

# TAX-EXEMPT ORGANIZATIONS

Hodgson Russ has extensive experience working with tax-exempt and not-for-profit organizations of all sizes on issues that include tax exemption, private foundation issues, board operations, bylaws and certificates of incorporation, joint ventures, corporate structuring, state-agency approvals, legal agreements, fundraising issues, U.S. laws affecting foreign charities, and more.

Hodgson Russ has been awarded a prestigious "Best Law Firms" Metropolitan Tier 1 ranking by *Best Lawyers/U.S. News & World Report* in the Nonprofit/Charities Law category.

Our not-for-profit law experience includes:

- Tax exemption, including initial applications; reporting information to the IRS, including Form 990; unrelated business income tax; advising on IRS audits; advising on New York State sales tax and real property tax exemptions; and reporting to the New York State Charities Bureau
- Private foundation issues, including advising on self-dealing, excise taxes, minimum distributions, excess business holdings, and other matters; Hodgson Russ represents a large number of private foundations, including some with assets in excess of \$500 million
- Board operation, including best practices relating to governance; director responsibilities and liabilities and D&O insurance; interactions among directors and staff; and adoption of board policies on ethics, conflicts of interest, whistleblowing, record retention, and gift acceptance procedures
- Bylaws and certificates of incorporation, including analysis of and amendments to these documents and necessary approvals from state agencies, the New York State attorney general, and the New York State Supreme Court
- Joint ventures with other not-for-profits and with for-profits, including service-sharing arrangements among a group of not-for-profits and health care projects between not-for-profit and for-profit providers
- Corporate structuring, including mergers, dissolutions, and creation of subsidiaries (both nonprofit and for-profit); examples include a merger of four hospital foundations, purchase of a for-profit school by a nonprofit and converting the school to nonprofit status, creation of single-member LLC subsidiaries, creation of supporting foundations for nonprofits, and creation of for-profit entities owned by nonprofits for the conduct of unrelated business
- Approvals from state agencies, the New York State attorney general, and the New York State Supreme Court for real estate sales, asset sales, mergers, and

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## Professionals

### Attorneys

Andrew Besch  
Thomas Collura  
Emanuela (Amy) D'Ambrogio  
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Catherine Eberl  
Elizabeth Holden  
Kenneth Hunt  
Heather Kimmins  
Adam Perry  
Rafael Pignataro  
Edmund Russell III  
Patricia Sandison  
Valerie Stevens  
William Turkovitch  
Marla Waiss  
Sujata Yalamanchili

### Paralegals

Meredith McCarthy

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- dissolutions of New York religious corporations and nonprofit corporations
- Legal agreements, including drafting, analysis, and explanation of documents such as executive employment agreements, leases, confidentiality agreements, agreements with service providers, and joint venture operating agreements
  - Endowments, pledge agreements, and planned-giving vehicles, including their creation and maintenance
  - Advice and guidance on fiscal sponsorship arrangements and related fiscal sponsorship agreements and operational requirements
  - U.S. laws affecting foreign charities, including issues involving U.S. “friends” organizations to support foreign charities, U.S. withholding rules affecting foreign charities with U.S.-sourced investment income, and grants from U.S. private foundations to foreign charities
  - Labor and employment law, including human resources issues, employee benefits, and managing employees and union relations, dispute resolution, and litigation
  - Litigation involving such things as dissident members, property ownership, and governance issues
  - Health law advice to hospitals, nursing homes, home health agencies, hospices, clinics, ambulatory surgery centers, behavioral health providers, and other providers, on matters such as reimbursement, regulatory, and compliance matters
  - Counseling on legislative updates and government directives and regulations that affect nonprofits
  - Advising schools, universities and colleges, and their foundations and related organizations on student housing projects and financing, tax issues, faculty-student associations, alumni associations, sponsorship and affinity agreements, and other matters
  - Intellectual property matters, including patent, trademark, copyright, unfair competition, and trade secret laws
  - Advising country clubs, homeowner and condominium associations, master associations, and property owners’ ad hoc associations
  - Advising religious organizations on all legal aspects of their operations
  - Advising Tax-Exempt Equine Associations and Foundations on all types of nonprofit and tax-exempt matters, including the organization and management of Section 501(c)(5) breeders’ associations, such as membership associations organized to maintain the purity of a certain type of equine breed, to promote interest in the breed, and to establish, maintain and publish authoritative records, registers and transfers of ownership of the breed

