into law on July 4, 2025, and includes several provisions directly affecting tax-exempt organizations and charitable donors.
- The Act changes charitable contribution deduction rules, creates a federal scholarship tax credit, expands compensation-related excise tax exposure, and revises the higher-education endowment tax under § 4968.

1.1.1 Charitable Contribution Changes

- New § 170(p) creates a non-itemizer charitable deduction for cash gifts to certain charitable organizations, subject to statutory limitations and substantiation requirements.
- The non-itemizer deduction is limited to cash contributions to public charities, excludes donor-advised funds, and is capped at $1,000 for single filers and $2,000 for joint filers.
- The Act makes permanent the 60% AGI limitation for cash contributions to public charities.
- The Act imposes a 0.5% AGI floor on charitable contribution deductions for itemizing individuals, allowing deductions only to the extent contributions exceed that floor.
- The Act creates a 1% taxable-income floor for corporate charitable contribution deductions under § 170(b)(2)(A), while retaining the existing 10% taxable-income limitation and allowing certain disallowed amounts to be carried forward for up to five years.
- The corporate charitable deduction floor does not appear to apply to charitable deductions against unrelated business taxable income under § 512(b)(10), which was not amended to incorporate the new 1% floor.
- The Act limits the deduction benefit for certain high-income taxpayers so that charitable deductions do not necessarily produce a full 37% marginal-rate benefit.

1.1.2 Federal Scholarship Tax Credit and Scholarship-Granting Organizations

- New § 25F creates a federal scholarship tax credit for certain contributions to qualifying scholarship-granting organizations.

- Scholarship-granting organizations must satisfy federal eligibility requirements and may also depend on state participation mechanisms before donors can claim the credit.
- The credit structure changes donor messaging because qualifying contributions may generate a federal credit rather than only a charitable contribution deduction.

1.1.3 Executive Compensation

- The Act expands § 4960 by applying the excise tax on excess compensation to any covered employee of an applicable tax-exempt organization earning more than $1 million, rather than limiting the regime to the five highest-compensated employees.
- Compensation aggregation rules require organizations to track compensation across applicable tax-exempt organizations and related entities, including current and former employees.
- Medical service compensation is excluded under § 4960. Compensation paid to clergy for services performed in the exercise of ministry may also fall outside § 4960 remuneration because § 4960 generally looks to § 3401(a) wages, and § 3401(a)(9) excludes ministerial-service compensation from wages.

1.1.4 Higher Education Excise Tax Provisions

- The Act amends § 4968 by replacing the flat 1.4% excise tax on net investment income of certain private colleges and universities with a tiered rate structure based on student-adjusted endowment.
- The revised § 4968 rates are 1.4%, 4%, and 8%, depending on the institution's student-adjusted endowment level.
- The revised § 4968 regime exempts schools with fewer than 3,000 tuition-paying students and schools with more than 50% international students.

1.1.5 Other Provisions Affecting Exempt Organizations

- The Act increases the filing threshold for Forms 1099-MISC and 1099-NEC to $2,000, indexed for inflation.
- The Act shortens the availability window for certain energy credits relevant to exempt organizations.
- The Act includes employer-facing tax provisions, including changes related to overtime and employee education benefits.

1.2 Proposed Fiscal Sponsorship Legislation: SPONSOR Act

- The Stop Proxy Organizations Nurturing Subversive Operations and Riots Act, or SPONSOR Act, has been introduced as S. 3942 and H.R. 7799.
- The bill would add new § 501(s), titled "Liability of Fiscal Sponsors for Sponsored Activities."
- The bill would apply when a § 501(c)(3) organization expends funds for a fiscal sponsorship and a § 170 deduction is allowed, or represented as available, for contributions to the sponsored project, program, or function.
- The bill would make the sponsoring charity bear criminal liability related to or arising from the fiscal sponsorship and civil liability concerning covered activity related to or arising from the sponsorship.

