

## **Gregg D. Polsky**

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### **Current Position**

Francis C. Shackelford Distinguished Professor in Taxation, University of Georgia School of Law  
July 2016 to present

Subjects Taught: Basic Tax; Corporate Tax; Partnership Tax, Business Basics for Lawyers, Tax Policy Seminar

### **Publications**

#### **Major Articles**

*A Critical Evaluation of the Qualified Small Business Stock Exclusion*, VIRGINIA TAX REVIEW (forthcoming 2023) (with Ethan Yale)

*Taxing Buybacks*, 38 YALE JOURNAL ON REGULATION 246-310 (2021) (with Daniel Hemel)

*Does Tax Matter? Evidence on Executive Compensation After 162(m)'s Repeal*, 26 STANFORD JOURNAL OF LAW, BUSINESS & FINANCE 1-34 (2021) (with Brian Galle & Andrew Lund)

*Taxing Residential Solar*, 74 TAX LAW REVIEW 69-128 (2020) (with Ethan Yale)

*The Impact of the 2017 Tax Act on Certain Personal Injury Plaintiffs*, 12 COLUMBIA JOURNAL OF TAX LAW 27-57 (2020)

*Explaining Choice-of-Entity Decisions by Silicon Valley Start-Ups*, 70 HASTINGS LAW JOURNAL 409-454 (2019)

*Taxing Litigation: Federal Tax Concerns of Personal Injury Plaintiffs and Their Lawyers*, 22 FLORIDA TAX REVIEW 120-179 (2018)

*The Up-C Revolution*, 71 TAX LAW REVIEW 415-470 (2018) (with Adam Rosenzweig)

*A Compendium of Private Equity Tax Games*, 146 TAX NOTES 615-625 (2015)

*Taxing Compensatory Stock Rights Transferred in Divorce*, 93 NORTH CAROLINA LAW REVIEW 741-782 (2015) (with Kathleen DeLaney Thomas)

*The Problem of Abusive Related-Partner Allocations*, 16 FLORIDA TAX REVIEW 479-518 (2014) (with Emily Cauble)

*Acqui-Hiring*, 63 DUKE LAW JOURNAL 281-346 (2013) (with John Coyle)

*Examining the Tax Advantage of Founders' Stock*, 97 IOWA LAW REVIEW 1085-1145 (2012) (with Brant J. Hellwig)

*The Diminishing Returns of Incentive Pay in Executive Compensation Contracts*, 87 NOTRE DAME LAW REVIEW 677-736 (2011) (with Andrew Lund)

*Taxing Punitive Damages*, 96 VIRGINIA LAW REVIEW 1295-1360 (2010) (with Dan Markel)

*Taxing Structured Settlements*, 51 BOSTON COLLEGE LAW REVIEW 39-94 (2010) (with Brant J. Hellwig)

*Detering Tax-Driven Partnership Allocations*, 64 TAX LAWYER 97-124 (2010)

*Private Equity Management Fee Conversions*, 122 TAX NOTES 743-767 (2009)

*Reforming the Taxation of Deferred Compensation*, 85 NORTH CAROLINA LAW REVIEW 571-635 (2007) (with Ethan Yale)

*Controlling Executive Compensation Through the Tax Code*, 64 WASHINGTON & LEE LAW REVIEW 877-926 (2007)

*Regulating Section 527 Organizations*, 73 GEORGE WASHINGTON LAW REVIEW 1000-1035 (2005) (with Guy-Uriel E. Charles)

*Taxing the Promise to Pay*, 89 MINNESOTA LAW REVIEW 1092-1152 (2005) (with Brant J. Hellwig)

*Can Treasury Overrule the Supreme Court?*, 84 BOSTON UNIVERSITY LAW REVIEW 185-246 (2004)

*Employment Discrimination Remedies and Tax Gross Ups*, 90 IOWA LAW REVIEW 67-120 (2004) (with Stephen F. Befort)