### Experience

Hodgson Russ attorneys represented a nonprofit 501(c)(3) corporation located in Staten Island in the refinancing of its existing tax-exempt fixed-rate bonds and letter of credit-backed variable rate bonds with two new tax-exempt bond issuances, aggregating approximately \$11.6 million, that were privately placed with a bank.

Hodgson Russ assisted a client with a \$50 million pledge to a university for a charitable purpose. The work involved drafting and negotiating various provisions of the gift agreement with the university and advising on the federal tax material restriction rules for donors, including the level of involvement a donor may have with respect to the gifted funds for purposes of the charitable deduction rules under Internal Revenue Code Section 170.

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Following the expiration of the provisions of the New York State General Municipal Law authorizing industrial development agencies to issue bonds to assist nonprofit corporations in financing capital projects, attorneys at Hodgson Russ developed a financing structure using locally created local development corporations (LDCs) to fill the void. As part of the LDC structure developed by the Hodgson Russ attorneys, we were successful in obtaining a private letter ruling from the Internal Revenue Service confirming our structure and providing that bonds issued by the LDCs would be eligible for exemption from federal income taxation.

Mr. Gilbride serves as counsel to Buffalo 2020 Development Corporation, a nonprofit joint venture between the University at Buffalo Foundation and the Research Foundation of the State University of the New York. This entity has been actively engaged in various capital projects in and around the Buffalo Niagara Medical Campus, including development of a \$300-million clinical translational research facility and biosciences incubator for University at Buffalo. Through the utilization of a unique public-private partnership condominium structure, Buffalo 2020 Development Corporation was able to develop this facility by co-location with a working hospital, thereby maximizing operational efficiencies and substantially reducing duplicate costs for both facilities.

Mr. Gilbride represented a nonprofit affiliate of the University at Buffalo in conjunction with land acquisition for the development of the new School of Medicine and Biomedical Sciences facility in downtown Buffalo. This \$450 million facility, which anchors the university's new downtown campus, represents the largest single construction project ever undertaken by the State University of New York and incorporates an operational subway station in the lobby. This feature necessitated negotiation of a first-of-its-kind long-term air rights lease agreement with the Niagara Frontier Transportation Authority.

Hodgson Russ establishes U.S. "friends" organizations for foreign charities to fundraise in the United States. We provide a complete package of services for our foreign charitable clients, including creating a U.S. nonprofit entity, obtaining an IRS 501(c)(3) determination, advising on receiving and acknowledging gifts, and advising on proper forms of corporate governance and compliance with state and federal laws.

A Hodgson Russ client wished to make income tax-deductible charitable contributions to charities in a foreign country. While individuals are not permitted to claim an income tax deduction for donations to foreign charities, an individual may claim an income tax deduction for donations to a private foundation, and the private foundation may make international grants. Hodgson Russ worked with this client to form a private 501(c)(3) foundation so that client could support his preferred international charities while still enjoying a federal income tax deduction.

Hodgson Russ represented a nonprofit corporation in conjunction with the development and construction of an \$11 million twin pad ice arena in Lockport, New York. This representation includes the negotiation of all construction, financing, naming rights, and management agreements for the facility

A team of attorneys from Hodgson Russ's College & University Practice led by Terrence M. Gilbride represented a community college foundation on various matters related to the construction and financing of an apartment-style housing facility for students, including the preparation, negotiation, and review of related conveyance, construction, and financing documents and the resolution of title issues relating to the site of the facility. Prior to this engagement, this team of attorneys has also represented six other New York community colleges (or their affiliated foundations or auxiliary service

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corporations) in conjunction with student housing projects and one community college in conjunction with the development of a satellite academic facility.

