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UNIVERSITY OF MIAMI ENTERTAINMENT & SPORTS LAW REVIEW

INTRODUCTION TO TAX ISSUE OF THE UNIVERSITY OF MIAMI ENTERTAINMENT & SPORTS LAW REVIEW

SAMUEL C. THOMPSON, JR.*

As dean of the University of Miami School of Law and also as a tax law professor, it is a particular honor for me to introduce this special issue of the ENTERTAINMENT & SPORTS LAW REVIEW, which focuses on federal tax issues facing various participants in the entertainment and sports industries.

This issue has two outstanding articles, each addressing an important tax question. In the lead article, entitled *Corporate Sponsorship in Transactional Perspective: General Principles and Special Cases in the Law of Tax Exempt Organizations*,¹ Professor Frances Hill of the University of Miami School of Law addresses the question of whether corporate sponsorship payments made to tax-exempt committees that host post-season football bowl games, such as the Mobil Cotton Bowl, are unrelated income to the committee, thereby subjecting the committees to federal income tax and possible loss of exempt status. In elaborating on these questions Professor Hill says:

The issues raised by corporate sponsorship are technical income taxation issues relating to whether the corporate

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1. Frances R. Hill, *Corporate Sponsorship in the Transactional Perspective: General Principles and Special Cases in the Law of Tax Exempt Organizations*, 13 U. MIAMI ENT. & SPORTS L. REV. 5 (1996) [hereinafter *Corporate Sponsorship*]

sponsorship payment is taxable to the recipient organization as income from the sale of advertising and whether, in particular cases, the size of the corporate sponsorship payment as a share of the organizations total receipts might jeopardize its continued exempt status.²

In a 1991 Technical Advice Memorandum, the Service first took the position that corporate sponsorship payments were unrelated business income to the bowl committees, in this instance the Mobil Cotton Bowl.³

This *Corporate Sponsorship* article comprehensively traces the history of the regulatory and legislation development of these issues and also provides a suggested policy approach for analyzing these and similar issues. Corporate sponsorship payments present a significant problem because, as Professor Hill points out, total corporate sponsorship payments to all tax-exempt entities may aggregate as much as \$3 billion a year.⁴

Professor Hill proposes the adoption of a transaction model for analyzing the treatment of corporate sponsorship payments: the charitable contribution transaction model, the exempt foundation transaction model, and the unrelated business income transaction model.

The charitable contribution transaction model is satisfied only if the contributor receives no *quid pro quo* benefit from the recipient organization.⁵ This exempt function transaction model is satisfied only if the corporate sponsor receives a benefit that is consistent with the recipient organization's exempt purpose.⁶ The unrelated business income transaction model is applicable if there is a "two-party *quid pro quo* that provides no benefits to a charitable class and does not give the payor the kind of benefit that the organization was granted exemption to provide."⁷

Analysis under these three models leads Professor Hill to conclude: The most straightforward case can be made for treating corporate sponsorship payments as unrelated business income based on the general principles of the unrelated business income tax. This is also a strong case for the position that this is the only position to the Service as a matter of policy.⁸

2. *Id.* at 8-9.

3. *Id.* at 7.

4. *Id.* at note 10.

5. *Id.* at § III pp. 19 to 29.

6. *Id.* at § IV pp. 29 to 31.

7. *Id.* at 31 § V, pp. 31 to 58.

8. *Id.* at 58.

Notwithstanding this firm conclusion, in view of subsequent legislative developments, the Service has, in essence retreated from the position it took in the *Mobil Cotton Bowl* ruling,⁹ thereby leading to "statutory dissonance," that is a "conflict in the results and rationales of provisions of [a] statute."¹⁰

Professor Hill has provided us with an outstanding piece of legal scholarship; this article will clearly become the leading guide for analysis of issues presented by corporate sponsorship and similar arrangements.

In the second article, *Independent Contractor/Employee Classification in the Entertainment Industry: The Old, The New and the Continuing Uncertainty*,¹¹ Marilyn Barrett of the Los Angeles bar provides an excellent road map to this thorny classification problem. After discussing the consequences flowing from the classification of a worker as either an independent contractor or employee,¹² Ms. Barrett first examines the traditional test the Service has used in approaching these classification issues.¹³ She then examines the implications of Section 530 of the Revenue Act of 1978, which prohibits the Service from issuing regulations or revenue rulings on this classification issue.¹⁴ The article goes on to examine various collateral issues, including the use of the famous "loan-out" corporation in the entertainment industry. As Ms. Barrett explains: "A loan-out corporation is typically a corporation wholly-owned by the worker ('shareholder-employee') where the shareholder-employee has an exclusive, long-term agreement to provide services to the corporation as the corporation designates."¹⁵

To finish up, the article examines both historical and recent developments in the case law and rulings addressing this classification issue in the entertainment industry.¹⁶ In *Independent Contractor/Employee Classification*, Ms. Barrett has provided a valuable resource for attacking this difficult classification problem in entertainment and related issues.

9. *Id.* at § VI pp. 58 to 74.

10. *Id.* at 87. See also § VIII, pp. 86 to 90.

11. Marilyn Barrett, *Independent Contractor/Employee Classification in the Entertainment Industry: The Old, The New and The Continuing Uncertainty*, 13 U. MIAMI ENT. & SPORTS L. REV. 91 (1996) [hereinafter *Independent Contractor/Employee Classification*].

12. *Id.* at 92 to 95.

13. *Id.* at 96 to 99.

14. *Id.* at 99 to 102.

15. *Id.* at 108.

16. *Id.* at 115 to 129.

The two articles in this special issue should be of significant value to the tax bar, and on behalf of the University of Miami School of Law, I would like to personally thank each of the authors for helping to make this a successful issue of the UNIVERSITY OF MIAMI ENTERTAINMENT & SPORTS LAW REVIEW.