*Litigation Expenses and the Alternative Minimum Tax*, 6 FLORIDA TAX REVIEW 899-947 (2004) (with Brant J. Hellwig)

*A Correct Analysis of the Tax Treatment of Contingent Attorney's Fee Arrangements: Enough with the Fruits and the Trees*, 37 GEORGIA LAW REVIEW 57-121 (2002)

## Other Academic and Professional Publications

*There's a Problem With Buybacks, But It's Not What Senators Think*, 162 TAX NOTES 765 (February 18, 2019) (with Daniel Hemel)

*Private Equity Monitoring Fees as Disguised Dividends: Collateral Impact*, 143 TAX NOTES 1053 (June 2, 2014)

*The Untold Story of Sun Capital: Disguised Dividends*, 142 TAX NOTES 556 (February 3, 2014)

*Tax Consequences of Splitting Equity Compensation in Divorce*, 88 FLA. B. J. 18 (January 2014) (with Jeffrey Fisher & Zachary Potter)

*The End of Cash, the Income Tax, and the Next 100 Years*, 41 FLORIDA STATE UNIVERSITY LAW REVIEW 159 (December 2013) (with Jeffrey Kahn) (symposium)

*Must Contingent Fee Lawyers Capitalize Litigation Costs?*, 141 TAX NOTES 295 (October 21, 2013) (with R. Kader Crawford)

*Can Executive Compensation Reform Cure Short-Termism?*, BROOKINGS INSTITUTION GOVERNANCE STUDIES SERIES (March 2013) (with Andrew Lund)

*Fixing Section 409A: Legislative and Administrative Options*, 57 VILLANOVA LAW REVIEW 635 (2012) (symposium)

*Rationally Cutting Tax Expenditures*, 50 UNIVERSITY OF LOUISVILLE LAW REVIEW 643 (2012) (symposium)

*Revisiting the Taxation of Punitive Damages*, 97 VIRGINIA LAW REVIEW IN BRIEF 73 (September 2011) (with Dan Markel)

*Reconstructing the Individual Mandate as an Escrow Account*, 109 MICHIGAN LAW REVIEW FIRST IMPRESSIONS 73 (March 2011)

*High Volatility, Negative Correlation & Roth Conversions*, 130 TAX NOTES 821 (February 14, 2011)

*End Tax Floats by Taxing Receivables or Deferring Payables*, 129 TAX NOTES 1243 (December 13, 2010) (with Calvin H. Johnson)

*Summary of "Taxing Punitive Damages,"* 17 AMERICAN ASSOCIATION FOR JUSTICE PROFESSIONAL NEGLIGENCE NEWSLETTER NO. 1 (Spring 2010) (with Dan Markel)

*Close the Yield Exemption Loophole Created by Childs*, 123 TAX NOTES 1141 (June 1, 2009) (with Brant J.

Hellwig)

*A Tax Lawyer's Perspective on Section 527 Organizations*, 28 CARDOZO LAW REVIEW 1773 (2007)

*The Employment Tax Challenge to the Check-the-Box Regulations*, 111 TAX NOTES 1039 (May 29, 2006)  
(with Brant J. Hellwig)

*The Contingent Attorney's Fee Tax Trap: Ethical, Fiduciary Duty & Malpractice Implications*, 23 VIRGINIA TAX REVIEW 615 (2004)

*What are the Tax Consequences for Plaintiffs Who Hire Their Attorneys on a Contingency Fee Basis?*, PREVIEW OF U.S. SUPREME COURT CASES, Issue No. 2 at 73 (November 1, 2004)

*Contingent Fees: Why the Partnership Theory Won't Work*, 104 TAX NOTES 1089 (September 6, 2004)

*Treasury Should Not Have Promulgated the Check-the-Box or INDOPCO Regulations*, 23 ABA SECTION OF TAXATION NEWSQUARTERLY No. 4 at 14 (Summer 2004)

