USC Gould School of Law

USC Gould School of Law 2023 Tax Institute

TAX23

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CE Credits available for attorneys (MCLE/Legal Specialization), accountants (CPE), financial planners (CFP® Professionals), and Trust Officers (CTFA)

In-Person and Virtual Event!

Tightening Up Tax Strategies

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#USCLAWTAX
For 75 years, the USC Gould School of Law Tax Institute has been the essential three-day event for tax professionals, providing an in-depth examination of the hottest tax law issues and the latest business perspectives. Join more than 60 experienced speakers from across the nation and internationally for the Institute’s conference, which will be hybrid this year (in-person audience and speakers with a virtual broadcast).

**Monday – Corporate Tax Planning**

The Institute will once again begin with a review of recent developments in corporate tax planning followed by afternoon tracks for corporations and closely-held businesses. The day ends with a variety of evening workshops which include an Entertainment Industry Tax Update, Stock Buyback Excise Tax session, a Compensation Tax Issues in M&A, Curing S Corp Tax Gaffes, and Protecting the Privilege in Tax Matters.

**Tuesday – Partnerships, Real Estate, Enforcement & Individual**

The second day will feature three concurrent tracks of programming focusing on partnerships and real estate, individual tax planning, and ethics, compliance and tax enforcement issues. The day ends with a selection of evening workshops with topics on Partnership and Real Estate Hot Topics, Making Sure an S Corp.’s Losses are Deductible, Income Tax Issues for Multistate Businesses, and more.

**Wednesday – Estate Planning**

The final day will focus on recent developments, Grantor Trust issues, QSBS, applying the Corporate Transparency Act for trusts, and Life Insurance. The Institute ends with evening workshops featuring our expert speakers on Hot Topics in Estate and Gift Tax Planning, Private Letter Rulings, and more.

**Don’t Miss Out – Register Now**

[REGISTER ONLINE AT](https://gould.usc.edu/cle/tax)

**Contact Information**

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Continuing Legal Education
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The USC Gould School of Law gratefully acknowledges the sponsors and supporter of the 2023 Tax Institute.

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Please visit our website at https://gould.usc.edu/cle/tax for a complete and up-to-date list of Institute sponsors and supporters.
Recent Developments in Corporate Taxation Planning

This session will cover recent developments in corporate taxation, including an update on IRS and Treasury guidance projects, an overview of proposed legislation, and recent private letter rulings.

10:30 AM – 11:30 AM
Corporate Tax Issues in Recent Deals

Learn about recent interesting and high-profile public deals from nationally-known experts as they focus on each transaction’s structural and commercial features and analyze its tax treatment, with particular emphasis on novel tax issues.

11:40 AM – 12:40 PM
The Future of Tax Policy

The panel will discuss short-term and long-term trends in tax policy, including for example consequences of the November 2022 election, ramifications of the 2025 expiration of TCJA provisions, impacts of the activities of the OECD, and challenges to IRS regulatory authority.

Edward Kleinbard Memorial Lecture
Luncheon & Keynote Address: Prof. Kimberly Clausing

Join Professor Kimberly Clausing for a 30-minute discussion about the future of international tax cooperation. She will discuss lessons from her scholarly work as well as her experience at the U.S. Department of the Treasury, focusing on the rationale for international tax cooperation as well as possible futures that lie ahead.

AFTERNOON DUAL TRACK PROGRAMMING

TRACK A – CORPORATE A

2:00 PM – 3:00 PM
Distressed Company Tax Planning: Selected Issues to Consider, Including in Light of Recent Tax Reform

This panel will cover a variety of difficult issues that the panelists encounter in distressed company practice, potentially including “significant modification” problems in “lender on lender violence” transactions, potential implications of the book minimum tax, the uncertain treatment of crypto businesses in distress, and other issues.
3:10 PM – 4:10 PM
Common Thorny Compensation Tax Issues in M&A and Other Deals
Complex tax-related executive compensation issues often arise in the context of corporate transactions. Practitioners must fully understand these tax issues to avoid pitfalls in structuring and implementing the deal. The panel will examine the tax-issues relating to service conditions on equity payments in the M&A context, including deferred payments and earn-outs. We will also examine various other Internal Revenue Sections, including Section 409A and Section 280G, which can significantly impact the price and structure of a transaction and the treatment of equity awards and other compensation paid in connection with the transaction.

