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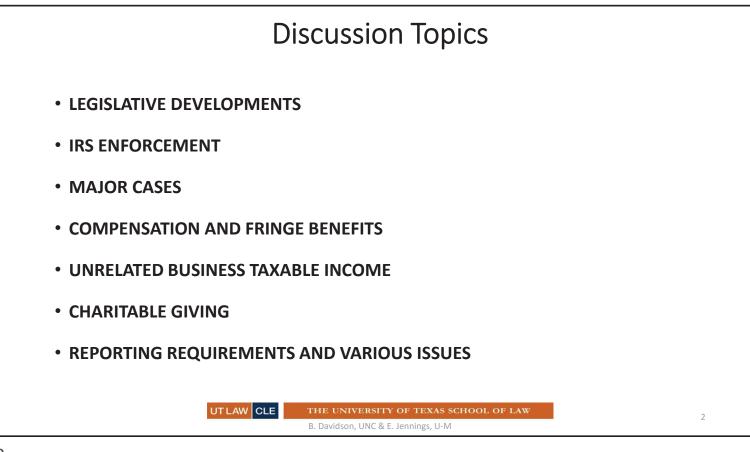
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Legislative Developments "In 1790, the nation which had fought a revolution against taxation without representation discovered that some of its citizens weren't much happier about taxation with representation."–Lyndon B. Johnson
• Congress Enacts SECURE 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.
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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.

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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:

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- \$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.

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• \$3.2b for "Taxpayer Services", including pre-filing assistance and education, filing and account services, and funding for the Taxpayer Advocate Service.

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• \$.5b for "Clean Energy".

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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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First appeared as part of the conference materials for the 11th Annual Higher Education Taxation Institute session "Recent Developments in College and University Tax Law"