

# Nonprofit beats IRS in precedent-setting lawsuit

An Atlanta attorney has won a federal lawsuit against the IRS that could affect nonprofits nationwide.

The ruling by the U.S. Court of Appeals for the 5th Circuit in New Orleans is the first since Congress changed federal law a decade ago to adopt new penalties for so-called "excess benefits" reaped by managers and directors of public charities.

The attorney who won the case, David Aughtry, managing partner of the Atlanta office of **Chamberlain, Hrdlicka, White, Williams & Martin**, said the ruling could affect executives and directors of any nonprofit in America. "It's the biggest thing to happen to public charities in as long as I can remember," he said.

At issue is whether the IRS views as excessive financial transactions between "insiders" and nonprofits,

from the salary the board pays the executive director to a piece of real estate a board member might sell to his church.

Until Congress changed the law in 1996, the IRS could punish a charity only by revoking its tax-exempt status — essentially the death penalty for the charity. The change allowed "intermediate sanctions" as an alternative.

In the Mississippi case, Aughtry represented Sta-Home, a home health-care company that had converted from nonprofit to for-profit in 1995. The IRS claimed that, in the conversion, the

new for-profit entity received valuable assets, and that the fair market value of the assets exceeded liabilities. So it levied \$389 million in intermediate sanctions and interest against the agencies and the family that owned them.

The Court of Appeals ruled that no sanctions should have been imposed.

Still, Aughtry and attorney Charles E. Hodges II of Chamberlain Hrdlicka say nonprofit boards could face liability if the IRS finds excess benefits in a transaction.

They recommend that nonprofit boards have a compensation expert review the proposed pay of every salaried employee in the organization, and have a well-qualified appraiser review any transaction that involves an insider.

## NONPROFIT BUSINESS

### LIGHT THE NIGHT IN GEORGIA.

Frederick J. Rowan II, chairman and CEO of Atlanta-based **Carter's Inc.**, will serve as this year's corporate chairman for The Georgia Chapter of **The Leukemia & Lymphoma Society's** annual Light The Night Walk.

As chairman, Rowan will encourage Atlanta companies to join the fight against blood cancers by forming corporate teams and participating in Atlanta's Oct. 14 walk at Centennial Olympic Park.

Since 1999, Carter's and its employees have contributed more than \$120,000 for the society's annual Light The Night Walk.

**SHIFT IN GOODWILL.** Goodwill Industries of North Georgia is closing its Columbus, Ga., location.