Technology-Driven Trends in Tax Law Training

Teaching Taxation
Co-Sponsored by Young Lawyers Forum
ABA 2019 Fall Tax Meeting
San Francisco, CA
October 4, 2019
Panelists from a Sampling of Online Tax LLM Programs

• Professor Leslie Book
  Villanova University
  Charles Widger School of Law

• Professor Steven Dean
  NYU Law

• Professor Mirit Eyal-Cohen
  University of Alabama School of Law

• Professor Katherine Pratt
  Loyola Law School, Los Angeles

Panelists Offering a Range of Perspectives

• Professor Michael Hunter Schwartz
  University of the Pacific
  McGeorge School of Law

• Professor Annette Nellan
  San Jose State University

• Samuel Greenberg
  Ernst & Young

• Ryan Montgomery
  Morgan Lewis
[Static Images/Links with Clips from Villanova’s LLM Program]
[Video Clip from NYU's LLM program]
[Video Clip from Alabama’s LLM program]
LLS Graduate Tax Program Preview

Two degrees:
- Tax LLM degree for JD graduates
- MT degree for other students

Two Areas of Emphasis:
- Business Tax Planning
- High Net Worth Private Clients

Hybrid Format:
- Asynchronous
- + Live Sessions

Mini-terms of 6 weeks
- + exam in week 7

100% online with options for
- 1-week on-campus courses

2-unit courses
- 24 units to graduate

Multiple start dates
LLS course design is based on the Community of Inquiry framework:

- **Social Presence**: peer-to-peer learning opportunities, designed for adult learners
- **Cognitive Presence**: rigor of content and design of active learning approach for students
- **Teaching Presence**: intentional design of student-to-instructor interactions

Core Course Attributes

- Strong, behavior-focused learning objectives
- Well-designed collaborative peer-to-peer interactions
- Multiple opportunities for feedback & assessment
- Rigorous course content
- Instructor is present and available to students
- Innovative use of Learning Management System
- Learner-driven media strategy (e.g., interactives, video)
Sample Sequence for Students to complete each Week’s Module

- **PRE-WORK:** Read assignment in course textbook, statutory supplement, cases, & any handouts; view video introduction.
- **WORK:** Work through module, answering in-line and self-check questions along the way; receive feedback.
- **QUIZ:** Take Quiz at the end of the module; receive feedback.
- **LIVE SESSION:**
  - Prepare and submit draft answer for Live Session;
  - Present draft answer during Live Session; and
  - Correct draft answer during Live Session.
Grading Policies

• Grading policies incorporate grades on intermediate work, including:
  • Quizzes;
  • Writing assignments; and
  • Presentations.
Sample grading policy from Federal Income Taxation:

• **30%** for Quizzes
  • 5% for each of 6 Quizzes

• **30%** for Live Session written submissions/participation
  • 5% for each of 6 Live Sessions

• **40%** for Final Exam
Opportunities to receive feedback on writing

- Loyola’s online graduate tax courses include writing assignments.
- Examples:
  - Tax Timing Issues
  - Taxation of Property Transactions
  - Advanced Tax Research
  - Tax Policy Colloquium
- Students receive feedback on their written work.

Tax Policy Colloquium Reaction Paper

Sample Comments:
[Student’s name], I am trying to give everyone in the class a close edit of one paper. Thus, do not be discouraged by so many comments. Please know that the comments I have made here re sentence structure, etc. are those that I am seeing from almost all. They are suggestions to improve the strength of your writing. You clearly understand section 199A and the issues it raises well. Remember, however, that you are writing a reaction paper. You need to tie your discussion to the author’s paper, not make a stand-alone summary of section 199A. Also, identify your concerns at the beginning of the paper, then explain and expand on them later.

I. Introduction

The Tax Cuts and Jobs Act of 2017 (“TCJA”) included a new Section 199A, which provides a 20 percent deduction of qualified business income (QBI) from income earned as independent contractors and other passthrough entities. Professor Diane M. Ring’s article provides a comprehensive analysis of the Section 199A, thoroughly explaining the Section 199A’s deduction as well as the guardrails that may limit its application.