- Covered activity would include aiding and abetting certain acts of international terrorism, interference by force or credible threat of force with constitutional rights, and intentional obstruction of commerce through force, credible threat of force, or physical blockage.
- The bill defines fiscal sponsorship as a relationship in which a § 501(c)(3) organization receives and administers funds on behalf of a project or organization not exempt from tax and retains discretion and control over the funds to ensure charitable use.
- The bill creates a presumption that the fiscal sponsor is responsible for ensuring sponsored funds are used in compliance with applicable laws, regulations, and tax obligations, while preserving defenses based on due diligence and reasonable oversight.

1.3 Other Legislative Proposals Affecting Exempt Organizations

- H.R. 9495 would establish an expedited process under § 501(p) for suspending the tax-exempt status of "terrorist supporting organizations."
- H.R. 9495 would define a terrorist supporting organization as an organization designated by the Treasury Secretary as having provided material support or resources to a terrorist organization during the three-year period ending on the date of designation.
- The Stop FUNDERs Act would amend the federal racketeering statute to include riot-related offenses under 18 U.S.C. § 2101 as predicate racketeering activity.
- Recent university endowment tax proposals reflect continuing congressional interest in using federal tax rules to respond to university endowment size, foreign investments, campus encampments, antisemitism, and institutional governance.

2 2025–2026 TREASURY AND IRS PRIORITY GUIDANCE PLAN

2.1 Overview

- The 2025–2026 Treasury and IRS Priority Guidance Plan covers the July 1, 2025 through June 30, 2026 plan year.
- For exempt organizations, the plan identifies priority projects involving § 4960 compensation tax, § 4968 college and university net investment income tax, § 25F scholarship credits, § 45S paid family and medical leave credits, donor-advised funds, expenditure responsibility, public inspection, private-school public-policy doctrine, and the Johnson Amendment.

2.2 Donor-Advised Funds

- The Priority Guidance Plan includes final regulations under § 4966 addressing taxable distributions from donor-advised funds and excise taxes on sponsoring organizations and fund managers.
- Final § 4966 regulations may affect sponsor procedures for donor/advisor benefits, grant approvals, pledge satisfaction, bifurcated payments, investment adviser arrangements, and documentation of sponsor control and discretion.
- The Priority Guidance Plan lists donor-advised fund guidance under §§ 4958 and 4967 as an omitted item, signaling that related DAF issues remain unresolved even if final § 4966 regulations are prioritized.

2.3 Expenditure Responsibility

- The Priority Guidance Plan includes regulations under § 4945 regarding private foundation expenditure responsibility requirements.
- Forthcoming expenditure responsibility guidance may affect grants to foreign organizations, noncharitable recipients, sponsored projects, and other arrangements requiring written agreements, reporting, segregation of funds, and documentation of charitable use.

2.4 Public Inspection and Section 6104

- The Priority Guidance Plan includes proposed regulations under § 6104 addressing the place for public inspection of materials relating to tax-exempt organizations, pensions, and other plans.
- Section 6104 guidance may affect public-inspection procedures, website posting practices, redaction processes, and consistency among Form 990, exemption applications, annual reports, and public-facing materials.

2.5 Section 501(c)(3) Public Policy and Political Activity Projects

- The Priority Guidance Plan includes a project addressing application of the fundamental public policy against racial discrimination in determining eligibility of private schools for recognition of exemption under § 501(c)(3).
- The Priority Guidance Plan includes a project addressing the prohibition against participation or intervention in political campaigns by § 501(c)(3) organizations.
- The inclusion of public-policy doctrine and Johnson Amendment guidance reflects continuing federal attention to the boundary between tax exemption, civil rights compliance, and protected expression.

3 UPDATED IRS GROUP RULING GUIDANCE REVENUE PROCEDURE 2026-8

3.1 Overview

- Revenue Procedure 2026-8 updates procedures for obtaining and maintaining group exemption letters for organizations described in § 501(c) that are affiliated with and under the general supervision or control of a central organization.
- The Rev. Proc. modifies and supersedes Revenue Procedure 80-27 and finalizes a modernized framework for group exemptions following Notice 2020-36.
- The revenue procedure treats group exemption status as an ongoing compliance relationship among the central organization, its subordinates, and the IRS rather than merely a one-time recognition letter.

