

# ZATEENY LOFTUS, LLP

ATTORNEYS AT LAW

TWO BALA PLAZA, SUITE 604

BALA CYNWYD, PA 19004

610-660-6110

Fax: 610-660-6166

DEBORAH J. ZATEENY  
dzateeny@zllaw.us.com

ANN T. LOFTUS  
aloftus@zllaw.us.com

## MISSION STATEMENT

Zateeny Loftus, LLP seeks to provide the highest quality legal representation to nonprofit organizations and to maintain the highest standards of professionalism.

## INTRODUCTION TO THE FIRM

Zateeny Loftus, LLP regularly counsels clients regarding the formation and operation of nonprofit corporations and charitable trusts, governance, fiduciary duties, and best practices, federal, state, and local tax exemption and other tax matters, charitable giving and fundraising, institutional affiliations and reorganizations, international philanthropy, day-to-day operations, and related matters. Our firm's partners, Debbie Zateeny and Ann Loftus, had previously practiced nonprofit organization law with large Philadelphia law firms. The unique legal needs of nonprofit organizations and the lack of nonprofit client-centered law firms led to the formation of our firm. We offer the sophisticated advice of a large national firm but with the personal touch characteristic of small firms. We pride ourselves on client service and value. We make it a priority to learn about our clients so we can anticipate their needs. We emphasize preventive law but are also able to provide services to clients in crisis. We often act as general counsel for clients that do not have in-house counsel and, in that capacity, we serve as a gatekeeper to legal services to be provided by us or others. For clients with in-house counsel, we strive to become colleagues in arms working collaboratively and providing services that require our expertise.

## OUR PRACTICE

We are first and foremost counselors. We seek to provide timely accurate legal advice to help our clients fulfill their nonprofit missions effectively and in compliance with applicable laws. We focus on several broad categories that are critical to effective operations for nonprofit organizations:

- State Nonprofit Corporate or Charitable Trust Law

- Governance, Fiduciary Duties, and Best Practices
- Tax Exemption
- Taxation
- Charitable Giving and Fundraising
- Institutional Affiliations and Reorganizations
- International Philanthropy
- Day-to-Day Operations

### **State Nonprofit Corporate or Charitable Trust Law**

We help clients evaluate whether their operations should be conducted on a nonprofit basis and, if so, we recommend the choice of entity and the jurisdiction where the entity should be formed. Most of our clients are organized either as nonprofit corporations or as charitable trusts under state laws. We draft documents to govern their formation and operations.

We counsel governmental entities regarding the laws that govern their formation and operations.

### **Governance, Fiduciary Duties, and Best Practices**

Our clients share our vision for a better world and our values of integrity and honesty. With increasing public scrutiny and governmental oversight, governance and fiduciary duties for nonprofits have become critical issues, often mirroring influences from the for-profit sector. To help our clients fulfill their lofty aspirations and protect their valuable reputations, we assist them to comply with legal standards relating to governance, including composition of the governing body, delegation of authority to committees and officers, and compliance with organizational documents, such as bylaws. We help their directors and managers understand and fulfill their fiduciary duties through board orientation seminars and written materials.

We help our clients interpret Sarbanes-Oxley principles for nonprofits. We advise them how to adopt “best practices” that can withstand criticism. Our counsel in this area includes evaluating indemnification and insurance for directors and officers, drafting policies relating to conflicts of interest, document retention, whistle blowing, external and internal audit functions, and ethics.

We advise clients about the Prudent Investor Act, the Principal and Income Act, Uniform Management of Institutional Funds Act, and similar state laws applicable to prudent investment and spending of their surplus funds and endowments.

## **Tax Exemption**

The nonprofit organization's most essential financial asset is its tax-exempt status but tax exemption is not automatic. Our lawyers are fully versed in the law of federal, state, and local tax exemption, a highly technical area. We form numerous nonprofit organizations and assist them to qualify and remain qualified as tax-exempt.

Most of our clients are exempt from federal and state income taxes as public charities or private foundations under section 501(c)(3) of the Internal Revenue Code. We counsel these clients on how to remain classified as public charities or how to meet the operating restrictions applicable only to private foundations.

Although 501(c)(3) tax-exempt organizations typically pay no income tax on their income, private foundations pay tax on their investment income. With our assistance, our private foundation clients may qualify to pay a reduced tax on their investment income. We also advise our private foundation clients about federal excise taxes that are designed to deter certain activities by private foundations, such as self-dealing, failure to distribute charitable funds, excess business holdings, imprudent investments, and prohibited grants. Similarly, we advise our public charity clients how to avoid the tax on excess benefit transactions, particularly with respect to executive compensation. We also advise tax-exempt clients about federal taxes on certain investments that are characterized as prohibited tax shelters.

