

CURRICULUM VITAE

RICHARD SCHMALBECK

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CAREER HISTORY

- 1993 - present Simpson Thacher & Bartlett Distinguished Professor
(Professor of Law prior to 2007)
Duke University School of Law
Durham, North Carolina
- 1990 - 1993 Dean
University of Illinois
College of Law
Champaign, Illinois
- 1980 - 1990 Professor of Law
Duke University School of Law
Durham, North Carolina
- (Visiting Professor of Law,
Northwestern University, Fall 1989)
- (Visiting Professor of Law,
University of Michigan, Fall 1986)
- 1977 - 1980 Associate Attorney
Caplin & Drysdale
Washington, D.C.
- 1976 - 1977 Special Assistant to the Associate
Director for Economics and Government
Office of Management and Budget
Washington, D.C.
- 1975 - 1976 Associate Attorney
Vorys, Sater, Seymour & Pease
Columbus, Ohio

CAREER HISTORY (continued)

1971 - 1973 Assistant to the Director and Economist
Illinois Housing Development Authority
Chicago, Illinois

EDUCATION

University of Chicago Law School, J.D., 1975. Associate Editor, University of Chicago Law Review; Floyd Russell Mechem Scholar.

University of Chicago, A.B., Economics, with honors, 1970. Phi Beta Kappa; Francis Kosmerl Pre-Law Scholar.

PROFESSIONAL & SERVICE ACTIVITIES

Various dates ABA re-accreditation inspections of law schools at the University of Wisconsin (1992), University of Pennsylvania (1993), Washington and Lee University (1994), UCLA (1995), Boston University (1996), University of California (Hastings) (1999), Northwestern University (2003), Stanford University (2008), New York University (2010), Boston College (Chair, 2012), University of Southern California (Chair, 2015), Harvard University (2022).

2013-14 Member, Duke University Provost Search Committee

2018 - 2021 Trustee, Law School Admissions Council.
2011-2014

2011 - Present Member, LSAC Investment Committee.

2010 - 2014 Duke University Employee Plan Investment
Advisory Committee.

2008 - 2017 Co-Director, Duke-Geneva Institute of Transnational Law.

2007 - 2020 Co-Director, Duke University Graduate Tax Administration Program.

2006 - 2012 Chair, Duke University Faculty Compensation Committee.

2005 Duke University School of Medicine Dean Review Committee.

2005 - 2011 Law School Admissions Council, Test Development Committee.

PROFESSIONAL & SERVICE ACTIVITIES (continued)

- 2004 - 2007 Association of American Law Schools, Membership Review Committee.
- 2003 Chair, Duke University Provost Review Committee.
- 2002 Member, Duke University Presidential Review Committee.
- 2000 - 2002 Executive Committee, Duke University Academic Council (Faculty Senate) (vice-chair, 2001-02).
- 1998 - 1999 Duke University Provost Review Committee.
- 1996 - 2001 Consultant, USAID Tax Reform Oversight Project, Russian Federation.
- 1992 - 1993 Member, Illinois Special Commission on the Administration of Justice; co-chair, committee on Lawyer Discipline and Admission to the Bar.
- 1987 - 1990 Chair, Duke University Committee on Sexual Harassment in Employment.
- 1985 - 1986 Chair, Duke University Faculty Hearing Committee.
- 1983 - 1985 Executive Committee, Duke University Academic Council (vice-chair, 1984-85).
- 1980 - 1985 Assistant Editor, Tax (ABA Journal).
- 1977 - 1980 Articles Editor, The Tax Lawyer.

SELECTED PUBLICATIONS

“Declaratory Judgments and Charitable Borders,” 184 Tax Notes 2017 (Sept. 9, 2024).

“Substance over Form in Transfer Tax Adjudication,” 55 Loyola (LA) Law Review 609 (2022), with Jay Soled.)

“The Lesser Foundation Excise Taxes: What Are They Good For? (Not Quite) Absolutely Nothing,” NYU Nat’l Center for Philanthropy and Law (Oct. 2019; currently published on the NCPL website only.)

“The NCAA and the IRS: Life at the Intersection of College Sports and the Federal Income Tax,” (92 Southern Cal. L. Rev.1087, (2019) with Lawrence Zelenak).

“Reassessing the Costs of the Stepped-Up Basis Rule, 162 Tax Notes 769, (2/18/19; w/ James Alm and Jay Soled.)

