

PRESENTED AT

11TH ANNUAL

HIGHER EDUCATION TAXATION INSTITUTE

June 5<sup>th</sup> – 6, 2023

Austin, TX

## **Recent Developments in College and University Tax Law**

**Hotel ZaZa Austin Downtown**

**8:30 a.m. – 9:45 a.m.**

**Monday, June 5th**

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**RECENT DEVELOPMENTS IN COLLEGE AND UNIVERSITY TAX LAW<sup>1</sup>**

- I. LEGISLATIVE DEVELOPMENTS** **p. 4**
- A. Congress Enacts SECURE 2.0 Act
  - B. Inflation Reduction Act
  - C. Ways and Means Oversight Subcommittee Issues Report on Coach Compensation
  - D. NIL
  - E. Ways & Means Questions UPenn on Endowment
  - F. Certain Investments of Private Colleges and Universities
  - G. Congress Enacts Respect for Marriage Act, Debates Impact of Same-Sex Couple Discrimination on Tax-Exemption
  - H. Congressional Scrutiny of Tax-Exempt Hospitals Could Forecast Trouble For Academic Medical Centers
- II. IRS ENFORCEMENT** **p. 12**
- A. The IRS' Strategic Operating Plan to Spend \$80B Over 10 Years
  - B. Workforce Transformation
  - C. Enforcement Transformation
  - D. Examinations of Exempt Organizations
  - E. Examination Guidance to IRS Employees
  - F. IRS Priority Guidance Plan projects for Tax-exempt Organizations and TE/GE Program Letter
- III. COMPENSATION AND FRINGE BENEFITS** **p. 18**
- A. IRS Issues Warnings on Employee Retention Credit Claims, Adds to Dirty Dozen
  - B. Deferred Compensation Plans May Be Impacted by Proposed Ban on Non-Compete Clauses
  - C. Employee's Housing Fails Section 119 Business Premises Requirement
  - D. Tax Court Allows Deduction for Nurse's "Scrublike" Clothing and Lab Coat
  - E. Settlements
  - F. Hospital Wins Broad Indemnification in Medical Resident FICA Tax Suit
  - G. Court Disallows Emeritus Professor's Deductions for Consulting Expenses
  - H. Tax Court Disallows Hotel and Dry-Cleaning Expenses
  - I. Tax Home and Travel Expenses
  - J. New Requirements for Claiming Work Opportunity Tax Credit
  - K. Chief Counsel Advice Explains the Importance of Substantiation in an FSA

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<sup>1</sup> Portions of this outline have been reproduced from Bertrand M. Harding, Jr. and Benjamin A. Davidson, The Tax Law of Colleges and Universities (5th ed. 2023) and from Harding and Davidson's *College & University Tax Report*, <https://collegeuniversitytaxlaw.com/>.

- IV. UNRELATED BUSINESS TAXABLE INCOME** **p. 25**
- A. Profit Motive
  - B. Tax Court Requires Capitalization of Start-up Expenditures, But Allows Deductions Pre-Revenue
  - C. Unrelated Debt Financed Income (UDFI) under Section 514
- V. CHARITABLE GIVING** **p. 28**
- A. Anticipatory Assignment of Income
  - B. Appraisals
  - C. Substantiation and Statutory Requirements
  - D. Scope and Standing
  - E. Court Rejects Taxpayer’s Reliance on “Professional Advice” Defense to Disallowed Charitable Contribution Deduction
- VI. REPORTING REQUIREMENTS** **p. 33**
- A. IRS Issues Final Regulations on Electronic Filing
  - B. IRS and the Courts on Penalties
  - C. 990-T Highlight Changes to 2022 Form and Instructions
  - D. IRS Issues Fact Sheet FAQs on Form 1099-K Addressing In-House AP Departments
  - E. IRS Formalizes New Schedule K-3 Notification Requirement
  - F. Final Regulations on Guidance to State Governments on the Inspection of Returns for Exempt Entities
  - G. IRS Issues Guidance on Certified PEOs
- VII. VARIOUS ISSUES** **p. 39**
- A. Section 179D Deduction Allocation
  - B. Supreme Court Dismisses Case on Dual-Purpose Communication and Attorney-Client Privilege
  - C. Claim of Right
  - D. NCAA Issues List of Permissible/Impermissible NIL Activities
  - E. IRS Releases Statistics on Sections 4960 and 4968 Excise Taxes
  - F. Taxpayer Required to Include PPP Loan Forgiveness in Income
  - G. Hotel Management Contract Does Not Constitute Private Business Use
  - H. Buckeye Institute Sues to Eliminate Form 990 Schedule B

APPENDIX I – IRA Allocations Financial Summary

APPENDIX II – IRA Implementation over the next 3 years

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