. . . Moreover, in order to properly reclassify employees into independent contractors, workers and employers (persons for whom the work is being performed) must meet the IRS’ worker classification test. The IRS’ worker classification test analyzes the relationship between worker and employer. . . .

Sample Comments within the paper:
Does she? She does not discuss the main beneficiaries of the provision, but the possible unintended ones.
Bite the bullet – does she or doesn’t she? Cut “attempts.”
Explain briefly. Also give reader a sense of your evaluation.
That is, write the thesis sentence for your argument.
Do you see how edited sentence is more direct?
I think you mean contractor here.
Welcome to the first week!

[Katherine Pratt, Professor of Law]

[MUSIC] Welcome to Loyola Marymount University and Loyola Law School. Also welcome to the online income taxation course. I'm Katie Pratt. I'm excited to get to know each of you, and I want you to get to know your classmates as well. In turn, my resume and personal background information are posted on the course page, so you can get to know me better.

Short video introduces each module
Sample “In-line” Engagement Question
The “base” of an income tax is income. The “tax” equals the income base x the tax rate.

**What are alternative tax bases?**
Think of real-world examples of taxes that use a base other than income. 
Click the cards below to see some examples.

- **Wages**
- **Consumption**
- **Commodities**
- **Wealth**

- Payroll Taxes. For example, Social Security tax and Medicare tax.
- Retail Sales Tax, Value-Added Taxes, and Goods and Services Taxes. For example, state and local retail sales taxes or VATs imposed by other countries.
- Excise Taxes. For example, federal, state, and local taxes on gasoline, tobacco, and alcohol.
- Property Taxes and Wealth Transfer Taxes. For example, local property taxes on real estate, or federal estate and gift taxes.
Immediate feedback on self-check questions
Problems include variations that build in complexity
Screencasts include narrated slides (with transcripts provided)

§1031: Like-kind Exchanges: Basic consequences of §1031 applying

§1031(a), (b), (c): Nonrecognition Rule

• A TP’s Realized Gain is recognized up to the amount of “boot” the TP received in the exchange
• A TP who receives 0 “boot” recognizes 0 gain.
• A TP’s Realized Loss is not recognized.
Self-check questions provide **immediate feedback** about student learning.
Students solve problems **individually** and **collaboratively** with other students and the Professor.

Screencasts include Professors writing on electronic white boards as students work through problems collaboratively.
https://online.lls.edu/programs/tax-llm/

Thank you.
Professor Michael Hunter Schwartz
University of the Pacific
McGeorge School of Law
Towards a Modality-Less Model for Excellence
What’s Next

• Trends in online LLM Tax Degrees

• Relevant Trends in Higher Education

• What to Look For/ My Observations Regarding the Programs Presented Today
In-Person Teaching Myths Debunked
Vicarious Learning/Self-Teaching

A law school professor calls on a student and asks her a series of questions. What percentage of students answer the questions in their minds?

A. 75%-100%
B. 50%-74%
C. 25%-49%
D. 0%-25%
Pretend Socratic
Death by PowerPoint (or Lecture Notes)
Surrender to the Helium Hands
All It Takes is One Good Day
Online Teaching Myths Debunked
Synchronous Online Teaching
Less Vicarious Asynchronous Online Teaching
(Multiple) Assessments as Learning in Online Classes
Community Building

• Self Introductions
• Responses to Introductions
• Peer Feedback
• Small Group Projects
What the Best Law Teachers Do
Six Key Principles

- Respect and Connection with Students
- High Expectations
- Preparation
- Humble and Authentic
- Varied Teaching Methods
- Multiple Assessments
Professor Annette Nellan
San Jose State University
Topics

- CPA Focused Continuing Education Examples
  - Many also offer CE for attorneys
  - Benefits of joining CPA or EA focused events
- Various Conferences Geared to Attorneys and CPAs
- Conferences Geared to Non-Tax Attorneys
- MST and Advanced Certificate Programs
- Other ABA Sections
- Expertise Reminder
AICPA Offerings