SELECTED PUBLICATIONS (continued)

Federal Income Taxation, 6th Ed., Aspen Publishers (with Lawrence Zelenak, Sarah Lawsky, and Shuyi Oei; 2024).

“Determining an Asset’s Tax Basis in the Absence of a Meaningful Transfer Tax Regime,” 10 Columbia Tax J. 49 (w/ Jay Soled, 2018)

“An Exempt Status Sorting Hat: Response to Lloyd Mayer, ‘A (Partial) Defense of Section 501(c)(4)’s Catchall Nature,” 21 NYU J. of Legislation and Pub. Pol.603 (2018).

“Bob Jones and the Public Policy Doctrine, 35 Years Later,” NYU Nat’l Center on Philanthropy & Law Conf. Papers, Oct. 2018 (Published on the NCPL website only at this time).

“Advocating a Carryover Tax Basis Regime,” 93 Notre Dame Law Review 109 (2017), (with Jay Soled and Kathleen Thomas)

“The Treasury Regulations Defining “Charity”: If Only They Would,” (SSRN 2016).

“Unifying Depreciation Recapture,” 48 UConn L.Rev. 531 (2015, with Jay Soled).

“Ending the Sweetheart Deal between the IRS and College Sports,” (SSRN, 2015).

“Rethinking the Penalty for Failure to File Gift Tax Returns,” 141 Tax Notes 757 (Nov. 2013, with Jay Soled).

“Estate Tax Relief and the Erosion of Capital Gains Tax Revenues,” 133 Tax Notes 733 (2011, with Jay Soled).

“Financing the American Newspaper in the Twenty-First Century,” 35 Vermont Law Review (2010). (Symposium issue honoring Vermont’s creating of the first low-profit liability company enabling statute in 2008).

“Reforming Uneven Subsidies in the Charitable Sector,” 66 Ex. Orgs. Tax Rev. 237 (2010).

“Gifts and the Income Tax — An Enduring Puzzle,” 73 Law and Contemporary Problems 63 (2010).

“The Cultural Symbolism of the Deductible Skybox,” 126 Tax Notes 1524 (2010 with Jay Soled).

“Elimination of the Deduction for Business Entertainment Expenses,” 123 Tax Notes 757 (2009, with Jay Soled).

“The Impact of Tax-Exempt Status: The Supply-Side Subsidies,” 69 Law & Contemp. Probs. 121 (Fall 2006).

SELECTED PUBLICATIONS (continued)

“Post-Disaster Tax Legislation: A Series of Unfortunate Events,” 56 Duke L.J. 51 (2006) (with Ellen Aprill).

“Class War and the Estate Tax: Have the Troops Gone AWOL?,” chapter in Law and Class in America, (N.Y.U. Press, 2006) (P. Carrington and T. Jones, eds.)

“Death of the Efficiency-Equity Tradeoff?: A Commentary on McMahon’s “The Matthew Effect and Federal Taxation,”” 45 B.C. L. Rev. 1143 (2004).

“Reconsidering Private Foundation Investment Limitations,” 58 Tax L. Rev. 59 (2004).

“Verenice Kuglin and Voluntary Compliance: Not This Year, Thanks,” ABA Tax Section Newsletter, (Winter, 2004).

“Many Unhappy Returns: Estate Tax Returns by Married Decedents,” 21 Va. Tax Rev. 361 (2002) (with Jay A. Soled).

“Unnecessary Estate Tax Returns: Removing the Residue of the ‘Widow’s Tax,’” 94 Tax Notes 235 (2002) (with Jay A. Soled).

“Does the Death Tax Deserve the Death Penalty?,” 48 Cleve. St. L. Rev. 749 (2000).

“Avoiding Federal Wealth Transfer Taxes,” Univ. of Michigan Working Paper Series, 2000-8 (2000), published as chapter 3 in “Rethinking Estate and Gift Taxation,” (Brookings, 2001).

“The Durability of Law School Reputation,” 48 J. Legal Educ. 568 (1999).

“Race and the Federal Income Tax: Has a Disparate Impact Case Been Made?” 76 N.C. L. Rev. 1817 (1998).