Mr. Gilbride serves as real estate counsel to the Buffalo Niagara Medical Campus, a nonprofit corporation responsible for the development and operation of the Buffalo Medical corridor. This representation has included the acquisition and redevelopment of the former M. Wile and Trico industrial facilities located on the campus.

Hodgson Russ represented a nonprofit 501(c)(3) corporation located in Staten Island, New York, in the refinancing of its existing tax-exempt fixed-rate bonds and letter of credit-backed variable rate bonds. Our attorneys assisted with two new tax-exempt bond issuances, aggregating approximately \$11.6 million, that were privately placed with a bank.

Assisted the foundation of a well-known public university in Central New York with sale of a student housing complex and related bond defeasance.

A Hodgson Russ team led by Terrence M. Gilbride represents five state university-affiliated foundations in conjunction with the development and operation of 11 privatized student housing projects on the campuses of University at Buffalo, SUNY Canton, Buffalo State College, and SUNY Purchase. This representation involved the creation of a unique financing model for the development and construction of on-campus student apartments with 100 percent private funding. This representation includes negotiation and drafting of all lease and facility related agreements between SUNY and the nonprofit sponsors of the individual housing projects.

Hodgson Russ represents a prominent New York City cultural organization in various tax matters, including sales tax and withholding tax. Our representation of this client has previously resulted in the cancellation of several New York State sales tax assessments.

Hodgson Russ attorneys have assisted employers as they navigate union organizing campaigns, negotiation of first contracts, and bargaining successor contracts, and have guided union clients through the administration of their grievance/arbitration provisions. We regularly counsel our nonprofit clients on union negotiations, including recently securing a broad and inclusive management rights proposal for a client that needs this flexibility in order to operate its programs under the confines of governmental grants. For other union clients, our attorneys adeptly address matters at the National Labor Relations Board. We negotiated a favorable settlement for a client in Michigan that faced large exposure in an unfair labor practice due in part to an indemnification clause in a contract for services with one of its customers.

In *American Medical Rehabilitation Providers Association v. University at Buffalo Foundation Activities, Inc.*, 2008 TTAB Lexis 509, the U.S. Patent and Trademark Office Trademark Trial and Appeal Board (TTAB) determined favorably for our client that FIM and FIM SYSTEM are not generic and are therefore registrable by our client as trademarks.

In a unanimous decision obtained by Hodgson Russ for the Hindu Temple Society of North America, Inc., the New York State Court of Appeals held valid and proper the rules and procedures under which the temple has operated since its formation. The decision in the case of *Venigalla v. Nori* was the culmination of litigation commenced years ago by six disaffected temple devotees. When the temple came to Hodgson Russ for assistance, the devotees had obtained several orders and judgments adverse to the temple and its trustees. On behalf of the temple, Hodgson Russ successfully petitioned for leave to appeal to the state's highest court and then prepared and argued the appeal. The decision was a clear

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vindication of the temple's board of trustees and a forceful rebuke to the six devotees who had challenged the authority of the temple's trustees, demanding that they be chosen by election. The Court of Appeals agreed with Hodgson Russ that the election of temple trustees is not authorized under Religious Corporations Law Article 9. Therefore, bylaws from 1970, which the disaffected devotees advanced as the Temple's original bylaws, were invalid to the extent that they contained provisions that provided for the election of trustees. The entire set of bylaws, however, also were found to be defunct and abandoned. The successful appeal validated the actions of the temple's officers and trustees. It was an important victory for the temple, one of the largest Hindu organizations in North America.