Sean Feller
Gibson, Dunn & Crutcher LLP
Colleen Hart
Proskauer
Erica Schohn
Skadden, Arps, Slate, Meagher & Flom LLP
New York, NY

4:10 PM – 4:25 PM – Networking Break

4:25 PM – 5:25 PM
This panel will cover tax issues that hit the desk of Tax Directors and can be the source of sleepless nights, including audits, remote work compensation, and ESG. The speakers will also discuss changes to U.S. tax laws and the OECD framework for global tax reform that are affecting the corporate environment.

Michael Hainkel
EVP & Chief Tax Officer
Lionsgate
David Paul
AVP Tax
American Honda
MODERATOR
Julie Divola
Pillsbury Winthrop Shaw Pittman LLP
San Francisco, CA

Hot Tax Topics for Closely-Held Businesses
Join this rapid-fire session on recent developments and important trends that affect closely-held corporations and partnerships and their owners.

Tony Nitti
EY

Choice of Entity and S Corps
Mr. Nitti will discuss common mistakes in operating an S corporation, including an explanation of the second class of stock rules as they pertain to state-law LLCs and relief recently offered by the IRS in the form of Revenue Procedure 2022-19. He will cover the recent rise in requests for Section 1362(f) relief for missed Section 336(e) elections and how this problem can be avoided. Mr. Nitti will also address special considerations for S corporations electing into a state’s PTE regime.

Michael Hainkel
EVP & Chief Tax Officer
Lionsgate
David Paul
AVP Tax
American Honda
MODERATOR
Julie Divola
Pillsbury Winthrop Shaw Pittman LLP
San Francisco, CA

4:10 PM – 4:25 PM – Networking Break

4:25 PM – 5:25 PM
Privately Held Business M&A
This session will focus on the most common tax issues that arise in privately held sale transactions. The session will cover structuring and tax reporting issues and also select tax provisions in legal documents.

Justin Bowen
Bowen Tax Law
Andy Torosyan
Holthouse Carlin & Van Trigt LLP
Everything You Wanted to Know (and More) About the 1% Stock Buyback Excise Tax

The Inflation Reduction Act of 2022 added new Internal Revenue Code Section 4501 which imposes a 1% excise tax on the fair market value of “repurchases of corporate stock” by certain publicly traded corporations after December 31, 2022. This session will review the mechanics of the new excise tax, its expected impact and its seemingly broad application to corporate redemptions (including redemptions by U.S. SPACs in connection with de-SPAC transactions). Further, we will discuss the potential application of the excise tax in connection with liquidations, certain tax-free reorganizations and other M&A transactions.

Compensation Tax Issues in M&A and Other Deals

Join the daytime speakers for an intimate discussion about executive compensation tax issues that arise in the context of corporate transactions. The speakers will be discussing a variety of issues that arise in both public and private transactions. Bring your questions!

S Corporations: Continuing Utility and Curing Tax Gaffes

This evening breakout session will take a closer look at issues related to S Corporations, including continuing utility and curing tax gaffes. In addition, our expert speaker will also discuss when the IRS allows taxpayers to fix innocent mistakes and what other workarounds may be available.

Protecting the Privilege in Tax Matters: It is Becoming More Difficult

This panel, who litigated In re Grand Jury in the Ninth Circuit (cert. pending), will discuss developments on the attorney client privilege and best practices in order to maintain the privilege.

1 hour of MCLE legal ethics credit
**session times subject to change**

7:30 AM  
Check-In and Continental Breakfast

8:50 AM – 9:00 AM  
Welcome and Opening Remarks

9:00 AM – 10:00 AM  
Recent Developments in Partnership and Real Estate Guidance  
Learn about up-to-the minute legislative, regulatory, and judicial developments in partnership and real estate tax from two of our country’s leading experts.

