

# 2022 HIGHER EDUCATION TAXATION INSTITUTE

## Recent Developments in College and University Tax Law

8:30 a.m. – 9:45 a.m.

Monday, June 20th

Austin, TX

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## Discussion Topics

- LEGISLATIVE DEVELOPMENTS
- IRS ENFORCEMENT
- TAX-EXEMPTION DEVELOPMENTS AND INTERMEDIATE SANCTIONS
- COMPENSATION AND FRINGE BENEFITS
- UNRELATED BUSINESS TAXABLE INCOME
- REPORTING REQUIREMENTS
- NONRESIDENT ALIEN TAX DEVELOPMENTS
- CHARITABLE GIVING
- EXCISE TAXES

# Legislative Developments

## What at first was plunder assumed the softer name of revenue - Thomas Paine

- **Build Back Better Act** - This legislation has undergone various versions from mid-September when it was initially released to mid-November.
  - This bill, roughly, \$1.7 trillion, includes a one-year extension of the expanded child tax credit, climate- and energy-related tax credits and spending, and implements tax provisions, such as a 15% minimum tax on corporate book income for corporations with profits over \$1 billion.
  - It does not include an increase in the corporate income tax rate of 21%.
  - It proposes \$80 billion to fund Internal Revenue Service (IRS) operations and activities over 10 years, including \$44.8 billion for enforcement.
- **Retroactive Amendment of the Employee Retention Credit** - On November 5<sup>th</sup>, Congress passed the Infrastructure Investment and Jobs Act which retroactively amended the COVID relief Employee Retention Tax Credit (ERC).
  - The retroactive amendment changed the end date of the ERC from December 31, 2021, to September 30, 2021.
- **Joint Committee Issues Report on Political and Lobbying Activities by Tax-Exempt Organizations**
- **For-Profit Dealings Provoke Concern Over Universities' Exemptions**
- **Accelerating Charitable Efforts (ACE) Act** - Senators Angus King, Jr., I-Maine and Charles Grassley, R-Iowa introduced the ACE act which would modify existing rules relating to donor-advised funds (DAFs) and private foundations.
  - The purpose is to prevent accumulating excess contributions or “warehousing” of funds (DAFs have over \$140 billion in assets), and to accelerate charitable granting.

## Congressman Questions Football Coaches' Salary and Compensation Packages

- **Letters** - In early 2022, Congressperson Bill Pascrell, Chair of House Ways and Means Oversight Committee, sent letters to nine universities with major sports programs asking how the schools' “lucrative compensation contracts” further its exempt purposes.
- **Series of Questions** - Schools were required to answer a series of questions relating to:
  - (1) Coaches' compensation;
  - (2) How the athletics program furthered university's educational mission;
  - (3) How the coaches' compensation compared to benefits provided to student athletes;
  - (4) The net income and manner of governance of athletics department; and
  - (5) The cost of the school's athletic facilities.
- **Impact on Athletic Departments** - Questions seem intended to set a predicate for some legislative action – but what?
  - Large athletic programs no longer related activity?
  - Section 4958 excess benefit transactions? Or
  - Scare tactic to induce voluntary changes?

# IRS Enforcement

“We do not have the resources to go after the bigs or the superbigs, as we refer to them, and we get outgunned routinely in that space.” - IRS Commissioner Charles Rettig

- **Resources** - The IRS has had budget cuts over the past decade.
  - Federal appropriations fell by 20% between 2010 and 2018.
  - The agency's overall workforce fell by 22%.
  - Employees who are focused on enforcement activities fell by 30%.
  - Examination rates for both individual and corporate taxpayers fell by 40% between 2010 and 2018.
- **Pronouncements on Process** - IRS gives FAQs greater weight and authority.
- **Tax-Exempt and Government Entities (TE/GE)** – Released a fiscal year 2022 “program letter” that sets out its compliance priorities as well as noting how these priorities align with IRS strategic goals.
  - TE/GE is one of four major divisions within the IRS. The other three divisions are Large Business and International (LB&I), Small Business/Self-Employed (SB/SE), and Wage and Investment (W&I).
- **List of Priorities for TE/GE for Fiscal Year 2022** - Regulations regarding the allocation of expenses in computing unrelated business taxable income (UBTI) under Section 512.
  - Regulations regarding the definition of government plan under Section 414(d).

## IRS Tax-Exempt and Government Entities (TE/GE) Division's Fiscal Year 2021 Accomplishments Letter

- **TE/GE** – TE/GE makes up a significant portion of the taxpayer base in the U.S.
  - It employs almost 25% of the country's workforce.
  - It controls over \$47 trillion in assets.
  - It accounts for nearly 20% or \$260B of the \$1.3 trillion in federal tax expenditures (revenues lost from tax benefits).
- **Accomplishments** – The letter discusses primarily examinations and personnel.
- **Exams** – Exempt Organizations (EO) closed 3,249 examinations regarding the Form 990 Series and their associated employment and excise tax returns which is 12% lower than the audits closed in 2019.
  - It made a tax change in 82% of the cases.
  - It proposed revocations for 94 tax-exempt entities (.03%).
  - Issues included under-reported unrelated business taxable income (UBTI) and non-compliance with community benefit provisions under Section 501(r).
  - Exempt Plans (EP) closed 4,295 employee plans examinations and revoked or disqualified 16 plans (.004%).
- **Personnel** – TE/GE continues to invest in its workforce of 1,521 employees of which approximately 35% or 535 is allocated to EO. The IRS expects to lose 52,000 workers over the next six years, or 8,666 per year. This year, TE/GE lost 5% or approximately 75 employees due to attrition.

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