*Supreme Court to Decide Contingent Fee Tax Issue*, 32 LABOR AND EMPLOYMENT LAW No. 4 at 7 (Summer 2004) (with Stephen F. Befort)

*Why the FLP Note Used in the ECS Deal is 'Property'*, 98 TAX NOTES 1160 (February 17, 2003) (letter to the editor)

*Debunking the Crop-Share Analogy to Contingent Attorney's Fee Arrangements*, 97 JOURNAL OF TAXATION 320 (November 2002)

*Another Gitlitz Windfall: Double Basis Increases for S Corp. Shareholders?*, 92 TAX NOTES 314 (July 9, 2001)

*Taxing Contingent Attorneys' Fees: Many Courts Are Getting It Wrong*, 89 TAX NOTES 917 (November 13, 2000)

*Installment Reporting for Sales of S Corporation Stock with a Section 338(b)(10) Election*, FLORIDA BAR JOURNAL, Volume 74, No. 7 (July/August 2000)

## **Books and Book Chapters**

*Private Equity and Venture Capital Tax Strategies* (book chapter), Research Handbook on the Structure of Private Equity and Venture Capital (Edward Elgar Ltd, forthcoming 2024)

*U.S. Federal Income Tax Aspects of Incorporations* (book chapter), Research Handbook on Corporate Taxation (Edward Elgar Ltd., forthcoming 2023)

*Stay Ahead of the Pack: Your Comprehensive Guide to the Upper Level Curriculum* (West Academic Publishing, 2018) (with Robert Glicksman, David Gray, Andrew Lund, Eric Miller, and Brad Wendel)

*Federal Income Taxation of Individuals, 6<sup>th</sup> ed.* (Foundation Press, 2008) (with Paul R. McDaniel, Martin J. McMahon, Jr., and Daniel L. Simmons)

### **Amicus Briefs and Comment Letters**

Comments on the Proposed Regulations on Disguised Payments for Services, November 2015 (submitted to Treasury and the IRS)

Amicus brief letter filed on May 5, 2014 in the United State Court of Appeals, Fifth Circuit in BNSF Railway Co. v. U.S. (regarding petition for rehearing in BNSF Railway Co. v. U.S., 745 F.3d 774 (5<sup>th</sup> Cir. 2014))

Amicus brief in the consolidated U.S. Supreme Court cases of Banaitis v. Comm’r (No. 03-907) and Banks v. Comm’r (No. 03-892) *available at* 2004 TAX NOTES TODAY 129-54 (July 6, 2004) (with Brant J. Hellwig)

### **Popular Press Publications**

*The Libel Tax*, January 4, 2018, SLATE.COM

*Is it Time to Take Away the Bankers’ Bonuses?*, NEW YORK TIMES, November 17, 2011 at A-32 (letter to the editor) (with Andrew Lund)

*Debating Mr. Fleischer’s Analysis of Business Hiring*, WALL STREET JOURNAL, August 13, 2010 at A-16 (letter to the editor)

*Damages Control*, NEW YORK TIMES, July 1, 2010 at A-31 (op-ed) (with Dan Markel)

*The Problem with Performance-Based Compensation*, FINANCIAL WEEK, December 8, 2008 (op-ed)

*Tax Bomb, Aimed at Middle Class*, MINNEAPOLIS STAR TRIBUNE, March 7, 2004 at p. AA-3 (op-ed)

### **Previous Academic Positions**

July 2010 – June 2016

Willie Person Mangum Professor of Law, University of North Carolina School of Law  
Subjects Taught: Basic Tax, Partnership Tax, International Tax, Tax Seminar, Corporate Finance, Business Basics for Lawyers

May 2007 – May 2010

Sheila M. McDevitt Professor of Law, Florida State University College of Law  
Subjects Taught: Taxation I, Partnership Tax, Corporate Tax, Tax Policy Seminar