10:10 AM – 11:10 AM  
Partnership Compensation  
The use of partnership “equity” to compensate service providers is common and, with the use of profits interests, can offer key employees, including investment managers, the opportunity to participate in the capital gains generated by the businesses as to which their services are provided. This session reviews the framework of rules applicable to profits interests, including so-called “carried interests”, and explores the effect of Section 1061 on their tax treatment. We consider how the application of these rules can vary in different scenarios and can influence the optimal structure for exit.

11:10 AM – 11:30 AM  
Networking Break

11:30 AM – 12:30 PM  
Tax Credit/Tax Equity Deals (IRA Money Dump)  
This panel will discuss the numerous energy-related tax credits made available (or, in the case of pre-existing credits, extended or modified) by the Inflation Reduction of 2022 (IRA). The panel will focus particularly on the new eligibility requirements for claiming credits and on structures (both old and new) for monetizing tax credits. Finally, the panel will discuss uncertainties in the post-IRA law and priority areas for IRS guidance.

12:30 PM – 2:00 PM  
Luncheon and Keynote Address:  
Hon. Mary Ann Cohen

Join Senior Judge Mary Ann Cohen for a 30-minute discussion about updating the practices at the United States Tax Court. Learn what changes have resulted from developing technologies and in response to COVID-19.

AFTERNOON MULTI-TRACK PROGRAMMING  
TRACK A  
PARTNERSHIPS & REAL ESTATE TAX PLANNING  
2:00 PM – 3:00 PM  
Section 1031  
This session will explore current issues associated with like-kind exchanges, including partnership transactions, unresolved issues involving boot, post-2018 “real property” definitional questions and current positions of the California Franchise Tax Board in audits of California property exchanges.
State Pass Through Entity (PTE) Tax Updates & Other California Tax Developments

This session will explore recent PTE developments, including the benefits, pitfalls and other lessons learned, with a focus upon the California PTE tax. In addition, we will provide a brief update on recent California personal income tax developments.

How to Be a Loser – Part I: Making Sure a Partnership’s Losses Are Deductible by Its Partners

Due to deductions for interest, regular and bonus depreciation, and business expenses, it is common for a partnership or limited liability company to have a net loss for one or more taxable years. In order to claim their distributive shares of such losses, under Section 704(d)(1) of the Code, the partners or members need to have sufficient basis in their partnership interests and, under Section 465(a)(1) of the Code, they may also need to have a sufficient amount at risk, to deduct such losses. If not, such losses will either be reallocated to other partners or members, or be suspended at the entity level. Part I will discuss planning to make sure the partners or members have sufficient basis in their partnership interests and a sufficient amount at risk to claim their distributive shares of such losses. Part I will also discuss whether such losses at the partner or member level are passive or active for purposes of Section 469 of the Code.

Handling Conflicts of Interest in Tax Representation: Avoiding Problems Before They Begin

This panel will cover best practices of avoiding conflicts of interest in tax matters and what to do if they arise.

1 hour of MCLE legal ethics credit

Crypto and NFTs

This session will review the latest tax developments in connection with transactions involving cryptocurrencies and NFTs.
4:25 PM – 5:25 PM
United States Tax Treatment and Reporting of Cross-Border Pensions and Retirement Plans
This panel provides an introduction to the U.S. tax treatment and reporting of cross-border pensions and retirement plans under the Internal Revenue Code of 1986 as amended and U.S. Model Tax Treaties (Articles 18 & 19). It will also provide an overview of pension and retirement plans in OECD countries with privatized social security regimes, how such plans are addressed (or not) in U.S. totalization agreements and the U.S. tax treatment and reporting of such plans. Recognizing that this area of tax law is constantly evolving, this panel will focus on the statutory framework for tax classification of cross-border pension and retirement plans, and the U.S. tax reporting position and compliance associated with the same. We will provide you with some hypotheticals and practical tips to help you navigate this exciting yet complex area of law.

Marsha Laine Dungog
Withersworldwide
San Francisco, CA

Terence F. Cuff
Loeb & Loeb LLP
Michel R. Stein
Hochman Salkin Toscher Perez P.C.

MODERATOR
Aaron Vaughan
Managing Director, Tax
KPMG US

3:10 PM – 4:10 PM
Handling Tax Cases Before the California Office of Tax Appeals
This panel will discuss the best practices of handling cases before the California Office of Tax Appeals.