• Tax conferences
  • National Tax Conference – 2 days in November in DC
    • Usually Commissioner and others from IRS + CPAs and attorneys speaking
    • Over 300 people
    • Good networking; but also available online
  • ENGAGE
    • 1 week in Las Vegas in June
    • Many segments – tech, accounting, tax, wealth strategies and more
• Other specialized industry conferences
  • Government and Not-for-Profit
  • Personal Financial Planning Summit
  • Oil and Gas
  • Employee Benefit Plans
  • Dealership
  • Others
More from AICPA

- Numerous webinars + self-study
- Tax Boot Camp – Entry Level + Level 2 + Level 3

<table>
<thead>
<tr>
<th>Level 1 Learning Agenda</th>
<th>Hours</th>
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<tbody>
<tr>
<td>Capitalized Costs &amp; Depreciation</td>
<td>6</td>
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<tr>
<td>Individual Tax Fundamentals</td>
<td>8</td>
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<tr>
<td>S Corporation Fundamentals</td>
<td>8</td>
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<tr>
<td>Effective Business Communications</td>
<td>4</td>
</tr>
<tr>
<td>Tax Fundamentals of LLCs &amp; Partnerships</td>
<td>8</td>
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<tr>
<td>Tax Research 1</td>
<td>4</td>
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<tr>
<td>Working Paper Documentation</td>
<td>2</td>
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<tr>
<td><strong>Total Hours</strong></td>
<td><strong>40</strong></td>
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<tr>
<th>Level 2 Learning Agenda</th>
<th>Hours</th>
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<tr>
<td>Accounting Methods and Periods</td>
<td>2</td>
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<tr>
<td>Intermediate Individual Taxation</td>
<td>8</td>
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<tr>
<td>Multistate Taxation</td>
<td>8</td>
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<tr>
<td>Taxation of Corporations</td>
<td>8</td>
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<tr>
<td>Choice of and Formation of Entity</td>
<td>4</td>
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<tr>
<td>Accounting Methods and Periods</td>
<td>2</td>
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<tr>
<td>Taxation of Property Transactions</td>
<td>4</td>
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<tr>
<td>Tax Research 2</td>
<td>2</td>
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<tr>
<td>Tax Accounting for Inventories</td>
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<tr>
<td><strong>Total Hours</strong></td>
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<tr>
<th>Level 3 Learning Agenda</th>
<th>Hours</th>
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<tr>
<td>Individual Tax Planning</td>
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<tr>
<td>Form 990</td>
<td>8</td>
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<tr>
<td>Advanced Taxation of LLCs &amp; Partnerships</td>
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</tr>
<tr>
<td>Advanced Tax Planning S Corporations</td>
<td>8</td>
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<tr>
<td>Income Tax Accounting</td>
<td>4</td>
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<tr>
<td>IRS Audits</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total Hours</strong></td>
<td><strong>40</strong></td>
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AICPA – Certificates and Badges

Includes:
• Blockchain Fundamentals for Accounting and Finance
• Cybersecurity Fundamentals for Finance and Accounting
• Data Analysis Fundamentals
• Robotic Process Automation Strategy for Business
• Retirement Planning
• Investment Planning
• Estate Planning
• Not-For-Profit
• U.S. International Tax: Core Concepts
CalCPA Offerings
[check CPA Society in your state]

• Numerous in-person programs and webinars and conferences
• Some offer MCLE and legal specialization for tax, family law and estate planning
• Example – **Entity Choice – Tax Considerations**
  • In person and webinar on August 23; 6.5 hours MCLE
  • Major Subjects:
    • Taxation of corporations and shareholders—potential double taxation
    • Comparison of individual and corporate tax rates
    • The qualified business income deduction, IRC 199A.
    • Special rules—differences that matter
    • Non-tax factors
    • Taxation of operations—differences beyond tax rates
    • Tax considerations of making business assets available to owners
    • Taxation of the sale of the assets of a business
    • Taxation of sale of stock or interest in the partnership
    • Transfer of assets for stock or a partnership interest
    • Death of an owner
    • Hybrid structure planning
Another CalCPA example

