

# Nonprofit Organizations

Kelley Drye's nonprofit practice group is comprised of attorneys with considerable experience in areas such as taxation, trusts and estates, corporate governance, litigation, legislative and regulatory affairs, employee benefits, labor and employment, tax-exempt financing, intellectual property and real estate, on issues affecting tax-exempt organizations.

## About

We provide our nonprofit clients with cost-efficient, creative and multidisciplinary solutions to the unique challenges they face.

## Taxation

Kelley Drye advises nonprofit organizations on the tax consequences of a wide range of corporate, trust, investment, grant-making and other activities, and all matters affecting tax-exempt status. We advise private foundations with respect to federal excise taxes on self-dealing, excess business holdings and taxable expenditures. In addition, we create charitable trusts and nonprofit corporations, prepare and file federal and state applications to recognize organizations' tax-exempt status, administer grants and scholarship programs, and prepare and file tax returns and regulatory filings. We also provide advice on unrelated business income tax issues.

## Governance

We advise nonprofit corporations and charitable trusts on their fiduciary obligations under nonprofit corporation law, charitable trust law and federal and state tax law. Kelley Drye provides counsel to charities with respect to governance issues and represents nonprofit corporations in merger and dissolution proceedings, and the disposition of charitable assets. We advise nonprofits on the application of the *cy pres* doctrine, the modification of trusts and the use of endowments and restricted assets. Our team also represents charities in internal investigations and disputes with regulatory authorities.

## Charities as Beneficiaries

A key focus of Kelley Drye is representing the interests of charitable organizations as the beneficiaries of donor-created trusts and estates. Our private clients practice combines knowledge of estate and trust law with experience in nonprofit organizations law and probate and trust litigation. Working closely with the firm's litigation attorneys, we have handled every type of litigated trusts and estates action on behalf of charitable beneficiaries, including will contests, contested judicial accountings and construction proceedings.

## Planned Giving and Charitable Promotions

Our private client attorneys can advise nonprofit organizations on their planned giving programs, including charitable gift annuities, pooled income funds, charitable lead and remainder trusts, as well as the drafting of gift agreements and testamentary legacies.

In addition, our team has helped various nonprofit organizations run promotions in which a portion of proceeds derived from sales are donated to a charity. In recent years, we have been involved with a number of high-profile charitable promotions, counseling organizations regarding the structure and advertisement of promotions, negotiating agreements with the charitable organizations involved in the promotions, and assisting organizations in registering the promotions in various states. With the help of our international network of attorneys, we have assisted clients in clearing charitable promotions across three continents.

We work to ensure that advertising, sponsorships, event marketing and promotion initiatives comply with federal and state regulations and laws. Additionally, we advise our clients on privacy and information security compliance, including establishing preparedness plans in the event of a data breach.

## Litigation

Kelley Drye's litigators have the capabilities and experience to represent nonprofit corporations and charitable trusts in all of their dispute resolution needs, as well as in internal investigations. We have successfully litigated a wide variety of disputes for nonprofit entities, including cases involving board and governance issues, civil rights and access to services, construction and real estate, donor estate and probate issues, investments, employment and employee benefits, intellectual property, libel, contract and other areas of law.

## Government Regulations and Lobbying

Subject to constraints in the tax code and state and federal regulations, nonprofit corporations, charitable trusts and unincorporated associations, which are otherwise tax-exempt, are generally prohibited from, or limited in, their participation or intervention in political campaigns on behalf of (or in opposition to) any candidate for public office. Depending on the circumstances, their expenditures are subject to tax and, in some circumstances, could jeopardize their exempt status. Our attorneys provide a broad scope of services to ensure our clients' voices are heard and their interests are furthered while ensuring they do not erroneously run into the increasingly complex laws and regulations.

## Employee Benefits

We advise nonprofits with respect to employee benefits and executive compensation programs, including excise benefit transactions. Our background encompasses retirement and welfare programs, executive compensation and associated legal and tax issues. Our mission is to help nonprofits retain key executives and motivate their employees while ensuring their compliance with the complex rules to which they are subject, such as reasonable compensation and the structure of tax-favored retirement arrangements.

## Labor and Employment

We help nonprofits prevent workplace problems in many ways; for example, by guiding them in the preparation of employee handbooks and appropriate policies, providing on-site training to supervisors and being available to answer the day-to-day questions that arise. We appear on behalf of our clients before federal, state and local agencies in matters involving traditional labor relations, wage and hour, employment contracts and employment discrimination matters. In all cases, we strive to minimize risk and expense while defending our clients' interests.