Dennis L. Perez
Hochman Salkin Toscher Perez P.C.
Stephen Sims
Steve Sims EA LLC
Gold River, CA

5:25 PM – 6:30 PM
Networking Reception
Trending State & Local Income Tax Issues for Multistate Businesses

Get updated on significant state and local income and franchise tax issues facing multistate businesses. Learn about the latest developments in the state nexus and apportionment areas, developments impacting the state tax base, including federal conformity as well as lack thereof, the impact of various state filing regimes, as well as general trends and issues impacting multistate businesses.

Nicole Gonzalez
PwC
Sacramento, CA

Christopher Whitney
PwC
Sacramento, CA

How to Be a Loser – Part II: Making Sure an S Corporation’s Losses Are Deductible by Its Shareholders

In order to claim a deduction for their pro rata share of the losses of an S corporation passed-through to them, under Section 1366(d)(1) of the Code, an S corporation’s shareholder must have sufficient basis in their stock and/or any indebtedness of the S corporation to such shareholder and, under Section 465(a)(1) of the Code, they may also need to have a sufficient amount at risk, to deduct such losses. If not, such losses will be suspended at the S corporation level. Part II will discuss planning to make sure that an S corporation shareholder’s has sufficient basis in their stock and/or any indebtedness of the S corporation to such shareholder and a sufficient amount at risk to claim their pro rata shares of such losses, including recent litigation involving this issue. Part II will also discuss whether such losses at the shareholder level are passive or active for purposes of Section 469 of the Code.

Craig Houghton
Baker, Manock & Jensen, PC

Eric Sloan
Gibson, Dunn & Crutcher LLP
New York, NY

Partnership and Real Estate Hot Tax Topics

Join speakers from the Tuesday daytime sessions as they discuss recent developments in partnership and real estate taxation. Be prepared to ask questions!

6:00 PM – 7:30 PM
EVENING WORKSHOPS
The following sessions will run concurrently.

Eric Sloan
Gibson, Dunn & Crutcher LLP
New York, NY

Craig Houghton
Baker, Manock & Jensen, PC

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**session times subject to change**

7:30 AM  
Check-In and Continental Breakfast

8:50 AM – 9:00 AM  
Welcome and Opening Remarks

9:00 AM – 10:30 AM  
Recent Developments and Current Trends in Estate Planning  
A nationally-known expert will provide an overview of significant changes and developments in the law, impacting estate planners and those who administer estates and trusts. Keep on top of current trends and developments that will affect all wealth transfer advisors.

**session times subject to change**

10:30 AM – 10:50 AM  
Networking Break

10:50 AM – 11:40 AM  
Grantor Trusts and Today’s Planning Landscape  
Grantor trusts are a long-time staple of estate planning for taxable estates. This session will address the appropriateness of grantor trusts as donees of gifts in view of the current income and transfer tax landscape, how to draft grantor trust instruments flexibly to respond to changes in tax law and other circumstances, and how to modify the grantor trust status of inflexibly-drafted trusts. The presentation also will touch on potential changes on the horizon for the grantor trust rules.

11:50 AM – 12:40 PM  
QSBS Planning: A Cocktail Party Idea, with a Small Chance of Qualifying  
How many trusts can I put my qualified small business stock (“QSBS”) into? Can both my spouse and I take advantage of the opportunity? None of my friends pay tax when they sell QSBS stock. - There is generally a large gap between what can be done with QSBS and what advisors and google think is possible. The leverage that can be applied to the right circumstances can be enormous. Here we will sort out truth from fiction. We will discuss the challenges to a lot of the proposed planning options. Whether it is the variety of trusts under Code §663(c), debunking statutory interpretation games practitioners play, inclusion under Code §2036(b) and the trade-offs for the various structures, we will educate and entertain as we navigate the narrow channel for qualification. The tools provided for new transactions and adjustments to current plans, with potential tax legislation will be discussed.