“Taxes and Philanthropy Among the Wealthy,” (with Gerald E. Auten and Charles T. Clotfelter) University of Michigan Office of Tax Policy Research Working Papers Series, No. 98-15 (1998); also published with the other papers in this series as: Does Atlas Shrug? The Economic Consequences of Taxing the Rich (Harvard University Press, 2000).

“The Impact of Fundamental Tax Reform on Charitable Organizations,” (with Charles T. Clotfelter). Published by The Brookings Institution as a chapter in The Economic Effects of Fundamental Tax Reform, (1996, H. Aaron and W. Gale, eds.).

“Flat Tax, VAT Tax, Anything But That Tax,” 14 Duke Law Magazine No. 1, at 40 (1996).

“Is the Flat Tax Reform or Rip-Off?,” The Duke Dialogue, (April, 1996).

Co-author, Report of the Illinois Supreme Court Special Commission on the Administration of Justice (1993). (Principal author of section on admissions to the bar.)

SELECTED PUBLICATIONS (continued)

Review: L. Lindsey, The Growth Experiment, 20 Contemp. Soc. 398 (1991).

“The Uneasy Case for a Lower Capital Gains Tax: Why Not the Second Best?,” 48 Tax Notes 195 (1990).

“The Tax Reform Act of 1986: The Impact on the Support of Public Goods and Services” 5 Duke Law Magazine No. 2, at 22 (1987).

“A Policy Analysis of Fee-Shifting Rules under the Internal Revenue Code,” 1986 Duke L.J. 970 (1986) (with Gary Myers).

“The Trouble with Statistical Evidence,” 49 Law & Contemp. Probs. 221 (1986).

“Case Law Substitutes for Constitutional Structures in Computing Taxable Income in the United States” (Paper read at U.S.-German Tax Law Symposium, University of Heidelberg, June, 1985, later published in 4 Duke Law Magazine No. 1, at 19 (1986)).

“Tax Legislation in the Reagan Era,” (Special editor) 48 Law & Contemp. Probs. (foreword at 1) (No. 4, 1985).

“Income Averaging after Twenty Years: A Failed Experiment in Horizontal Equity,” 1984 Duke L.J. 509 (1984).

Review: Marvin A. Chirelstein, Federal Income Taxation, 33 J. Legal Educ. 734 (1983).

“The Justice of Economics: An Analysis of Wealth Maximization as a Normative Goal,” 83 Col. L. Rev. 488 (1983) (Review essay on Richard Posner’s, The Economics of Justice).

“Retired Lives Reserves,” chapter in Implementing Compensation Plans after the Revenue Act of 1978, (N.Y. Law Journal Seminars Press, 1980).

“Group-Term Life Insurance: IRS Creates New Solutions, Questions, and Challenges,” 51 J. Tax’n 130 (1979) (with Irving Salem).

“The Validity of Grant-Back Clauses in Patent Licensing Agreements,” 42 U. Chi. L. Rev. 733 (1975).

Illinois Housing Needs, 1970-1980. Published by the Illinois Housing Development Authority, 1972 (with Peter Blomstrom and Don Samuelson).

SELECTED RECENT PRESENTATIONS

“Bob Jones University and the Public Policy Doctrine after Forty Years,” presented at a meeting of the International Charity Law Network, Toronto, Sept. 2024.

SELECTED RECENT PRESENTATIONS (continued)

“Declaratory Judgments and Charitable Borders,” presented at the annual meeting of the Law and Society Association, Denver, June 2024.

“IRS Regulation of Private Foundation Investment Portfolios,” presented at the annual conference of the National Center for Philanthropy and Law, NYU Law School, October 2023.

Commentary on Harvey Dale, “Inurement, Private Benefit, and Excess Benefit Transactions,” National Center on Philanthropy and Law, New York, October 2022.

“Wrapping Up: the End of the Beginning,” Presentation at Conference celebrating the completion of the Restatement: the Law of Nonprofit Charitable Organizations, Los Angeles, September 2022.

“Substance over Form in Estate and Gift Taxation,” 42nd Annual Duke Estate Planning Conference (Durham/Zoom, October 2020).

“Bob Jones and the Public Policy Doctrine, 35 Years Later,” Annual meeting of NYU National Center for Philanthropy and Law (New York, Oct. 2018.)

“Political Activities of Nonprofit Organizations” AALS Annual Meeting, Section of Philanthropy, (San Diego, Jan. 2018.) (Also presented at Northwestern University Tax Policy Workshop (September, 2017) and Duke Faculty Workshop (August, 2017.)

