

# Chapman Law Review: Partying Like It's 1999

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Contributor

Fifteen years ago, the Chapman Law Review held its first annual symposium. The topic: Federal Tax Policy in the New Millennium. Fast forward 15 years to where the Fowler Law School once again became a center for tax law scholastics—the topic: Business Tax Reform: Emerging Issues in the Taxation of U.S. Entities.

It was fitting that Professor Frank Doti kicked off the festivities. After all, he has been instrumental to Fowler's tax program and provided the introductory piece at the first Chapman Law Review symposium. In his address Professor Doti mentioned that in 1999 there were many calls for simplifying the tax code, and yet, since then, the code has only gotten more complex. However, Professor Doti mentioned that he feels that the federal tax code is not complex: "It's a damn good law," said Doti. "It accomplishes its purpose in getting those who can most afford [it, to] pay more tax than those who can't. But, at the same token, over the years it has become frustratingly ridiculous with respect to the bells and whistles in the law."

And so, there is need for discussion...and debate. Tax law can be challenging, but a lot of the discussion is based on simple, non-tax ideas. The presentations proved that we can best understand that tax issues are everywhere, important, and not just "math."

The first panel, moderated by Professor Bobby Dexter of Fowler Law, focused on specific tax issues affecting the business world. According to Professor Jonathan Forman of the University of Oklahoma, pensions and annuities are costly to the treasury, and are just examples of the rich taking advantage of tax deferrals. He argued for a simplified system, so that all taxpayers can take advantage of the various retirement plans. Professor David Hasen from Santa Clara University proposed to treat the taxation of corporate income differently for investors. His plan is to provide for deductions to those who invest in corporations, receive a dividend, and then re-invest prior to the next tax return. The aim

From left to right: Ericka A. Evans, Andrew S. Gahan, Lauren E. Vanga, Stephan M. Brown, Christopher K. Wong, Blake J. Corry, Dallis Nicole Warshaw, Adam J. Weidner and Nancy Sandoval.





of Professor Jordan Barry University of San Diego was to lower the corporate income tax because U.S. businesses have a perceived disadvantage compared to international businesses. And finally, Professor Steven Bank of University of California, Los Angeles, feels that the corporate interest deduction should be capped.

The second panel, moderated by Bahar Schippel from Snell & Wilmer, and Kelly Phillips Erb of TaxGirl, provided a lively discussion regarding pass-through entities (Subchapters “S” and “K”). Professor Roberta Mann from the University of Oregon felt that taxpayers should have a choice when it comes to pass-through entities, because choice is good. Her hope is to keep “S” corporations around, as the vast majority of small entities are “S” corporations. However, Professor Walter Schwidetzky of the University of Baltimore opposed this position because of abuse with “S” corporations, explaining that partnerships are a better deal anyways. Professor Robert Morrow from Fowler Law, although unwilling to side with either of the other two speakers, did profess that Section 704 (within Subchapter “K”) is his favorite, as it allows for the attorney to build a partnership around the business, and most importantly, allows for the attorney to have a steady stream of clients.

Professor Edward Kleinbard of the University of Southern California presented the keynote speech during lunch. Kleinbard said, “The reason that tax reform, in the broad sense, cannot happen is because there is no agreement on the fundamental question ‘how large should government be and how much should we finance.’” He further explained that “Those of us who think about tax tend to think about questions in the wrong order... The ultimate question is: what should we be spending our money on? And how to finance it is much easier.” Kleinbard added that public debates about tax reform are unproductive because people are arguing about the wrong question, noting that we should focus more on where to spend the money before we discuss how much to spend.

Moderated by Professor Michael Lang of Fowler Law, the third panel discussed the effects of federal business tax reform on state and local tax. Oksana Jaffe from the California State Assembly presented the advantages (such as simplicity) and disadvantages (such as a loss of legislative decision-making authority) of California automatically conforming to federal income tax law (currently, there is delayed conformity). Professor John Swain from

the University of Arizona discussed state taxation of out-of-state partners, which could lead to either over-taxation or under-taxation because

each state taxes its citizens differently. Professor Darien Shansky from the University of California, Davis discussed the emerging taxation issue regarding carbon tax, which could be initiated on the state level, as opposed to a tax starting on the federal level. However, such taxes could be economically damaging, as businesses would look elsewhere, and so, the challenge is to level the playing field without violating the Dormant Commerce Clause. Todd A. Carper of Ernst & Young “cleaned-up” the panel, noting that California will face many challenges, as it still has to balance the budget on a yearly basis (unlike the federal government), and yet, align its tax code with the federal government (albeit on a delayed schedule).

Moderated by Douglas A. Schaaf of Paul Hastings, the final panel focused on the taxation of multinational corporations. Professor Robert J. Peroni from the University of Texas warned that the international tax system needs to be perceived as a fair system in order to receive domestic support. He proposed an update to the source rules, among other proposals. Professor J. Clifton Fleming of Brigham Young University stressed that it will be unlikely that all countries will agree on a uniform apportionment program that meets everyone’s needs, but a new system is needed. Professor Omri Y. Marian from the University of Florida introduced a “negative” corporation tax residence test, to avoid the tax abuses associated with shell corporations in tax-free jurisdictions. And finally, Professor Tracy A. Kaye of Seton Hall University discussed the tax-avoidance programs that corporations such as Google, Apple, Facebook, and Amazon are exploiting.

The Chapman Law Review symposium covered a lot of taxation issues in a short period. Although it was neat to see that the Chapman Law Review went full circle by bringing back a tax-themed symposium, the issues are just as relevant today, and they will still be relevant tomorrow. Maybe the Chapman Law Review is actually partying like it’s 2099. All of the videos and presentations can be found at <http://www.chapmanlawreview.com/archives/2448>.

From Left: Prof. Bobby Dexter, David Hasen, Jonathan B. Forman, Jordan M. Barry, and Steven A. Bank.