12:40 PM – 2:00 PM  
Luncheon & Keynote Address: Prof. Edward J. McCaffery  
The Past, Present and Future of Wealth Transfer Taxation  
In a 30-minute discussion, Professor McCaffery will address the current state of the gift, estate and generation-skipping transfer taxes, and consider various possible and likely reforms. A principal theme is the continuation of a “Golden Age of Capital,” in which well-structured trusts are well advised. Trust companies and other fiduciaries with responsibility for asset management and capital preservation will remain the dominant players in estate planning.
2:00 PM – 2:50 PM  
**Warming Up to Preferred Partnerships Freezes**  
This session will give an overview of Preferred Partnerships, as the lesser known estate freeze vehicle compared to GRATs and Sales to Grantor Trusts. The session will give an overview of the historical and technical underpinnings of Section 2701 compliant preferred partnerships, pitfalls to avoid, as well as the basic structure and advance combination of this type of vehicle with others such as GRATs, GST Non-Exempt Trusts, QTIPs, limited perpetuity trusts and other applications.

2:50 PM – 3:10 PM  
**Networking Ice Cream Break**  
Hosted by Jack Barcal, Esq.

3:10 PM – 4:00 PM  
**Compliance with the Corporate Transparency Act**  
The presenters will discuss the background of the Corporate Transparency Act of 2020 (CTA), the Act itself, and the regulations promulgated in late 2022. They will also cover how the CTA and regulations will affect lawyers who help clients set up LLCs and other entities covered by the Act, including as part of estate planning.

4:10 PM – 5:00 PM  
**Tax Considerations of Private Placement and Split-Dollar Life Insurance**  
This session will be a discussion on the current environment and landscape of private placement insurance, split-dollar life insurance, and life settlement transactions. In addition to an overview and tax considerations, we will discuss use cases and recent headlines.

5:00 PM – 6:00 PM  
**Networking Reception**

5:30 PM – 7:00 PM  
**EVENING WORKSHOPS**  
The following sessions will run concurrently.

**Hot Topics in Estate and Gift Tax Planning**  
Join Clary Redd as he discusses hot topics in estate and gift tax planning in a follow-up to his morning session.  
*Bring your questions!*

**An Underutilized Wealth Planning Tool: Private Letter Rulings**  
Private letter rulings (PLRs) are one of many tools that tax and wealth planning professionals can employ to benefit their clients, but many professionals are unaware of the benefits of PLRs or don’t know how to obtain PLRs. This presentation will discuss the most common estate, gift, and generation-skipping transfer tax PLRs, issues on which the IRS will not issue a PLR, guidelines for preparing and submitting a PLR request, and working with the IRS to obtain a PLR.

5:00 PM – 6:00 PM  
**Networking Reception**

**Eva Wolf**  
Office of Associate Chief Counsel  
Internal Revenue Service

**Jack Barcal, Esq.**

**Evan J. Davis**  
Hochman Salkin Toscher Perez P.C.

**AnnaLou Tirol**  
O’Melveny & Myers LLP  
Washington, DC

**Russell Delibero**  
VP, Consumer and Wealth Management  
Goldman Sachs

**Tama Brooks Klosek**  
Klosek & Associates PLLC  
Houston, TX

**Todd Angkatavanich**  
McDermott Will & Emery LLP  
New York, NY

**Adam K. Sherman**  
McDermott Will & Emery LLP  
Chicago, IL

**Charles A. (“Clary”) Redd**  
Stinson LLP  
St. Louis, MO

**Jack Barcal, Esq.**
planning committee

Stephen D. Rose  
Beach Point Capital Management  
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Armanino LLP

Didi Borden  
Deloitte Tax LLP

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The 2023 Tax Institute will be held at the Millennium Biltmore Hotel in downtown Los Angeles.
Address: 506 South Grand Avenue, Los Angeles, CA 90071
Reservations: Call 213-612-1575, Monday-Friday between 8 AM and 6 PM.

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LexisNexis Matthew Bender will publish articles written by Institute speakers in a volume entitled Major Tax Planning. For additional information on LexisNexis Matthew Bender or Major Tax Planning please visit http://bender.lexisnexis.com or call (800) 306-5230 (ext. 6101517).

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Contact the USC Gould Continuing Legal Education Office at cle@law.usc.edu.
registration form
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