3.2 Resumption of Group Exemption Applications

- The IRS stopped accepting applications for group exemption letters beginning June 17, 2020.
- Provides that the IRS resumed accepting group exemption applications after January 20, 2026.
- New group exemption applications must comply with Revenue Procedure 2026-8, including updated requirements for central organizations, subordinate organizations, and annual maintenance.

3.3 Central Organization and Subordinate Organization Requirements

- Revenue Procedure 2026-8 applies to central organizations and subordinate organizations included in a group exemption letter.
- The revenue procedure requires an affiliation relationship and general supervision or control by the central organization over subordinate organizations.
- Central organizations must maintain procedures to confirm subordinate eligibility, classification, annual reporting compliance, and continued inclusion in the group exemption.
- Affiliation agreements, bylaws, annual certifications, subordinate reporting, and procedures for adding or removing subordinates are now central to group ruling compliance.

3.4 Transition Rules

- Preexisting group exemption letters and preexisting subordinate organizations are subject to transition rules under Revenue Procedure 2026-8.
- Existing group ruling holders should use the transition period to reconcile subordinate lists, confirm subordinate Form 990 compliance, review automatic revocation status, update affiliation documents, and document general supervision or control.

4 FORM 990 AND REPORTING DEVELOPMENTS

4.1 Form 990 Transparency Initiative

- On April 23, 2026, Treasury announced that the IRS plans to revise Form 990 to improve transparency, strengthen tax administration, and require clearer reporting by § 501(c)(3) organizations. The announced revisions are expected to focus on government contracts, government grants, and fiscal sponsorship arrangements.
- Treasury stated that clearer reporting on government grants and contracts is intended to help the IRS and the public better understand the sources and uses of public funding, support proper revenue classification, and reduce the risk of fraud, abuse, and misuse of taxpayer dollars.
- Treasury stated that fiscal sponsorship arrangements may obscure who operates a project, who controls project funds, and how funds are used, and that increased reporting is intended to make those arrangements more transparent.
- Form 990 revisions have not yet been finalized. Treasury and the IRS expect to publish proposed regulations and provide an opportunity for public comment before final changes are adopted.

4.2 Government Grants, Contracts, and Fiscal Sponsorship Reporting

- The planned Form 990 revisions are expected to require clearer reporting on government grants and government contracts received by § 501(c)(3) organizations.
- The initiative reflects increased federal attention to public funding streams, revenue classification, pass-through funding, and whether exempt organizations can document the source, control, and use of government funds.
- The planned revisions are also expected to require clearer reporting on fiscal sponsorship arrangements involving § 501(c)(3) organizations.
- The announced fiscal sponsorship reporting initiative should be considered together with pending legislative proposals, including the SPONSOR Act.

4.3 Form 990 as Public Disclosure and Enforcement Tool

- Form 990 functions as a public disclosure, tax administration, governance, and reputational document.
- Current Form 990 reporting already requires governance disclosures, including board composition, independence, conflict-of-interest policies, whistleblower and document-retention policies, public-access practices, Form 990 review procedures, and disclosures regarding material diversions of assets.
- The announced Form 990 transparency initiative would expand that public-reporting function by increasing attention to fund flows, project control, public funding, and fiscal sponsorship arrangements.

5 COURT DECISIONS AND LITIGATION AFFECTING EXEMPT ORGANIZATIONS

5.1 Section 501(c)(4) and What "Primary" Means

- Section 501(c)(4) organizations are described in the Code as civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, with no part of net earnings inuring to the benefit of a private shareholder or individual. I.R.C. § 501(c)(4).
- IRS regulations have historically interpreted § 501(c)(4) to require that the organization be primarily engaged in promoting social welfare. Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).
- Recent litigation creates uncertainty over whether § 501(c)(4) activity should be evaluated under a more-than-50% primary-purpose framework, a substantial-nonexempt-purpose framework, or a more speech-protective constitutional standard.

5.1.1 Memorial Hermann Accountable Care Organization v. Commissioner, 120 F.4th 215 (5th Cir. 2024)

- The Fifth Circuit affirmed the Tax Court's rejection of § 501(c)(4) status for an accountable care organization.
- Applying Loper Bright, the Fifth Circuit gave no controlling deference to IRS regulatory guidance interpreting "exclusively" in § 501(c)(4). Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).
- The Fifth Circuit looked to § 501(c)(3), which also uses the term "exclusively," and applied the substantial-nonexempt-purpose test from Better Business Bureau. Better Bus. Bureau of Wash., D.C. v. United States, 326 U.S. 279 (1945).
- The court concluded that Memorial Hermann ACO's direct benefits accrued to its members and that the organization did not qualify for § 501(c)(4) exemption.