### **In the News**

Thought Leaders: The Community Benefits  
*Buffalo Business First*, May 22, 2020

Albany Business Review - Industry Roundtable: Nonprofit & Charitable Organizations  
*Albany Business Review*, November 16, 2018

### **Press Releases**

Amy D'Ambrogio Joins Hodgson Russ LLP  
June 6, 2023

Hodgson Russ Receives Top Tier National and Metropolitan Rankings in 2022 Best Law Firms Listings  
*Hodgson Russ Press Release*, November 15, 2021

Two Hodgson Russ Attorneys Selected to Author Monthly Columns in Tax Notes State  
*Hodgson Russ Press Release*, April 27, 2020

Hodgson Russ Earns Five National-Level Rankings in *U.S. News & World Report*/Best Lawyers 'Best Law Firms' Report  
*Press Release*, November 18, 2015

### **Publications**

New York State Legislative Developments For Tax-Exempt Organizations/Nonprofits  
*Hodgson Russ Tax-Exempt Organizations Alert*, December 15, 2021

Recent Developments For Tax-Exempt Organizations/Nonprofits  
*Hodgson Russ Tax-Exempt Organizations Alert*, November 10, 2021

New Nonprofit Filing Requirements with NYS Department of State  
*Hodgson Russ Tax-Exempt Organizations Alert*, May 14, 2021

Recent COVID-19 Developments for Tax-Exempt Organizations/Nonprofits  
*Hodgson Russ Tax-Exempt Organizations Alert*, May 13, 2021

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IRS Recognizes the Issuance of Erroneous Tax-Exempt Status Revocations Due to COVID-Related Computer Issue

*Hodgson Russ Tax-Exempt Organizations Alert*, November 2, 2020

New York Appellate Court Decision Stops Short of Settling Solar Property Tax Issues

*Hodgson Russ Renewable Energy Alert*, September 22, 2020

IRS Postpones Due Date for Form 990 Series Returns

*Hodgson Russ Tax-Exempt Organizations Alert*, April 16, 2020

Non-Profit Organizations and the CARES Act: Can Non-Profits Take Advantage of the Financial Assistance Programs?

*Hodgson Russ Tax-Exempt Organizations Alert*, April 3, 2020

COVID-19 Developments for Tax-Exempt Organizations/Non-Profits

*Hodgson Russ Tax-Exempt Organizations Alert*, March 30, 2020

2020 Tax-Exempt Organizations Update

*Hodgson Russ Tax-Exempt Organizations Alert*, February 13, 2020

## Presentations & Events

Tax-Exempt Seminar: Current New York State & IRS Enforcement Efforts

140 Pearl Street, Suite 100, Buffalo, New York, 14202, April 25, 2024

New York State Bar Association Annual Meeting 2024

New York Hilton Midtown, January 16, 2024

A Practical Introduction to Nontaxable Corporate Reorganizations

ABA Section of Taxation 2022 Fall Tax Meeting

Dallas, TX, October 13, 2022

Advising International Charitable Organizations With U.S. Donors and U.S. Investments

August 8, 2022

Hodgson Russ Webinar: Child Victims Act and Mandatory Reporting of Child Abuse

October 1, 2019

2019 Summer Tax Series

Understanding New York State Tax Issues of 2019

The Harvard Club 35 W. 44th Street, New York, NY, June 12 - August 7, 2019

Hodgson Russ Seminar: Current Trends in IRS and New York State Enforcement Efforts for Tax-Exempt Organizations

Hodgson Russ, The Guaranty Building, 140 Pearl Street, Buffalo, NY, November 13, 2018

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New York Council of Nonprofits, Inc. (NYCON) – Nonprofit governance with an Emphasis on Conflicts of Interest  
Camp Finance 2018  
New Paltz, New York, October 4-5, 2018

Hodgson Russ Seminar: Current Trends and Legal Updates for Tax-Exempt Organizations  
Hodgson Russ, The Guaranty Building, 140 Pearl Street, Buffalo, NY, July 11, 2018

New York Council of Nonprofits, Inc. - Transgender Employees in the Workplace: Up to Date Guidance for Employers  
Camp Finance 2017  
October 6, 2017