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## Office Locations

### Indiana Offices

#### *Downtown*

One American Square  
Suite 2000  
Indianapolis, IN 46282  
(317) 633-4884  
Contact: Charles P. Sukurs

#### *North Office*

8402 Harcourt Road  
Suite 820  
Indianapolis, IN 46260  
(317) 871-6222  
Contact: James R. Willey

### Kentucky Office

614 West Main Street  
Suite 4000  
Louisville, KY 40202  
(502) 568-1890  
Contact: Rene R. Savarise

### Michigan Offices

Columbia Center, Suite 315  
201 West Big Beaver Road  
Troy, MI 48084  
(248) 740-7505  
Contact: Kimberly J. Commins-  
Tzoumakas

#### *Lansing Office*

110 W. Michigan Avenue  
12th Floor  
Lansing, MI 48933  
(517) 703-8640  
Contact: Brian F. Bauer

### Wisconsin Office

111 East Kilbourn Avenue  
Suite 1300  
Milwaukee, WI 53202  
(414) 721-0442  
Contact: Gregory J. Melgares

## Contact Us

[hallrender@hallrender.com](mailto:hallrender@hallrender.com)

## IRS Issues Final Regulations Addressing Standards For Revocation of Exempt Status For "501(c)(3)" Organizations That Have Engaged In Excess Benefit Transactions

On March 28, 2008, the Internal Revenue Service and Department of Treasury released final regulations under the "Intermediate Sanctions Law" relating to when an "excess benefit transaction", in addition to resulting in Intermediate Sanctions penalties, should serve as the basis for revocation of an organization's tax-exempt status. In light of these final regulations, hospitals and other tax-exempt organizations should take steps immediately to ensure that they have safeguards in place to protect against excess benefit transactions.

### Final Regulations

The final regulations that were issued clarify the relationship between an organization's tax exempt status under Internal Revenue Code Section 501(c)(3), and the imposition of excise taxes (i.e., intermediate sanctions) under Code Section 4958 on excess benefit transactions. An excess benefit transaction occurs when a tax-exempt organization provides a benefit to a "disqualified person" that exceeds the fair market value of such benefit or the benefit is otherwise unreasonable under the circumstances.

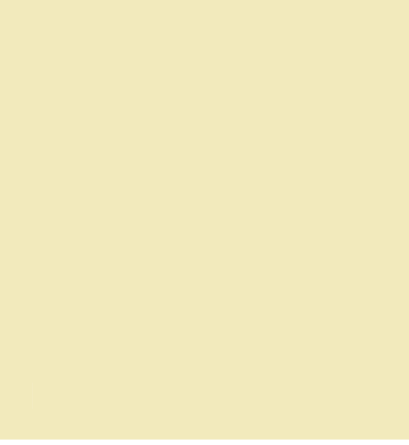
In issuing these final regulations, the IRS has responded to the comments it received on the proposed regulations which were issued on September 9, 2005. These final regulations refine the IRS's application of certain factors when determining whether an exempt 501(c)(3) organization that has engaged in an excess benefit transaction should therefore lose its exempt status.

While the IRS did not make major revisions to the existing proposed regulations, it has provided an additional example of the application of the factors it will consider when evaluating the standards for revoking an organization's exempt status. This new example addresses reasonable compensation and demonstrates the application of the factors involved in considering whether to revoke an organization's exempt status on account of an excess benefit transaction when the transaction is neither significant nor de minimis in comparison to the size and scope of an organization's exempt activities.

Notably, the IRS stated that "implementation by an organization of safeguards that are reasonably calculated to prevent excess benefit transactions, will be treated as a factor weighing in favor of continuing to recognize exemption regardless of whether such safeguards are implemented in direct response to the excess benefit transaction(s) at issue or as a general matter of corporate governance or fiscal management."

### Conclusion

In light of these legal developments, hospitals and other tax-exempt organizations should consult with their tax advisors to ensure that they have appropriate safeguards developed against excess benefit transactions. Such safeguards would include an effective intermediate sanctions policy to be adopted and effected by the organization's board.



Should you have any questions, please do not hesitate to contact your regular Hall Render attorney, Charles P. Sukurs via email at [csukurs@hallrender.com](mailto:csukurs@hallrender.com) or 317-633-4884 or Gregory J. Melgares via email at [gmelgares@hallrender.com](mailto:gmelgares@hallrender.com) or 414-721-0442.

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