Course goals: This is a survey of the law governing tax-exempt organizations in the U.S. It will primarily focus on federal tax law, though state corporate and other concepts will be covered where appropriate. Along with the relevant code sections and regulations, this class will include discussion of real-world issues facing practitioners as well as policy debates currently facing the sector. This area of the law is too rich and dynamic to adequately cover in ten weeks, so the goal will be to give you enough of an understanding of the guiding principles, rules and logic to get started.

The course will roughly follow the life cycle of a tax-exempt organization – starting with formation and determination of status and then moving into more operational matters such as the prohibitions on private inurement and electioneering and, finally, touching on issues common when winding down or terminating an organization.


Selected provisions of the Internal Revenue Code and related regulations. You may purchase copies of the IRC and regulations (complete or excerpts) or rely on other sources for these materials. Fishman and Schwarz are editors of a version called Nonprofit Organizations: Statutes, Regulations and Forms, Fourth Edition (Foundation Press, Inc. 2010). The law and regulations are available on-line, through Westlaw and Lexis and at the library.

The key IRS forms in this area are the Form 1023 application for recognition of tax-exempt status, the Form 990-PF annual information return for private foundations and the Form 990 annual return for public charities and other tax-exempt organizations. Along with the accompanying instructions, these forms can be very helpful resources and can be found at www.irs.gov (use the search function to find them by form number).

Recommended supplementary sources: There are a number of government publications that are helpful resources in this area. The following may help in your preparation for class, researching answers to the problems assigned for various classes and preparing for the exam. These
materials are prepared to help nonprofits, practitioners and policy makers and are thus intended to be practical and comprehensible.

The Congressional Joint Committee on Taxation has published overviews of the law in this area, most recently as a part of a report on present law and suggestions for reform (JCS-3-13, available at [www.jct.gov/publications.html](http://www.jct.gov/publications.html)) and a more comprehensive overview of the historical development and present law (JCX-29-05). This second document has a good narrative overview of the tax law in this sector but predates the Pension Protection and Affordable Care Acts and is thus not up-to-date.

IRS Publications available at [www.irs.gov/charities](http://www.irs.gov/charities) (there is a search function by publication number):

- Pub. No. 557: *Tax-Exempt Status for Your Organization*
- Pub. No. 598: *Tax on Unrelated Business Income of Exempt Organizations*
- Pub. No. 526: *Charitable Contributions*

Guidestar: This organization collects and publishes publicly available information from Section 501(c)(3) organizations, particularly their Form 990 or Form 990-PFs annual information returns. A basic level of service is available through a free registration process at [www.guidestar.org](http://www.guidestar.org).

IRS Exempt-Organizations Continuing Professional Education presentations: The IRS used to prepare helpful surveys of issues and updates for internal training and guidance. These are available on-line (for an index of all topics, see [http://www.irs.gov/pub/irs-tege/cpeindexbytopic.pdf](http://www.irs.gov/pub/irs-tege/cpeindexbytopic.pdf)). While these have no precedential value and are often out of date, they do provide a good plain language summary of legal issues, often with helpful historical context and citations, and also give an indication of the thinking of the IRS’ head office at the time they were prepared.

**Class web site:** Supplementary materials, including articles from popular and tax press sources, will be posted and are intended to help support discussion and help illuminate the practical application of the tax rules. Also, presentations will generally be posted here following each class.

**Grading, the final exam and class participation:** Final grades will be based primarily (85%) on the final exam. The remaining portion of the grade will be based on one or more take-home written exercises and class participation.

The exam will be open book. While the discussions in class, particularly with guest lecturers, may sometimes appear to focus on policy matters and practical approaches to working in this sector, note that the test will also cover your knowledge of the relevant Code sections and regulations that are included in the assigned reading. Anything covered in class or in the readings is fair game for the exam.