In addition to working with 501(c)(3) organizations, we have experience with organizations formed as tax-exempt under the following Internal Revenue Code sections: 501(c)(2) and (25) title holding corporations; 501(c)(4) social welfare organizations, civic leagues, and local associations of employees; 501(c)(5) agricultural/horticultural associations; 501(c)(6) trade associations and business leagues; 501(c)(7) social clubs; 501(c)(8) and (10) fraternal beneficiary associations; 501(c)(12) cooperative utility organizations; 501(c)(13) cemetery companies; 501(c)(14) credit unions; and 501(c)(19) veterans organizations. We also have experience with taxable and tax-exempt homeowner associations. We help these organizations with distinct rules in the areas of unrelated business income, deductibility and tax exemption of dues payments, charitable set-asides, and reporting lobbying expense allocable to dues.

Tax exemption issues arise not only with respect to income, but also with respect to purchases that are subject to state and local sales taxes, ownership of real property that is subject to local real estate taxes, and transfers of real estate that are subject to state and local real estate transfer taxes. There are also numerous taxes imposed by local municipalities that may apply to nonprofit organizations. We advise clients regarding Pennsylvania Act 55, Institutions of Purely Public Charity Act, and its tax exemption and reporting requirements. We work with clients to ensure they receive every available exemption from tax.

Tax-exempt nonprofit clients may be subject to federal, state, and local taxes because of their unrelated trade or business activities. We help clients identify potential exposure to these taxes and ways to minimize or eliminate them. We advise clients about these issues in the context of: furnishing goods or services in connection with charitable solicitations; corporate sponsorships; commercial co-ventures; controlled subsidiaries or affiliates; goods or

services provided to related or unrelated organizations and their students, patients, employees and members; joint operating agreements; university presses; hospital pharmacies and laboratories; off-campus patient services or student services; leasing of student housing and other university facilities; leasing excess hospital space; operation of bookstores, gift shops, eating establishments, summer camps, and health clubs; affinity credit card agreements, mailing list rentals, travel tours, and insurance programs; advertising in event programs and journals; licensing excess broadcast capacity of university-owned and operated radio stations; and allocation of dual use expenses.

We advise clients about limitations on political and legislative activity and penalties for violating the limits. We advise eligible charities about elections under federal income tax law relating to the lobbying they are permitted to do. We assist clients with presentations for legislative and administrative bodies. We also advise organizations about federal and state registration and disclosure requirements triggered by their political or lobbying activities. We advise non-charitable clients about the formation and reporting requirements for PACs under section 527 of the Internal Revenue Code.

We routinely review the federal annual returns of our clients (Form 990, Form 990-PF, Form 990-T) and counsel them regarding public disclosure requirements with respect to these returns as well as to their federal applications for exemption.

We advise governmental entities about their tax status and tax reporting obligations at the federal, state, and local levels.

We represent clients seeking advance approval of their activities by a government agency such as the Internal Revenue Service, state Attorneys General, and Departments of State, Revenue, or Education. We have experience with IRS private letter rulings regarding the federal tax consequences of reorganizations, physician recruitment plans, joint operating agreements, termination of private foundation status, and various exceptions to unrelated trade or business income tax. We have experience with rulings from the Pennsylvania Department of Revenue regarding the instrumentality status of a state-related university and with respect to transfer tax liabilities arising in connection with the incorporation of an unincorporated association.

## **Taxation**

Nonprofit organizations may find themselves involved in a tax controversy with a federal, state, or local taxing authority. We counsel clients in connection with federal, state, and local tax audits. We have experience handling coordinated examination program audits by the Internal Revenue Service and federal and state employment tax audits. We advise clients in connection with compliance checks by the Internal Revenue Service.

Nonprofit organizations have tax liabilities and responsibilities in their capacity as employers. We advise clients regarding these matters. For example, we counsel clients about the proper characterization of workers as employees or independent contractors and the risks to employers for mischaracterization at the federal, state, and local levels. We counsel clients regarding federal, state, and local exclusions from income and reporting and withholding obligations for various fringe benefits for employees and dependents, such as: medical,

disability, life, and medical malpractice insurance; housing; bonuses, recruitment incentives, prizes, awards, and gifts; grants, scholarships, and fellowships; severance and early retirement pay; working condition fringe benefits such as transportation and employee discounts; and educational assistance plans. We help clients draft expense reimbursement policies and comply with the accountable plan rules. We advise clients regarding exemptions from FUTA and FICA, such as the student exemption, and state unemployment compensation options available to certain nonprofits. We counsel clients regarding the taxation, reporting, and withholding obligations for nonresident aliens.

Nonprofit organizations may be obligated to collect and report sales tax on the goods or services they sell, such as sales from gift shops, cafeterias, catalogs, and hospital carts. We advise them regarding these obligations and potential exemptions that may apply with respect to isolated sales, university sales of food on-campus, and sales of medical supplies.

### **Charitable Giving and Fundraising**

We counsel donors, governmental entities, 501(c)(3) charities, and certain other eligible organizations about the federal income, estate, and gift tax consequences of charitable giving. We help our clients meet the federal requirements to properly accept and document gifts, including gifts of cash or property, *quid pro quo* payments, such as the right to purchase seating at university athletic events or to attend fundraising events, and the highly technical deduction and substantiation rules relating to gifts of inventory, automobiles, intellectual property, and certain other property.