5.1.2 Freedom Path v. IRS, No. 1:20-cv-01349-JMC (D.D.C. Sept. 30, 2025)

- U.S. District Court for the District of Columbia addressed the meaning of "exclusively" and the standards for political activity under § 501(c)(4).
- The court held that the regulatory "primary purpose" test and the facts-and-circumstances political activity analysis under Revenue Ruling 2004-6 were unconstitutionally vague as applied. Rev. Rul. 2004-6, 2004-1 C.B. 328.

- The court did not grant exemption outright; it denied Freedom Path's request for recognition at the summary judgment stage because the parties had not proposed an alternative lawful standard.
- The court directed the parties to file renewed motions advancing interpretations of the primary-activity and political-activity inquiries that are not unconstitutionally vague and are rooted in the governing statutory, regulatory, and constitutional framework.

5.2 Buckeye Institute v. IRS, No. 25-3170 (6th Cir. filed Mar. 14, 2025)

- Buckeye Institute v. IRS challenges the IRS requirement that § 501(c)(3) organizations report substantial contributors to the IRS on Form 990 Schedule B.
- The case raises First Amendment associational-privacy objections to compelled donor disclosure to the IRS.
- As of the date of this outline, the case is pending in the U.S. Court of Appeals for the Sixth Circuit as Buckeye Institute v. IRS, No. 25-3170.
- The appeal concerns the legal standard applicable to compelled disclosure of donor information and follows the Supreme Court's associational-privacy analysis in Americans for Prosperity Foundation v. Bonta, 594 U.S. 595 (2021).

5.3 American Alliance for Equal Rights v. Fearless Fund Management, LLC, 103 F.4th 765 (11th Cir. 2024)

- The Eleventh Circuit held that a grant contest limited to Black women-owned businesses was substantially likely to violate 42 U.S.C. § 1981.
- The court held that the contest constituted a contract for § 1981 purposes and that the eligibility criteria created an absolute bar to non-Black applicants.
- The court rejected the argument that the contest was shielded by the First Amendment as protected expressive conduct.
- The Eleventh Circuit decision was a preliminary-injunction decision. The case later settled, and the challenged grant contest was permanently closed.

5.4 Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission, 605 U.S. 238 (2025)

- The Supreme Court held that Wisconsin's denial of an unemployment-tax exemption to Catholic Charities Bureau and affiliated entities violated First Amendment principles.
- The Wisconsin Supreme Court had treated the organizations' activities as insufficiently religious because they did not proselytize, hand out religious materials, or limit services to Catholics.
- The U.S. Supreme Court rejected that approach, holding that the government may not distinguish among religious organizations based on theological choices about proselytization, religious instruction, or service to co-religionists.
- Justice Thomas's concurrence emphasized church autonomy and the principle that religious institutions are not defined solely by the corporate entities they choose to form.

5.5 National Religious Broadcasters v. Bessent, No. 6:24-cv-00311-JCB, 2026 WL 884020 (E.D. Tex. Mar. 31, 2026)

- Section 501(c)(3) organizations remain subject to the statutory prohibition on participation or intervention in political campaigns on behalf of or in opposition to candidates for public office. I.R.C. § 501(c)(3).
- The plaintiffs challenged the constitutionality of the Johnson Amendment as applied to churches and religious nonprofit organizations, asserting claims under the First Amendment, the Fifth Amendment, and the Religious Freedom Restoration Act.
- The IRS and the plaintiffs jointly sought entry of a consent judgment that would have treated certain good-faith communications by houses of worship to their congregations, through customary channels and in connection with religious services, as outside the ordinary meaning of political campaign "participation" or "intervention."
- The Eastern District of Texas declined to enter the proposed consent judgment and dismissed the case without prejudice for lack of subject-matter jurisdiction, relying on the Anti-Injunction Act and the tax exception to the Declaratory Judgment Act.
- The district court relied on Bob Jones University v. Simon, 416 U.S. 725 (1974), in concluding that a suit seeking relief from threatened loss of § 501(c)(3) status is a suit to restrain tax assessment or collection for purposes of the Anti-Injunction Act.
- The plaintiffs filed an appeal to the U.S. Court of Appeals for the Fifth Circuit on April 28, 2026. The appeal is docketed as National Religious Broadcasters v. Bessent, No. 26-40237.

