

# 2021 HIGHER EDUCATION TAXATION INSTITUTE

## Recent Developments in College and University Tax Law

12:30 to 1:30 p.m.

June 15, 2021

Austin, TX

**Bertrand M. Harding Jr.**  
**Edward J. Jennings**

1

## Discussion Topics

- **Legislative Developments**
- **IRS Guidance on COVID-19 Related Tax Provisions**
- **IRS Enforcement**
- **Tax-Exemption Developments**
- **Unrelated Business Taxable Income (UBTI)**
- **Compensation, Excise Tax and Fringe Benefits**
- **Charitable Contribution Deductions**
- **Form 990 and Other Reporting Requirements**
- **International Taxes and Procedural Matters**

2

# Legislative Developments

Herbert Hoover once said, “About the time we can make the ends meet, somebody moves the ends.”

- **Consolidated Appropriations Act, 2021** - On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021 (CAA), which includes a \$1.4 trillion omnibus appropriations package to fund the government through fiscal year 2021 of which approximately \$900 billion was allocated to the coronavirus relief.
- **The American Rescue Plan Act of 2021** - On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA) to provide additional relief for individuals and businesses affected by the coronavirus pandemic.
  - Payroll Tax Credit under FFCRA
  - Dependent Care Assistance
  - Unemployment Extension
  - The Shuttered Venue Operator Grant Program
- **American Families Plan**

## Shuttered Venue Grant Program

- **About the Program**
  - Established in December 2020 by Economic Aid Act
  - Provides \$16 billion in grant aid for operators of live venues, including theaters and museums
  - Administered by Small Business Administration’s Office Disaster Assistance
  - After an initial delay, the SBA began accepting SVOG applications in April 2021
- **Applicants**
  - Must have been operational on February 29, 2020
  - May receive an amount equal to 45% of 2019 gross earned revenue or \$10 million, whichever is less
  - Grants made in priority of economic need
  - Funds can be used for payroll, rent, and most other operational costs
- **Open Items**
  - SBA guidance found in continuously updated online FAQs
  - Lot of unanswered questions regarding application requirements and process
  - The applicant is the “venue” whether or not a legal entity in its own right
  - Numerous questions and issues when venue is owned by a state university

# IRS Guidance on COVID-19 Related Tax Provisions

If we could first know where we are, and whither we are tending, we could then better judge what to do, and how to do it – Abraham Lincoln

- **Families First Coronavirus Response Act (FFCRA) Reporting Tax Credits on Wage Statements for Small Exempt and Government Employers**
- **CARES Act**
  - **Employee Retention Credit**
  - **Employment Tax Deferral**
  - **Reporting Grants on Form 1098-T**
    - There was an open question as to whether these HEERF grants had to be reported by the schools on the Forms 1098-T issued to the students, and the IRS has said that these grants do not need to be reported.
- **Consolidated Appropriations Act on COVID-Related Flexible Spending Account Rules**
- **Presidential Memorandum on Employee Social Security Tax Deferral Option**
- **Ancillary Issues**
  - **Leave-Based Donation Programs**
  - **Relief for Van Pools**
  - **Related Unused Dependent Care Contributions Cannot Be Returned**

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5

## IRS Enforcement

“Intoxication” - Euphoria at getting a refund from the IRS, which lasts until you realize it was your money to start with. ~Author unknown

- **Government Accountability Office Report (GAO)**
- **TIGTA** - Treasury Inspector General for Tax Administration (TIGTA) issued its final audit report on February 24, 2021, which made claims regarding the IRS’ audit techniques.
  - **No UBTI**
  - **IRM**
  - **NOLs**
  - **Low Examination Rate and Audit Selection**
- **Compliance Program and Priorities** - This April, TE/GE promulgated an update of its Compliance Program and Priorities on its website. This program is in addition to the annual FY 2021 Program Letter and is intended to share information and findings about other compliance initiatives conducted regularly throughout the fiscal year
  - **Excise Tax on Excess Compensation**
  - **Misclassification of Workers**
  - **Participant Loans of Employee Plans**
- **Audits of Exempt Organizations**

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6

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