We advise charities regarding restrictive provisions imposed by donors in their wills, trusts, and other transfer documents. We counsel charities about the legal implications of discriminatory or other impermissible restrictions on charitable gifts. We draft pledge agreements and handle negotiations between charities and donors of large and complex gifts.

We counsel clients about planned giving, including charitable remainder trusts, charitable lead trusts, pooled income funds, and charitable gift annuities. We draft gift policies and endowment programs. We help clients establish donor-advised funds and act as fiscal sponsors for worthy projects.

We advise clients regarding registration, exemption, and disclosure requirements under state charitable solicitation laws. We draft contracts with professional fundraising counsel and paid solicitors with a view to state law compliance.

We counsel clients about special events fundraising and state and local regulation of events like raffles and other games of chance. We work with clients to establish and document cause-related marketing relationships with for-profit entities.

### **Institutional Affiliations and Reorganizations**

We represent nonprofit organizations in affiliations and reorganizations, including corporate mergers, consolidations, joint operating relationships, partnerships, and divisions. We advise clients with respect to liquidation and dissolution. We represent clients whose reorganizations take them before state Attorneys General and courts such as the Orphans' Courts

in Pennsylvania, and we seek IRS private letter rulings regarding affiliations and reorganizations when appropriate.

We help clients create taxable or tax-exempt subsidiaries or affiliates when appropriate to conduct some aspect of their overall operations, including supporting organizations, alumni associations, fundraising and endowment foundations, hospital auxiliaries, and title holding corporations. We give advice regarding formation of captive professional corporations that may be taxable or tax-exempt, and we prepare organization documents, employment agreements, and shareholder agreements with respect thereto.

We advise national and other parent organizations with local chapters or affiliates operating under group tax exemptions. We have experience with the successful conversion of a national 501(c)(4) group parent to 501(c)(3) status and the recognition of a new 501(c)(3) group exemption for its local affiliates that opted to convert. We have experience with the successful conversion to 501(c)(3) status for a national parent of affiliates classified as 501(c)(8) fraternal beneficiary societies under a group exemption. We have experience with the formation of a new parent organization for a group of over 20 home and school associations for a public school district and recognition of a 501(c)(3) group exemption covering the HSAs.

We have experience converting: taxable business corporations to nonprofit tax-exempt status; taxable professional corporations to 501(c)(3) status; and a 501(c)(7) alumni association to 501(c)(3) status. We have experience involving a taxable nonprofit corporation that successfully demutualized.

We assist public charities to change their classifications under section 509 of the Internal Revenue Code. We convert publicly supported organizations to supporting organizations. We assist private foundations to become private operating foundations or to terminate their status and become public charities.

For universities and health systems with multiple affiliates, we analyze federal controlled group status for purposes of unrelated business income tax and employee benefit plans.

We advise nonprofit clients how to structure relationships with for-profit entities.

## **International Philanthropy**

We advise U.S. charities that make grants to UNICEF, WHO, and similar intergovernmental or nongovernmental agencies, to foreign governments, and to foreign organizations. We advise U.S. charities that carry on programs in foreign countries. We assist clients to comply with Presidential Executive Orders, the U.S. Patriot Act, and other laws governing international philanthropy. We advise clients regarding compliance with pronouncements by the Department of Treasury Office of Foreign Assets Control. We draft grant procedures with reference to these laws.

We counsel private foundations on the making of public charity equivalency determinations for foreign organizations. We create and assist “friends of” foreign charities in the United States to ensure deductibility of contributions by U.S. donors.

We advise foreign nonprofit organizations about doing business in the United States and help them evaluate whether to form a U.S. subsidiary to carry on their activities in this country. We counsel foreign charities about fundraising in the U.S and their federal tax obligations under the Internal Revenue Code and applicable tax treaties. We assist foreign charities to seek tax exemption in the U.S. when appropriate.

We counsel U.S. donors about deductibility of contributions to foreign charities and special rules that apply to recipients in Canada, Israel, and Mexico.

We advise U.S. charities regarding their reporting obligations for bank accounts in foreign countries and with respect to controlled foreign entities and captive offshore insurance companies.

### **Day-to-Day Operations**

We counsel clients generally about their operations, legal compliance, and protecting against risks. We draft board resolutions, contracts, and policies and procedures. We draft proposed legislation and position papers on matters of public interest or at the request of legislative bodies.

We advise clients regarding telemarketing registration requirements and reduced postal rates for nonprofit mailers. We give advice regarding private school or other state licensing. We help clients distinguish between compliance with nonprofit accounting rules and nonprofit legal rules. We counsel clients about the application of state sunshine and other open access laws. We alert clients to legislative and regulatory developments.

Most importantly, we identify legal issues that fall outside our areas of expertise and we refer clients to other lawyers whom we know and trust.

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