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Bruce R. Hopkins
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Preface

This is the fourth Preface to accompany the fifth edition of this book. This 2018 cumulative supplement covers developments in the charitable giving law context as of the close of 2017.

This supplement reflects the various changes in and extensions of law occasioned by enactment of the Protecting Americans from the Tax Hikes Act of 2015 and the Tax Increase Prevention Act of 2014.

The supplement also encompasses the extraordinary amount of litigation that is taking place in this field, particularly with regard to the charitable gift substantiation requirements. A section of this supplement has been added to capture the extensive litigation in this area, mostly in the U.S. Tax Court, which is finding the requisite substantiation in gift deeds, among peppercorns of consideration and merger clauses.

Other court decisions have recently arisen in the realms of gifts (or ostensible gifts) of easements, valuation of property that is the subject of charitable giving, the appraisal requirements, and application of accuracy-related penalties in the charitable deduction context. There have even been two court opinions denying estates a charitable contribution deduction for distributions for charitable purposes because the amounts were not permanently set aside, as well as a court opinion concerning determination of the value of the remainder interest in a net-income make-up charitable remainder unitrust and finding that donors were not qualified farmers (albeit farmers of a sort) for purposes of the more generous limitations on the annual allowable charitable contribution deduction. Speaking of the charitable deduction, a court opinion inexplicably denied one to a donor inasmuch as he retained the right to make the gift to another charity!

The year 2017 brought 11 court opinions in the charitable giving field—perhaps a record crop (particularly good for supplements).

Final regulations were issued concerning a transaction of interest involving dispositions of assets from charitable remainder trusts. Proposed regulations were issued to implement the exception to the general charitable gift substantiation requirement by which donee organizations may file information returns with the IRS that report the required information about contributions, only to be withdrawn in the face of public and political outcries. Treasury and the IRS even cast certain syndicated conservation easement gifts as listed transactions.

The IRS has contributed some private letter rulings in the charitable giving area, and an interesting chief counsel advice memorandum concerning the circumstances when a charitable gift may be deductible as a business expense.
The IRS provided a prototype provision that may be included in the governing instrument of a charitable remainder annuity trust, which will be treated as a qualified contingency, enabling the trust to continue to qualify as a CRAT and sidestep the probability-of-exhaustion test.

Tax reform legislation was signed into law on December 22, 2017 (Pub. L. No. 115-73). A table at the end of this supplement summarizes the provisions of this legislation that involve nonprofit law and inventories relevant provisions in the House and/or Senate bills that did not survive to enactment. This new body of law changes is not otherwise reflected in this cumulative supplement.

My thanks go to my development editor, Brian T. Neill, and Abirami Srikandan, production editor, for their assistance and support in connection with this cumulative supplement.

Bruce R. Hopkins
March 2018
About the Author

Bruce R. Hopkins is the principal in Bruce R. Hopkins Law Firm, LLC, in Kansas City, Missouri. He concentrates on the representation of charitable and other nonprofit organizations. His practice ranges over the entirety of law matters involving tax-exempt organizations, with emphasis on charitable giving (including planned giving), the formation of nonprofit organizations, acquisition of recognition of tax-exempt status for them, the private inurement and private benefit doctrines, the intermediate sanctions rules, legislative and political campaign activities issues, public charity and private foundation rules, unrelated business planning, use of exempt and for-profit subsidiaries, joint venture planning, tax shelter involvement, review of annual information returns, fundraising law issues, and Internet communications developments.

Mr. Hopkins served as chair of the Committee on Exempt Organizations, Tax Section, American Bar Association; chair, Section Taxation, National Association of College and University Attorneys; and president, Planned Giving Study Group of Greater Washington, D.C.

ABOUT THE AUTHOR

Fifth Edition. He also writes Bruce R. Hopkins’ Nonprofit Counsel, a monthly newsletter, published by John Wiley & Sons.

Mr. Hopkins earned his JD and LLM degrees at George Washington University National Law Center, his SJD degree at the University of Kansas School of Law, and his BA at the University of Michigan. He is the Professor from Practice at the Kansas University Law School, where he teaches courses on nonprofit and tax-exempt organizations, including the charitable giving rules. Mr. Hopkins received the 2007 Outstanding Nonprofit Lawyer Award (Vanguard Lifetime Achievement Award) from the American Bar Association, Section of Business Law, Committee on Nonprofit Corporations. He is listed in The Best Lawyers in America, Nonprofit Organizations/Charities Law, 2007–2018.
Book Citations

Throughout this book, four books by the author (in some instances, as coauthor), all published by John Wiley & Sons, are referenced as follows:


The first, second, and fourth of these books are annually supplemented. Also, updates on all of the foregoing subjects (plus *The Tax Law of Charitable Giving*) are available in *Bruce R. Hopkins’ Nonprofit Counsel*, the author’s monthly newsletter, also published by John Wiley & Sons.
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PART ONE

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Chapter 2 The United States Tax System: An Overview