6 BROADER FEDERAL DEVELOPMENTS AFFECTING NONPROFITS

6.1 Congressional and Executive Branch Scrutiny of Nonprofit Funding

- Congressional scrutiny of nonprofit funding, fiscal sponsorship, protest-related activity, foreign funding, university governance, and foreign influence has increased.
- Congressional inquiries have targeted universities, immigration-service nonprofits, foreign funding, antisemitism, alleged electioneering, climate-related advocacy, and nonprofit networks associated with fiscal sponsorship or donor-advised structures.
- Recent proposed legislation, including the SPONSOR Act and H.R. 9495, reflects congressional interest in using tax-exemption rules, § 501(p), fiscal sponsorship liability, and terrorism-support concepts to scrutinize nonprofit funding flows.
- Congressional investigations and public inquiries may create collateral risks involving Form 990 reporting, donor communications, restricted funds, fiscal sponsorship documentation, foreign funding, and public-policy doctrine.

6.2 Federal Funding Shifts and Civil Rights Certifications

- Multiple executive orders, memoranda, agency actions, and funding directives have affected nonprofit recipients of federal grants, cooperative agreements, contracts, subawards, and other federal financial assistance.
- Under 2 C.F.R. § 200.339, federal agencies may respond to noncompliance by temporarily withholding payments, disallowing costs, suspending or terminating awards, initiating suspension or debarment, withholding further awards, or using other legally available remedies.

- Executive Order 14151 directs federal agencies to terminate DEI, DEIA, and environmental justice offices, positions, programs, preferences, grants, contracts, and performance requirements to the maximum extent allowed by law.
- Executive Order 14173 revokes Executive Order 11246 and directs federal agencies to enforce civil rights laws against unlawful DEI-related preferences, mandates, policies, programs, and activities.
- Executive Order 14173 requires federal contractors and grant recipients to certify compliance with applicable federal anti-discrimination laws and represents that compliance with those laws is material to the government's payment decisions.
- The DOJ Civil Rights Fraud Initiative directs the Department of Justice to use the False Claims Act against federal funding recipients and contractors that knowingly violate federal civil rights laws while certifying compliance.
- Federal funding disputes may create collateral tax, Form 990, restricted-fund, False Claims Act, public-policy, and reputational consequences.

6.3 FARA Rulemaking and Foreign-Influence Compliance

- FARA registration may be triggered when a tax-exempt organization acts in the United States at the order, request, direction, or control of a foreign principal and engages in registrable activities.
- FARA may apply even without lobbying because registrable activities can include public relations work, dissemination of information, arranging meetings, or representing a foreign principal's interests before U.S. officials.
- DOJ proposed amendments to the FARA regulations in early 2025, but the proposed rule has not been finalized. The rulemaking should be described as pending or stalled rather than formally withdrawn.
- Attorney General Bondi's February 2025 enforcement memorandum shifted DOJ's FARA posture by limiting criminal FARA and 18 U.S.C. § 951 charges to alleged conduct similar to traditional espionage by foreign government actors, while directing DOJ to focus on civil enforcement, regulatory initiatives, and public guidance.
- Although routine criminal FARA enforcement appears de-prioritized, foreign influence remains a heightened compliance concern for nonprofits, NGOs, universities, think tanks, advocacy organizations, and organizations with foreign funding or foreign-government relationships.
- National Security Presidential Memorandum-7, "Countering Domestic Terrorism and Organized Political Violence," directs federal law-enforcement attention to certain nongovernmental organizations and U.S. persons with close ties to foreign governments, agents, citizens, foundations, or influence networks that may be engaged in FARA violations, money laundering, or support for entities involved in political violence.