Regular attendance is expected and classes will not be recorded. Classes will be a mix of lecture and discussion and if you come to class unprepared to discuss the materials please let me know at the start of class (guest lecturers will also be strongly encouraged to seek participation from students). Please avoid surfing the web or otherwise giving in to the temptations afforded by laptops, smartphones and the like, as it will be noted and will impact your grade. If you will not be able to attend a class, please notify me in advance.
**Disability-related needs:** To request accommodations due to a disability, please contact Disability Resources for Students (DRS), # 448 Schmitz Hall, (206) 543-8924 (V), (206) 543-8925 (TTY). If you have a letter from DRS, please let me know as soon as possible so we can discuss any accommodations you might need in this class.

**Guest lecturers:** The Seattle legal community has a strong exempt organizations practice and we will take advantage of local expertise where possible. This may require rescheduling of particular classes from time to time to coordinate with the schedules of guest lecturers. Materials covered by guest lecturers are just as likely to be on the exam as materials covered by me. Similarly, your participation and attention during classes led by guests may impact your grade.

**Reading assignments and course outline:** We will likely follow the reading schedule closely (particularly since guest lecturer schedules have already been set). We’ll use the first few minutes of each class to go over main points from the prior class and, if necessary, to cover any major points that were missed due to lack of time.

There are problems assigned for most of the topics covered in this class. While we may or may not actually walk through these in each instance, you should be prepared to do so and should view these as an opportunity to test your understanding of the materials.

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**Week One (January 6 and 9): Introduction to the tax-exempt sector; applying for tax-exempt status; organizational and operational tests**

These classes will introduce the nonprofit sector, including a historical overview and current federal/state structure. We’ll discuss the options under state and federal law for charitable and non-charitable entities. Then, we’ll cover the organizational and operational tests necessary for qualification under Section 501(c)(3) and start discussing charitable bases.

**Required reading:**
Text: 2-43; 56-59; 77-106
Code: Sections 501(a) & (c)(3); 508(a)-(c)
Regulations: Sections 1.501(c)(3)-1(a)-(c); 1.508-1(a)
IRS Form 1023, Parts II-III and Schedule C (skim the rest of the form)
IRS Form 1024, Parts I-II (skim)

**Text problems:**
Page 54
Page 105 (a)-(d)

**Supplementary reading (optional):**
Chart describing types of Section 501(c) tax-exempt organizations on pp. 20-27 of the Joint Committee on Taxation’s “Report to the House Committee on Ways and Means on Present Law and Suggestions for Reform Submitted to the Tax Reform Working Groups,” May 6, 2013 (JCS-3-13).

Text: 59-76 (The Rationale for Charitable Tax Exemptions)
Week Two (January 13 and 16): Charitable purposes and additional requirements for Section 501(c)(3) charitable organizations

We will cover the statutory and common law concepts of charity and discuss its application in specific areas as churches, journalism, education and health care, as well as public policy limitations.

Required reading:
Text: 106-178; 183-201
Code: Sections 501(c)(1)-(29) (skim all, but focus on (c)(3)-(c)(6)), (m), (r)
Regulations: Sections 1.501(c)(3)-1(d), (e)
Instructions for IRS Form 1023, Schedules A through F

Text problems:
Page 119: (a)-(c)
Page 124: (a)-(c)
Page 129: (a)-(c)
Page 159: (a)-(i)
Page 176: (a)-(f)
Page 192: (a)-(d)
Page 201: (a)-(c)

Week Three (January 23) (No class on Monday): Private inurement, public benefit and intermediate sanctions

Charitable assets must be used exclusively for the Section 501(c)(3) organization’s mission – that is, “substantially all” of the organization’s activities must be charitable. But charities are often controlled or heavily influenced by a small number of insiders or donors who might be in a position to misuse assets for their own benefit. Similarly, a Section 501(c)(3) organization may be formed for a good charitable purpose (e.g. save the environment!) but used in a way that disproportionately benefits a small number of people (e.g. keep our private lake beautiful!). These rules are intended to regulate such “insider” and similar private benefits.

