

2023 HIGHER EDUCATION TAXATION INSTITUTE

Recent Developments in College and University Tax Law

Hotel ZaZa Austin Downtown

8:30 a.m. – 9:45 a.m.

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Austin, TX

Benjamin A. Davidson

The University of North Carolina at Chapel Hill

Edward J. Jennings

University of Michigan

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Discussion Topics

- LEGISLATIVE DEVELOPMENTS
- IRS ENFORCEMENT
- MAJOR CASES
- COMPENSATION AND FRINGE BENEFITS
- UNRELATED BUSINESS TAXABLE INCOME
- CHARITABLE GIVING
- REPORTING REQUIREMENTS AND VARIOUS ISSUES

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Legislative Developments

"In 1790, the nation which had fought a revolution against taxation *without* representation discovered that some of its citizens weren't much happier about taxation *with* representation."—Lyndon B. Johnson

- **Congress Enacts SECURE 2.0 Act** - In December, as part of the Consolidated Appropriations Act, 2023 (P.L. 117-328), Congress enacted the SECURE 2.0 Act of 2022. It contains numerous provisions of interest to colleges and universities, both as plan sponsors and as the recipients of planned gifts.
- **Provisions Include:**
 - **Increases the required minimum distribution age to 73 in 2023 and to 75 in 2033.** Donors remain eligible to make qualified charitable distributions (QCD, or "charitable rollover") at age 70 ½ even if they are not required to take RMDs.
 - **Indexes the current \$100,000 QCD limit to inflation.**
 - **Allows an employer to treat student loan payments made by employees as elective deferrals for purposes of the employer's matching retirement contributions.**
 - **Allows a one-time, \$50,000 QCD to a charitable remainder trust or a charitable gift annuity.**

Inflation Reduction Act (IRA) Energy Credits for Most Colleges and Universities

- **No UBIT Limitation**- New section 6417(d)(2) allows most colleges and universities to make an election to have the credit determined without regard to the unrelated trade or business limitations of section 50(b).
- **Direct Payment Against Tax** - This "direct pay" mechanism enables electing schools to receive a refund if the school has no UBIT against which to apply the deemed payment, functioning like a refundable credit.
- **Examples:**
 - **Charging stations: Sections 30C (alternative fuel vehicle refueling property)**
 - **Electric vehicles: 45W (qualified commercial vehicles)**
 - **Solar, wind, geothermal: 48 (energy) and 48E (clean electricity investment)**
 - **Electricity production and sale: 45 (renewable electricity production), 45Y (clean electricity production)**
- **Bonus amounts** for paying prevailing wages, employing apprentices, and using domestic materials.
- **Drafting error:** Section 6417 does not list instrumentalities of a state, whose income is often excluded under section 115, as eligible. This includes some public universities. In reaction to comments from practitioners, Treasury is expected to make instrumentalities eligible.

IRA (Cont'd)

- **Extension of Section 179D Allocation to Nearly all Colleges and Universities**
- **New Corporate Alternative Minimum Tax (CAMT)** – Congress brought back shades of the alternative minimum tax for corporations. CAMT includes a 15% minimum tax on a corporation's "adjusted financial statement income" (AFSI) – separate from the corporation's taxable income under the Internal Revenue Code – if AFSI exceeds \$1 billion.
 - **AFSI will be appropriately adjusted to only take into account AFSI of (i) an unrelated trade or business of the organization or (ii) AFSI derived from debt-financed property to the extent treated as UBTI.**
- **Congress Increases IRS Funding by \$80B Over Ten Years** – Congress passed a provision that increased the IRS' budget by an additional \$80 billion with the expectation of closing the tax gap, increasing federal revenue by more than \$180 billion in the decade ahead.
- **Under the IRA, the increased funding will be allocated as follows:**
 - **\$45.6b for "Enforcement", which includes examinations, collections, criminal investigations, legal and litigation support, and digital asset monitoring.**
 - **\$25.3b for "Operations Support", including legacy information technology systems and telecommunications.**
 - **\$4.8b for "Business Systems Modernization", including technology to improve customer service.**
 - **\$3.2b for "Taxpayer Services", including pre-filing assistance and education, filing and account services, and funding for the Taxpayer Advocate Service.**
 - **\$.5b for "Clean Energy".**

Other Congressional Actions

- **House Ways and Means (HW&M) Issues Report on Coach Compensation** - Bill Pascrell (D-NJ), Chair of the HW&M Oversight Subcommittee, released his report on letters that he sent to nine universities a year ago regarding the compensation paid by the schools to their respective football and basketball coaches.
 - **Regarding the section 4960 excise taxes on compensation exceeding \$1 million, he said "[t]he committee should consider reforming the excise tax" to "close a loophole that may enable some state universities to avoid the tax."**
 - **"It is also worth exploring whether profitable, multimillion dollar college athletics programs should be subject to the Unrelated Business Income Tax."**
- **NIL** – A House Committee held a hearing on student-athlete name, image, and likeness (NIL) issues, including the role of NIL collectives and the impact on student recruitment and transfers, among others.
 - **Meanwhile Senators reintroduce a bill to disallow charitable deduction for gifts to NIL collectives.**
- **HW&M Questions UPenn on Endowment** – It inquired into the University's funding of the Penn Biden Center, use of its endowment, and investments in entities that the U.S. government has designated as potentially hostile.
 - **Congressman Greg Murphy, M.D. (R-NC) introduced a bill to pressure large university endowments to purge their investment portfolios of Chinese entities deemed a threat to U.S. national security.**
- **Congress Enacts Respect for Marriage Act, Debates Impact of Same-Sex Couple Discrimination on Tax-Exemption**

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