July 2005 – May 2007

Associate Professor of Law (with tenure), University of Minnesota Law School (also Vance K. Opperman Research Scholar 2005-06)(awarded full professor in May 2007)

July 2001 – June 2005

Associate Professor of Law, University of Minnesota Law School

Subjects Taught: Basic Federal Income Taxation, Corporate Tax, Partnership Tax, Taxation of Business Organizations, Taxation of Corporate Mergers and Acquisitions, Corporations/Business Associations, Tax Policy Seminar, Enron Seminar

### **Visiting Appointments**

January 2023 – May 2023 (upcoming)

Visiting Professor of Law, Northwestern University Pritzker College of Law  
Subjects: Advanced Partnership Tax, Taxation of S Corporations

August 2022 – December 2022

Visiting Professor of Law, New York University School of Law  
Subjects: Corporate Tax, Taxation of S Corporations

Academic Year 2014-2015 & Spring Semester 2013, 2014, 2016, 2017

Visiting Professor of Law, Duke University School of Law  
Subjects Taught: Partnership Tax, Corporate Tax, Business Essentials for Lawyers, Taxation of Venture Capital and Private Equity Transactions

September 2007 - July 2008

Professor in Residence at the Office of Chief Counsel, Internal Revenue Service, Washington, D.C.

July 2006 - May 2007

Visiting Professor of Law, University of Florida Levin College of Law  
Subjects Taught: Corporate Tax (LL.M. course), Partnership Tax, Basic Tax

August 2000 - June 2001

Visiting Assistant Professor of Law, University of Florida Levin College of Law  
Subjects Taught: Accounting for Lawyers, Basic Tax, Tax Research (LL.M. course)

### **Practice Experience**

2002 – present

Consulting, legal & expert witness activities relating to federal income tax and business issues  
(references available upon request)

September 2007 - June 2008

Professor in Residence, IRS Office of Chief Counsel (Washington, D.C.)

August 2005 - August 2006

Of Counsel, Dorsey & Whitney LLP (Minneapolis, MN)

May 1998 - July 2000

Associate, White & Case LLP (Miami, FL)

### **Selected Expert Witness Experience**

Plaintiff's expert in Rupp, et al., v. Thompson et al., a Minnesota state class-action securities lawsuit arising out of the \$615 million purchase of Minnesota Corn Processors, LLC by Archer Daniels Midland Co. in 2002. Testimony related to the value to ADM, and cost to MCP unitholders, of the alleged switch from a tax-free acquisition structure to a taxable one. Case was reported on the front business pages of both the Minneapolis Star Tribune (January 21, 2005) and the Chicago Tribune (November 7, 2004) (expert report and deposition testimony)

Counterdefendant's expert in In re: American Business Financial Services, Inc. et al., Greenwich Capital Financial Products, Inc. vs. George L. Miller, in his individual capacity and as Chapter 7 Trustee, in the United States Bankruptcy Court for the District of Delaware, Case No.: 05-10203 (MFW) (expert report and deposition testimony)

Defendant's expert in TP Racing v. Ronald Simms, in the Superior Court of Arizona, County of Maricopa, Case No. CV2010-022308 (expert declaration and hearing testimony)

Respondent's expert in In re: The Marriage of Howard F. Thier and Wendy D. Thier, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Family Division, Case No. 502009DR008442XXXXMBFD (expert report)

Petitioner's expert in Dr. Robert W. Reagan v. Triangle Urology Associates, P.A., American Arbitration Association Case, No. 31-193-00306-10, Raleigh, NC (expert report and arbitration trial testimony)

Wife's expert in Kozel v. Kozel, 12<sup>th</sup> Judicial Circuit, Sarasota, FL (expert report, deposition testimony, and trial testimony)

### **Education**

University of Florida Levin College of Law Graduate Tax Program, Gainesville, Florida  
Master of Laws (LL.M.) in Taxation, July 1998  
Recipient of the Richard B. Stephens Award (given to the most outstanding LL.M. student)  
Florida Tax Review, Student Editor