Required reading:
Text: 207-240
Code: Section 4958
Regulations: Sections 1.501(c)(3)-1(c)(2), -1(d)(1)(ii) & (iii) and -1(f); 53.4958-2(a)(6) and -3, -4, -6

Text problems:
Page 240: 1-3
Supplementary reading (optional):
Montana Attorney General’s Investigative Report of Greg Mortenson and Central Asia Institute

Week Four (January 27 and 30): Non-private foundation (public charity) status

Section 501(c)(3) organizations are presumed to be private foundations unless they can satisfy a grounds for public charity status (e.g. broad public support or an organizational status like a church or university).

Required reading:
Text: 481-496; 508-530
Code: Sections 170(b)(1)(A); 507(d)(2); 509(a), (d), (e)
Regulations: Sections 1.170A-9(a) through (e); 1.509(a)-1 through -5

Text problems:
Page 519 (all)

Supplementary reading (optional):
Form 990, Schedule A (on IRS website)

Week Five (February 3 and 6): The “subpart F” private foundation regulations and grant-making issues

In 1969, Congress expressed concerns over how private foundations were operating and enacted a series of bright-line excise tax rules prohibiting and sharply limiting certain activities by private foundations. We’ll discuss compliance with these rules, along with related legal and practical issues facing grant-makers.

Required reading:
Text: 472-480; 496-499; 508-511; 534-592
Code: Sections 507; 508(e); 4940; 4941; 4942(a)-(e), (g)(1)-(3), (h), (j)(1)-(4); 4943; 4944; 4945; 4946
Regulations: Sections 53.4940(a)-1(a), (c), (e);
53.4941(a)-1(a), (b); 53.4941(d)-1(a), (b)(1); 53.4941(d)-2(a), (b)(1)&(2), (c)-(f);
53.4942(a)-1(a),(b); 53.4942(a)-2(a), (b), (c)(1)-(3);
53.4943-1, -2, -3, -6, -8, -9, -10
53.4944-1, -2, -3, -4, -5
53.4945-1(a), (b), (d);
53.4945-4, -5, -6
Rev. Rul. 92-94, 1992-1 CB 507

Text problems:
Page 549: 1-2
Page 572: (a)-(l)
Week Six: (February 10 and 13): Restrictions on lobbying and political activities; Commerciality Doctrine

Public charities can’t engage in substantial lobbying and many charities rely on the Section 501(h) “safe harbor” provision that provides greater certainty and flexibility. Private foundations are prohibited from engaging in any lobbying (as defined under the tax laws), while Section 501(c)(4) organizations have become very popular as both lobbying and “stealth” electioneering vehicles in a post-*Citizens United* world.

If time permits, we will also cover the Commerciality Doctrine this week. Otherwise, these readings will be covered in a subsequent class.

**Required reading:**

*Lobbying/Political Activities*
Text: 243-314  
Code: Sections 501(c)(3); 501(c)(4); 501(h); 527; 4911; 4945(d)(1)&(2)  
Regulations: Sections 1.501(c)(3)-1(b)(3); 1.501(c)(3)-1(c)(3); 1.504-1; 1.501(h); 54.4911-1; -2; -5; -6; 53.4945-2  
Proposed Rule: Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities  
IRS Form 5768  
Form 990, Schedule C

*Commerciality Doctrine*
Text: 336-359; 436-459  
Code: Section 502  
Regulations: Sections 1.501(c)(3)-1(b)(1)(i), -1(c)(1), -1(e)(1); 1.502-1  
*C. F. Mueller Co. v. Comm’r*, 190 F.2d 120 (3d Cir. 1951)  
*Washington Research Foundation*, TC memo 1985-570  
Rev. Rul. 72-369, 1972-2 C.B. 245  
Rev. Rul. 73-127, 1973-1 C.B. 221  
Rev. Rul. 73-128, 1973-1 C.B. 222

