

Brant J. Hellwig
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Academic Appointments

New York University School of Law, New York, NY

Professor of Tax Law; Faculty Director of the Graduate Tax Program, 2022 to present

Courses: Partnership Taxation; Corporate Taxation; Estate and Gift Taxation; Taxation of Property Transactions; Grantor Trusts; Advanced Estate and Gift Taxation

Washington and Lee University School of Law, Lexington, VA

Professor of Law, 2012 to 2022

Dean, 2015 to 2021

University of South Carolina School of Law, Columbia, SC

Professor of Law, 2010 to 2012

Associate Professor of Law, 2007 to 2010

Assistant Professor of Law, 2002 to 2007

Associate Editor, REAL PROPERTY, TRUST AND ESTATE JOURNAL (2006 to 2014)

New York University School of Law, New York, NY

Acting Assistant Professor of Law, 2001 to 2002

Assistant Editor, TAX LAW REVIEW

Casebooks

Estate and Gift Taxation (4th ed. 2023) (with Robert T. Danforth)

Fundamentals of Partnership Taxation: Cases and Materials (11th ed. 2019) (with Stephen Schwarz and Daniel J. Lathrop)

Fundamentals of Business Enterprise Taxation: Cases and Materials (7th ed. 2020) (with Stephen Schwarz and Daniel J. Lathrop)

Understanding Estate and Gift Taxation (3d ed. 2024) (with Robert T. Danforth)

Primary Publications

The Constitutional Nature of the United States Tax Court

35 VA. TAX REV. 269 (2016)

Law Review article exploring the location of the United States Tax Court in the constitutional structure of government. Article prompted by the 2014 decision of the D.C. Circuit Court of Appeals in *Kuretski v. Commissioner*, which concluded that the Tax Court remains housed within the Executive Branch.

The United States Tax Court: An Historical Analysis (2d ed. revised and expanded, 2015)

Manuscript commissioned by the United States Tax Court to update the seminal text published in 1979 by Harold Dubroff shortly after the Tax Court was chartered as an Article I court of record. In addition to bringing the original text up to date, second edition details the scope of the Tax Court's jurisdiction as expanded by Congress in modern times.

Examining the Tax Advantage of Founders' Stock

97 IOWA L. REV. 1085 (2012) (with Gregg D. Polksky)

Compares the capital gain preference enjoyed by managers who sell stock they own in companies they founded with loss of compensation deductions at the corporate level, concluding that the use of founders' stock rarely produces a tax advantage on the whole and, further, that any existing tax advantage may be justified on normative grounds.

Taxing Structured Settlements

51 B.C. LAW REV. 39 (2010) (with Gregg D. Polksky)

Highlights tax benefit of yield exemption statutorily provided to physical injury plaintiffs who structure payment of damage recoveries, and explains how benefit has been claimed by parties outside the physical injury setting.

On Discounted Partnership Interests and Adequate Consideration

28 VA. TAX REV. 531 (2009)

Traces and critiques the evolving application of the statutory exception to § 2036(a) for transfers made for adequate and full consideration in context of transfers to family limited partnerships.

Nonqualified Deferred Compensation and the Pre-Statutory Limits on Deferral

Book chapter in FEDERAL INCOME TAXATION OF RETIREMENT PLANS (Alvin D. Lurie, ed. 2008)

Explains judicial doctrines employed to determine when a contractual right to a future payment is included in gross income prior to enactment of IRC § 409A; explores deferred income recognition as matter of tax policy.

Questioning the Wisdom of Patent Protection for Tax Planning

26 VA. TAX REV. 1005 (2007)

Presented at University of Minnesota Law School Symposium on The Future of Tax Shelters.

Outlines policy arguments against affording patent protection for tax planning strategies (prior to statutory preclusion of patents for this purpose).

The Supreme Court's Casual Use of the Assignment of Income Doctrine

2006 U. ILL. L. REV. 751 (2006)

Reprinted in THE MONTHLY DIGEST OF TAX ARTICLES (Dec. 2007)

Critiques Supreme Court's analysis in *Commissioner v. Banks* on basis that the Court inappropriately applied the assignment-of-income doctrine outside the context of gratuitous assignments.

Taxing the Promise to Pay

89 MINN. L. REV. 1092 (2005) (with Gregg D. Polksky)

Reprinted in the *Journal of Deferred Compensation* (Summer 2006)

Explains that compensatory payment obligations entitled to deferred income tax treatment do not include obligations issued by a third party to the service transaction, both as a matter of statutory construction and tax policy.

Litigation Expenses and the Alternative Minimum Tax

6 FLA. TAX REV. 899 (2004) (with Gregg D. Polksky)

Details the implications of treating litigation expenses as miscellaneous itemized deductions subject to disallowance under the alternative minimum tax, and proposes statutory change.

Revisiting *Byrum*

23 VA. TAX REV. 275 (2003)

Reviews the analytical basis for the Supreme Court's decision in *United States v. Byrum* and contends that the decision does not serve as a meaningful impediment to the application of IRC § 2036(a)(2) in the family limited partnership context.