We have represented nonprofit employers against administrative charges before the Equal Employment Opportunity Commission (EEOC) and other federal and state agencies, in arbitration and mediation proceedings before the Federal Mediation and Conciliation Services and other tribunals, and in union organizing campaigns, collective bargaining negotiations, arbitrations and National Labor Relations Board (NLRB) hearings.

## The Unique Needs of Trade Associations

Kelley Drye has advanced the interests of industry trade groups for nearly five decades, distinguishing the firm as among the first to develop a practice focusing on the unique legal needs of these organizations. Officers and managers of associations from a variety of industries, including retail, manufacturing, allied health professions, agriculture, services and fisheries, entrust Kelley Drye with their complex legal matters and everyday operations. With a track record of success in serving both large and small associations, as well as association management companies, our attorneys help strengthen our clients' competitive strategies so they can provide more effective services to members and sustain viability and vitality in times of change. We have counseled on all aspects of trade show and symposium activities, educational conferences, affiliate and other membership benefit programs and accreditation activities, each or all of which oftentimes provide a central focus of an association's operations.

## Financing

Kelley Drye has represented numerous nonprofit organizations in accessing capital through tax-exempt and general financings. Our involvement encompasses private financing, state and federal securities laws, joint ventures and other strategic relationships, and regulatory issues concerning access to capital.

## Intellectual Property and Technology

Kelley Drye's intellectual property attorneys offer legal services in virtually every aspect of IP law to museums, educational institutions, trade associations and other nonprofits that own trademarks, copyrights, patents, logos, Internet domain names and other assets.

## Real Estate

Kelley Drye represents a variety of nonprofit hospital, educational, religious and other institutions and associations in the acquisition, development, financing and leasing of their properties throughout the United States.

## Experience

- Formed a charitable venture fund and represented fund in obtaining recognition of its tax-exempt status by the Internal Revenue Service. The fund was formed to invest in startup companies developing therapies to treat neurological illnesses that cannot be funded by traditional sources of capital.
- Advised a foundation being investigated by the New York Attorney General on litigation strategy, corporate governance, private foundation excise taxes for self-dealing and excess business holdings, and court proceedings to authorize the sale of restricted assets.
- Successfully represented a well-known educational institution as sole beneficiary of an estate

where the decedent's children challenged her will and revocable trust by asserting a claim of tortious interference with an inheritance.

- Obtained tax-exempt status for a permit bank granting fishing permits to small-scale fishermen with the goal of protecting the ecology of fishing grounds off the coast of New England, preserving historic fishing fleets and communities and increasing access for small-scale fishermen and community involvement in the local fisheries.
- Assistance with formation and obtaining IRS determination letter for private foundation dedicated to improving the lives of people in the communities where the supporting company carries on its business. The foundation complements and supports the interests, values and vision of the supporting company and its employees. The foundation also provides financial support to qualified educational, medical, human welfare services and other 501(c)(3) charitable organizations.
- Assistance and guidance regarding ongoing activities of a private social club dedicated to supporting the interests of professional journalists and a newsgathering organization.
- Assistance in obtaining IRS determination letter for Type I supporting organization of trade association-related charitable foundation.
- Review, negotiation and strategy of trade show leasing, hotel and exhibitor agreements.
- General counsel to trade association regarding intellectual property rights and related activities for a Canadian affiliate.
- General contract, employment, board counsel and related business planning of "for profit" subsidiary of state level trade association.
- Represent a large, NYC-based public charity in all aspects of maintaining tax-exempt status, including compliance with donor-advised fund rules and grant making to foreign charities.
- Obtained 501(c)(3) status for religious-based organization established to make interest-free loans to members of affiliated church.
- Represented a Jesuit-based institution in forming and obtaining necessary state educational approvals and federal, state and local tax exemption.
- General contract and employment counsel to United Way of Northern New Jersey.
- Advised a footwear retailer regarding their role in promotions for the (RED)<sup>™</sup> Campaign, in which a portion of proceeds from the sale of certain products are donated to The Global Fund to Fight AIDS, tuberculosis and malaria.
- Assisted a diversified consumer products company in a promotion to benefit The Susan G. Komen Breast Cancer Foundation.
- Assisted a *Fortune* 500 athletic equipment and apparel manufacturer in structuring and advertising a promotion in which a portion of the proceeds from specially marked products go to [ninemillion.org](http://ninemillion.org), a global campaign founded by the United Nations High Commissioner for Refugees (UNHCR) to bring education and sport programs to the world's refugee youth.
- Counseled a paint manufacturer in structuring a commercial co-venture with American Forests.

- Assisted a subscription movie rental service provider in structuring and advertising a promotion to benefit Feeding America.
- Advise state and private companies applying for broadband stimulus funds on developing a business case and compelling public interest narrative.

## Contacts

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