**Text problems:**
Page 305: (a)-(i)  
Page 314  
Page 359: (a)-(f)

**Supplementary reading (optional):**

*Lobbying/Political Activities*
Jane Mayer, *State for Sale; A conservative multimillionaire has taken control of North Carolina, one of 2012’s top battlegrounds*, *The New Yorker*, October 10, 2011.  
Online e-training module on private foundation lobbying rules at [www.learnfoundationlaw.org](http://www.learnfoundationlaw.org)
Week Seven (February 20) (No class on February 17): Reporting and Public Disclosure Requirements

Most, but not all, Section 501(c)(3) organizations must submit initial applications for recognition of tax-exempt status and annual information returns that are generally available to the public. Historically, state and federal regulators have used this transparency and broad availability of informational and other filings to encourage compliance with legal and best practices and to identify noncompliance. Increasingly, the IRS and state regulators are also encouraging exempt-organizations to develop stronger corporate governance and to hold directors and officers more accountable under state fiduciary duties.

Required reading:

Text: 315-335
Code: Sections 6033(a), (b); 6104(a), (b), (e)
Regulations: Section 301.6104(a)-1, -3, -4, -5
Form 990, schedules and instructions
Form 990-PF and instructions

Text problems:
None

Supplementary reading (optional):

Week Eight (February 24 and 27): Unrelated business income tax

We’ll discuss the definition of unrelated business trade or business, apply to areas of frequent contention (e.g. corporate sponsorship, mailing lists) and delve into some of the technical aspects of calculating UBIT (exclusions, computation and planning, unrelated debt-financed income, partnership income).

Required reading:

Text: 360-402; 404-431
Code: Sections 511-514 (skim, with particular attention to 511(a), 512(a)(1) and (b)(1)-(13) and 513(a)
Regulations: Sections 1.511-3(a) & (b), 1.512(a)-1(a)-(e); 1.512(b)-1(a)-(d), (l); 1.512(c)-1; 1.513-1, -4, -7; 1.514(a)-1; 1.514(b)-1; 1.514(c)-1
Form 990-T

Text problems:
Page 402: 1(a)-(i); 2 (a)-(f)
Page 410: 1(a)-(f)
Page 419: 1
Page 431: (a)-(h)

Supplementary reading (optional):
None
Week Nine (March 3): Charitable Contributions and Planning from the Donor’s Perspective

We will cover the Section 170 income tax deduction, the percentage limits for private foundations and charities, use of donor-advised funds and supporting organizations, “fiscal sponsorship” and conduit issues, contributions of property, substantiation rules and related issues.

Required reading:

Text: 499-506; 594-599; 615-632; 645-652; 671-685
Code: Sections 170(a)-(e); 170(f)(8); 6113; 6115
Regulations: Sections 1.170A-1(a)-(c), (g), (h); 1.170A-13(c)(1)-(2); 1.170A-13(f); 1.6115-1; Prop Reg 1.170A-15, -16, -17

Text problems:
Page 652: (a)-(j)
Page 675: 1(a)-(i)

Supplementary reading (optional):
Familiarity with the Seattle Foundation’s activities will be helpful for this class. Consider reviewing the materials available at www.seattlefoundation.org, particularly their Giving Center and Foundation Initiatives materials.

Week Nine, cont’d (March 6): Charitable and Mutual Benefit Organizations Revisited; Winding Down a Tax-Exempt Organization

Required reading:

Text: 573-592; 688-695; 698-727; 734-742
Code: Sections 501(c)(1), (c)(2), (c)(4), (c)(5), (c)(6), (c)(7); Section 507

Text problems:
None

Week Ten (March 10): Make up on any open topics; Themes/Trends in Regulation of the Tax-Exempt Sector; Review

Required reading:

Senate Finance Committee White Paper: Tax-Exempt Organizations and Charitable Giving
http://www.finance.senate.gov/issue/?id=046ec1ca-5a13-4dc2-83ee-30a92cafbd73