Estate Tax Exposure of Family Limited Partnerships Under Section 2036

38 REAL PROP. PROB. & TR. J. 169 (2003)

Proposes an expanded interpretation of IRC § 2036 that would apply to family limited partnerships employed as trust substitutes for estate planning purposes.

Additional Publications

Connelly v. United States: The Supreme Court's Foray Into the Estate Tax Treatment of Corporate-Owned Life Insurance

41 J. TAX'N OF INVESTMENTS 5 (2024)

Brief as *Amicus Curiae*, *Connelly v. United States*

United States Supreme Court Docket No. 23-146 (filed Feb. 27, 2024)

Exploring *Hoops v. Commissioner*

118 TAX NOTES 89 (Oct. 2, 2023)

The Holding Intent Requirement for Property Transferred in a Section 1031 Exchange

45 REAL PROP. TR. & EST. J. 635 (2011)

Close the Yield Exemption Loophole Created by *Childs*

123 TAX NOTES 1141 (June 1, 2009) (with Gregg D. Polsky)

Taxpayer's Family Limited Partnership in *Estate of Mirowski v. Commissioner*

LexisNexis Expert Commentary (June 2008)

U.S. Tax Court's Treatment of Formula Disclaimers in *Estate of Christiansen v. Commissioner*

LexisNexis Expert Commentary (June 2008)

The Eleventh Circuit's Acceptance of a Full Discount for the Lurking Capital Gain Liability in *Estate of Jelke v. Commissioner*

LexisNexis Expert Commentary (May 2008)

The Ninth Circuit's Interpretation of the Bona Fide Sale Exception to § 2036(a) in *Estate of Bigelow v. Commissioner*

LexisNexis Expert Commentary (May 2008)

Trust Investment Advisory Fees and the Two Percent Floor: The Supreme Court Decision in *Knight*

PROBATE PRACTICE REPORTER, vol. 20 no. 2 (February 2008)

The Employment Tax Challenge to the Check the Box Regulations

111 TAX NOTES 1039 (May 29, 2006) (with Gregg D. Polsky)

Evaluating the Estate Tax Exposure of the SCTC Trust Termination Provisions

Book chapter in THE SOUTH CAROLINA TRUST CODE (James C. Hardin, III and S. Alan Medlin, 2006)

Choice of Business Entity: Weighing the LLC Against the Alternatives

Book chapter in SOUTH CAROLINA CORPORATE PRACTICE MANUAL (2d ed. 2005)

Kimbell v. United States: The Rise and Apparent Fall of the Section 2036 Argument Against FLPs

104 TAX NOTES 517 (Aug. 2, 2004)

Brief as Amici Curiae, Commissioner v. Banks

United States Supreme Court Docket No. 03-907 (filed June 11, 2004 with Gregg D. Polksky)

Kimbell: Is the Party Over for Family Limited Partnerships?

98 TAX NOTES 1871 (Mar. 24, 2003)

Judicial Activism Is Not the Solution to the Attorney's Fee Problem

97 TAX NOTES 693 (Nov. 4, 2002)

Estate of Strangi, Section 2036, and the Continuing Relevance of Byrum

96 TAX NOTES 1259 (Aug. 26, 2002)

Education

New York University School of Law, New York, NY

LL.M. in Taxation, 2000

Harry J. Rudick Memorial Award (for distinction in the Graduate Tax Program)

TAX LAW REVIEW, Student Editor

Wake Forest University School of Law, Winston-Salem, NC

J.D. *magna cum laude*, 1997

Guy T. Carswell Scholar

Order of the Coif

WAKE FOREST LAW REVIEW, Editorial Board Member

Wake Forest University, Winston-Salem, NC

B.S. Mathematical Economics, *summa cum laude*, 1994

Guy T. Carswell Scholar

Kenneth Tyson Raynor Award in Mathematics

Phi Beta Kappa

Practice Experience

United States Tax Court, Washington, DC

Law Clerk to the Honorable Juan F. Vasquez, 2000 to 2001

Bell, Davis & Pitt, P.A., Winston-Salem, NC

Associate, 1997 to 1999

Member of firm's business, taxation, and estate planning group

Honors and Awards

2020 Recipient of the Washington and Lee University School of Law Outstanding Faculty Member Award as determined by the Student Bar Association

2013 Recipient of the Washington and Lee University School of Law Alumni Faculty Fellowship for Teaching

2011 Recipient of the University of South Carolina School of Law G.G. Dowling Faculty Award

2006 Recipient of the University of South Carolina School of Law Award for Outstanding Faculty Publication (2006) for *Taxing the Promise to Pay*, 89 MINN. L. REV. 1092 (2005) (with Gregg D. Polksky)

2004 Recipient of the University of South Carolina School of Law Award for Outstanding Faculty Publication (2004) for *Revisiting Byrum*, 23 VA. TAX REV. 275 (2003)

ABA Tax Section Nolan Fellowship (2005)

Professional Affiliations

North Carolina State Bar (1997)

Fellow, American College of Tax Counsel (2020 to present)

Academic Fellow, American College of Trust and Estate Counsel (2011 to present)

Southern Federal Tax Institute, Academic Advisor to the Board of Trustees (2010 to 2015; 2020 to present)

American Bar Association, Section of Taxation