• Everything You Need to Know About Trusts Webcast
  • 6.5 MCLE hours
  • Major Subjects:
    • Trust obstacles and pitfalls
    • Revoking irrevocable trusts
    • Trust protectors
    • Succession planning, retirement planning and estate planning through trusts
    • Special needs and Medi-Cal/Medicare planning
    • Tax planning with trusts, including GRATs, QPRTs, IDGTs, etc.
    • Planning with A-B and A-B-C (QTIP) trusts
    • Asset protection through domestic and foreign trusts
Additional CalCPA examples

- Understanding Form 5500 webcast • 3 hours MCLE
- Helping Clients with New State and Local Tax Obligations
- 18th Annual SEC Hot Topics Conference webcast • 3 hours MCLE
- Taxation of Marijuana Sales webcast • 3 hours MCLE
- Moore Marsden Calculation—Equity Of The Home In Family Law Webcast • 6 hours MCLE
- Deal Structure for Mergers and Acquisitions • 6 hours MCLE
- Pension and Profit-Sharing Strategies • 6 hours MCLE
- Construction Contractors: Special Tax and Accounting Considerations • 6 hours MCLE
- Strategies for Tax Dispute Resolution • 6 hours MCLE
- The Nuts and Bolts of High-End Planning • 6 hours MCLE
- Lots more!

https://www.calcpa.org/events-and-programs#credit=MCLE&mpp=12
Add’l Continuing Education Options

• Numerous for-profit providers.
  • Usually offering webinars and self-study.

• Range of prices from free to expensive.
  • Several CPA and law firms provide 1 hour sessions for free.

• Look for ones offering the CE you need.

• Look for reviews; get recommendations from colleagues.
Getting Attorney CE Credit For CPA Events

• Check your state CPA society

• Cost? Varies
  • CalCPA general rates
    • All day program (400 minutes); 6.5 MCLE hours; same price in person and webinar
      • Member $295
      • Nonmember $400
    • + Bundle pricing such as 40 hours for $850 for member
    • + Pricing to deliver to your firm or company

• Consider becoming a member
  • Great way to meet CPAs – at conferences and other events
Various Conferences Geared to Attorneys and CPAs

- TEI-SJSU High Tech Tax Institute
  - 2 days in November (Nov 4-5, 2019); MCLE available
  - [http://www.sjsu.edu/taxinstitute/](http://www.sjsu.edu/taxinstitute/)

- UCLA Annual Tax Controversy Conference
  - [http://business.uclaextension.edu/taxcon/](http://business.uclaextension.edu/taxcon/)

- NYU Institute on Federal Taxation

- IRS/GWU Annual International Tax Conference

- Georgetown Law Advanced State and Local Tax Institute

- Many others
Conferences Geared to Non-Tax Attorneys

Can be a great way to get into a topic, be on cutting edge of new tax issues, and meet folks who might want to meet a tax attorney

Examples:

| Annual Conference on Robotics, Law & Policy | Stanford Blockchain Conference | Legalweek New York | others |
MST and Advanced Certificate Programs

• MST
  • For tax accountants, but usually, attorneys also welcome (may need some accounting course prerequisites)
  • Typical student profile:
    • Undergrad degree in accounting
    • CPA or plans to become a CPA
    • 0 to 25 years of experience
  • Programs throughout the U.S.
    • Vary in terms of size, course offerings, price, faculty experience
  • Some may also offer certificates or advanced certificates (for someone who already has an MST or LLM in tax)
  • Some may offer a completely online option or have a few classes online.
• Example – San Jose State University
  • MST – 4 required courses + over 20 electives
  • Advanced Certificates of 9 units
    • High Tech Tax
    • International Tax
    • General
Join Another ABA Section