University of Florida Levin College of Law, Gainesville, Florida  
Juris Doctor, with honors, May 1996

Florida Atlantic University, Boca Raton, Florida  
Bachelor of Arts, May 1993

### **Selected Presentations, Press Mentions, Etc.**

Recent presentations at Tax Colloquia Workshops at Florida (2022), University of California-Hastings (2020), Duke (2020), BYU (2020), Florida (2019) Duke (2018), UC-Irvine (2017), Penn (2016), Duke (2016), Florida (2016), Loyola-LA (2016), NYU (2015), Northwestern (2015), Pepperdine (2015), Florida (2015), Duke (2014), and UCLA (2014)

Presented "Tax Professionals Behaving Badly" at Washington & Lee faculty workshop (2017) & UVA Invitational Tax Conference (2016)

Research on private equity tax practices profiled in Wall Street Journal article, Buyout Firms' Fees Get Closer Look: Research Suggests Private-Equity Industry May Be Underpaying Taxes by Misrepresenting Payments (February 3, 2014)

Articles have been mentioned in New York Times, Wall Street Journal, Financial Times, CNNMoney, Business Insider, Financial Planning, Tax Notes, Fortune.com, Forbes.com and Private Equity Manager

Recent quotations (since 2014) in New York Times, Wall Street Journal, Los Angeles Times, Chicago Tribune, USA Today, Minneapolis Star Tribune, Huffington Post, Atlanta Journal-Constitution, and New York Post

Presentations at numerous CLE events, including those organized by the American Bar Association Tax Section, American Bar Association LLC Institute, Federal Bar Association, Georgia State Bar, North Carolina State Bar, South Carolina State Bar, North Carolina J. Nelson Young Tax Institute, Florida Tax Institute, and Palm Beach Tax Institute

Presented "Acqui-Hiring" at Harvard Business School (Entrepreneurial Management Unit) in connection with its Fall Seminar Series, September 26, 2012 (with John Coyle)



Participated in Senate Finance Committee Staff's Academic Roundtable on Tax Reform, Washington, D.C., January 5-6, 2012

Presented "Rationally Cutting Tax Expenditures" at Louisville Law Review's symposium on Federal Budget and Deficit Reduction, Louisville, KY, October 22, 2011

Presented "Fixing Section 409A: Legislative and Administrative Options" at Villanova Law Review's symposium on US Taxation of Off-Shore Activity and Regulation of Executive Compensation, Philadelphia, PA, September 23, 2011

Panelist, "Compensation, Incentives, and Risk-Taking: The Impact of the Great Recession on Executive Compensation Design," American Association of Law Schools Annual Meeting, San Francisco, CA, January 7, 2011

Panelist, "Private Equity Tax and Regulatory Update" at the 7<sup>th</sup> Annual Private Equity Tax Practices Conference, Boston, MA, June 24, 2008

Panelist, "Current Hedge Fund Tax Issues" at the 10<sup>th</sup> Annual Effective Hedge Fund Tax Practices Conference, New York, NY, May 19, 2008

Moderator, "The Tax Legislative Process: Past, Present & Future" at the American Bar Association Tax Section Mid-Year Meeting, Washington, D.C., May 9, 2008

Presented "The 2007 Mortgage Mess and Tax Policy" at the IRS Office of Chief Counsel Presentation Series, Washington, D.C., December 12, 2007 (with Christopher Peterson)

Panelist "Tax Issues in Hedge Funds" at the IRS Office of Chief Counsel Presentation Series, Washington, D.C., October 31, 2007

Presented "Independent Political Organizations & the First Amendment" at University of North Carolina School of Law's First Amendment Law Review symposium, February 16, 2007

### **Memberships**

Member, Florida Bar, September 1996–present

Fellow, American College of Tax Counsel, 2016-present