

**PRESENTED AT**  
**12TH ANNUAL**  
**HIGHER EDUCATION TAXATION INSTITUTE**

June 13-14, 2024

Austin, TX

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

**The Otis Hotel Austin**  
**8:30 a.m. – 9:45 a.m.**  
**Thursday, June 13**

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**RECENT DEVELOPMENTS IN COLLEGE AND UNIVERSITY TAX LAW<sup>1</sup>****I. LEGISLATIVE DEVELOPMENTS****p. 4**

- A. A Year of Congressional Scrutiny Following October 7 Hamas Attack
- B. Organizations Respond to House Ways and Means Request on Political Activity, Ways and Means Holds Hearing
- C. Congressman Questions Georgetown Law Professor Regarding Election Activities
- D. Chairs Smith and Wyden Introduce Bill That Would Raise Form 1099 Reporting Threshold to \$1,000
- E. Senators Criticize Oversight of Tax-Exempt Hospitals and Suggest Changes to Form 990 Schedule H
- F. Pressure on Tax-Exempt Hospitals Continues with New Senate Report

**II. IRS ENFORCEMENT****p. 8**

- A. IRS Releases New Technical Guides
- B. IRS Issues 2023-2024 Priority Guidance Plan
- C. IRS Tax-Exempt Government Entities (TE/GE) Division Release Accomplishments Letter for Fiscal Year 2023
- D. IRS Adds NIL and Tax-Exempt Hospitals to TE/GE Compliance Program
- E. IRS Commissioner Requests Additional Funding from Congress
- F. IRS Releases Annual Guidance on EO Determinations
- G. IRS Announces Audits of Corporate Jet Usage. Senators Praise Announcement and Urge Increase in the Flight Valuation

**III. SPECIAL ISSUES****p. 13**

- A. NIL, Boosters, and Scholarship Organizations
- B. NLRB Regional Director Rules That Dartmouth Basketball Players Are Employees
- C. 501(c)(3) Status as Financial Assistance for Purposes of Title IX
- D. Inflation Reduction Act
- E. Corporate Transparency Act Takes Effect, District Court Holds it Unconstitutional, Government Appeals
- F. Intersection of Tax Law and Race Conscious Programs
- G. IRS Statistics Reveal Significant Increase in Excise Tax Payments
- H. Nonprofit Challenges Constitutionality of Section 501(c)(3) Lobbying and Electioneering Restrictions

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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. 2024) and from Harding and Davidson's *College & University Tax Report*, <https://collegeuniversitytaxlaw.com/>.

**IV. COMPENSATION AND FRINGE BENEFITS****p. 25**

- A. Tax Court Holds That Office Manager and Medical Assistants Were Employees, Denies Section 530 Relief
- B. Tax Court Disallows Deduction for UCLA MBA Expenses
- C. Settlements
- D. D.C. Circuit Allows Suit Alleging Fraudulent W-2 to Proceed
- H. Employee Retention Credit
- I. IRS Explains Employee Consent Requirement for FICA Refunds When Using Tax Equalization Agreements
- J. Determining Reasonable Compensation
- K. SECURE 2.0 Act

**V. UNRELATED BUSINESS TAXABLE INCOME****p. 31**

- A. Profit Motive
- B. Crypto
- C. Unrelated Debt Financed Income (UDFI) under Section 514: U.S. Pursues its Appeal Against Mayo Clinic
- D. JCT Bluebook Offers Exempt Organizations Relief from Corporate AMT

**VI. CHARITABLE GIVING****p. 35**

- A. Substantiation and Statutory Requirements
- B. Treasury Issues Proposed Regulations on Donor Advised Funds
- C. Donor Privacy Lawsuit Challenging the Constitutionality of Form 990 Schedule B, Survives Summary Judgment, Certified to Sixth Circuit on Interlocutory Appeal
- D. Treasury and IRS Propose Designating Certain Charitable Remainder Annuity Trusts (CRAT) as Listed Transactions

**VII. REPORTING REQUIREMENTS****p. 38**

- A. Fourth Circuit Highlights the Importance of Using Certified Mail, Notes Circuit Split
- B. Deadlines Matter — Tax Court Dismisses Petition Filed 11 Seconds After Midnight
- C. IRS Announces E-Filing Requirement for Form 8300
- D. IRS Codifies Allowance of Electronic Signatures on Certain Forms
- E. Circuit Court Denies Reasonable Cause Relief for E-Filed Returns
- F. Highlighted Modifications to the 2023 Form 990-T
- G. IRS Issues Memo on Backup Withholding Timing
- H. Treasury Issues Final Regulations on De Minimis Information Return Errors
- I. Treasury Considers Finalizing 2016 Proposed Regulations on Form 1098-T, Reopened Comment Period. NACUBO Submits Comments.

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