“The Treasury Regulations Defining “Charity”: If Only They Would,” Annual meeting of NYU National Center for Philanthropy and the Law (New York, Oct. 2015).

“The IRS and College Sports: Time to End the Sweetheart Deal,” Annual meeting of NYU National Center for Philanthropy and the Law (New York, Oct. 2013)

“The Excess Burden in Capital Gains Taxation,” Duke Tax Policy Workshop, (January, 2013).

“IRS Regulation of Social Enterprise Organizations,” Section on Philanthropy, Association of American Law Schools Annual Meeting, (New Orleans, January, 2013).

Commentary on Daniel Halperin paper “Reforming the Charitable Contribution Deduction,” Annual meeting of NYU National Center for Philanthropy and the Law (New York, Oct. 2012)

“The Carter Commission and the Income Taxability of Gratuitous Transfers,” Dalhousie University Conference on the 50th Anniversary of the Carter Commission (Halifax, Sept. 2012)

“Valuation Issues in Non-Cash Charitable Contributions,” Urban Institute conference on charitable giving. (Washington, (Sept. 2012).

“Low-profit Limited Liability Companies as an Engine of Social Change,” Law and Society Association annual meeting (Honolulu, June 2012).

SELECTED RECENT PRESENTATIONS (continued)

“The Tax Treatment of Churches,” Duke Tax Policy Workshop (February 2012).

“The Future of the Estate tax,” Section on Taxation, Association of American Law Schools annual meeting, (Washington, Jan. 2012)

“Declaratory Judgments and the Meaning of Charity,” Annual meeting of NYU National Center for Philanthropy and the Law (New York, Oct. 2011)

“Tax Legislation in Response to Hurricane Katrina,” Duke University Law Journal Administrative Law Conference, Durham, NC (February, 2006).

“Tax Exemption as a Supply-Side Subsidy in the Health Care Industry,” Conference on Distributive Injustice in American Health Care, Durham, NC (November, 2005).

“What is the Optimal Spending Rate for Private Foundations?,” University of Michigan Tax Policy Workshop, (April, 2005).

“Is the Death Tax Really Dead?,” Faculty Seminar, William & Mary School of Law, (April, 2005).

“Reconsidering Private Foundations Investment Limitations,” Conference on Managing Charitable Assets, NYU School of Law (November, 2003).

“Resurrecting the Death Tax,” Loyola University (LA) School of Law (February, 2003).

“Does the Death Tax Deserve the Death Penalty?,” Cleveland-Marshall College of Law conference on “The Death of the Death Tax?,” Cleveland, OH (October, 2000).

“Appropriate Excess Business Holdings De Minimis Rules under IRC sec. 4943,” Presentation to Joint Committee on Taxation Staff, Washington, DC (September, 2000).

“Prospects for Repeal of Federal Wealth Transfer Taxes,” SEAALS Meeting, Captiva Island, FL (August, 2000).

“Avoiding Federal Wealth Transfer Taxes,” Brookings Institution Conference on the Future of Federal Wealth Transfer Taxation, Washington, DC (May, 2000).

“Law School Rankings and What to Do about Them,” Arizona St. University College of Law, Phoenix, AZ (April, 2000).

“The Politics of Tax Scholarship,” University of Wisconsin Law School conference on Alternative Perspectives on Taxation, Madison, WI (April, 2000).

“Privatization and Tax Systems,” International Conference on Privatization, Geneva, Switzerland (July, 1999).

SELECTED RECENT PRESENTATIONS (continued)

“Reflections on Tax Rates and Donative Behavior,” Annual Meeting, Assn. for Research on Non-Profit Organizations and Voluntary Action (ARNOVA), Seattle, WA (November, 1998).

“Taxes and Philanthropy among the Wealthy,” University of Michigan Office of Tax Policy Research conference on Taxation of High-Wealth Individuals, Ann Arbor, MI (October, 1997).

“The Enduring Charms of the Coase Theorem,” Federalist Society Annual Meeting, Durham, NC (March, 1997).

MISCELLANEOUS

Member, American Law Institute (since 1992), American Bar Association.

Fellow, American College of Tax Counsel.

Designated Law School Teacher of the Year, by the Duke Bar Association, 1994 and 1999.

Who’s Who in America (since 1993).

RS/September, 2024