A
Administrative Law & Regulatory Practice
Affordable Housing & Community Development Law
Air & Space Law
Antitrust Law

B
Bar Services
Business Law

C
Civil Rights & Social Justice
Communications Law
Construction Law
Criminal Justice

D
Dispute Resolution

E
Entertainment & Sports Industries
Environment, Energy, & Resources

F
Family Law
Franchising

G
Government & Public Sector Lawyers

H
Health Law

I
Infrastructure & Regulated Industries
Intellectual Property Law
International Law

J
Judicial

L
Labor & Employment Law
Law Students
Law Practice
Legal Education & Admissions to the Bar
Legal Services
Litigation

P
Professional Responsibility
Public Contract Law
Public Education
Public Interest Law

R
Real Property, Trust & Estate Law

S
Science & Technology Law
Senior Lawyers
Solo, Small Firm & General Practice
State & Local Government Law

T
Taxation
Tort Trial & Insurance Practice

Y
Young Lawyers
Expertise
Reminders/Observations

• Many ways to build, reinforce, deepen and verify your expertise gained from a course, conference, webinar, etc.

• Consider:
  • Learning in a class with time for study, homework, Q&A, etc. versus just showing up.
  • Need to understand underlying law to be competent and expert.
  • Additional ways to build and show expertise:
    • Writing articles
    • Presenting
    • Blogs, podcasts, YouTube, other social media used wisely.
    • Teaching in an MST or LLM program
Samuel Greenberg
Ernst & Young
The Employer’s Perspective

- Your employer’s interest: making you profitable
  - In an ideal world (for an employer):
    - High billable rate
    - Billable hour minimums
    - Price insensitive clients willing to pay for “training” time
    - High realization
    - Practices capable of sustaining high leverage
  - The reality:
    - Clients’ collective reluctance to pay ever increasing rates, particularly for junior attorney and training time
    - Belated recognition that there is indeed a limit on how many billable hours one can bill
    - Increasing price sensitivity regarding delivery of legal services
    - Competition not only from other law firms, but also other providers (e.g., in-house, alternative, Big 4)

- What does this mean for the employee?
  - Longer ramp-up period to profitability
  - Pressure to focus on a high-value specialty sooner rather than later
  - Need to invest in your own career progress given the economic disincentive for employer training
The Employer’s Perspective

• What your employer expects you to know (i.e., how you will be profitable sooner):
  • How to navigate around the “core” tax areas
    • Partnership
    • Corporate
    • International
    • Property transactions
  • How to research issues within the “core” tax areas
    • Checkpoint
    • Westlaw
    • Bloomberg BNA
    • PLI Plus
    • CCH Intelliconnect

• What your employer (should) expect you to learn on the job (i.e., things they can train you to do on the client’s dime):
  • Anatomy of various transactions (how do deals work)
  • The bowels of the “core” tax areas
The Employer’s Perspective

- Ways to make yourself more accretive to the bottom line (i.e., how to make your time more profitable for the firm)
  - Degree programs
    - LLMs
    - Certificates
  - Colleagues
    - Building a network of knowledgeable friends
  - Tax institutes
    - No better way of learning what’s “market”
  - Teaching/Writing
    - How do you get better at thinking on your feet and talking to clients about something they find tedious? Teach it!
  - Individual learning/webinars/podcasts
    - Whichever method works best for you to learn knowledge as you go
    - Daily updates – follow along what’s happening in the field
The Employer’s Perspective

• Time is limited, what should I focus on?
  • What’s your career goal? Do you think you want to stay in the field? Be mindful of costs (including opportunity costs)
    • If you plan on staying in the field, bigger investments are probably warranted as they will generate a bigger return (e.g., a LLM)
    • If you are unsure about whether you will stay in the field, a more piecemeal approach to backfill areas directly applicable to your practice may be a more cost-effective move
    • If you don’t plan on staying in the field, consider what investments you can make that would have more general applicability (e.g., transaction structuring)
  • General tax knowledge versus specialty tax knowledge
    • A good working knowledge of corporate, partnership, and international tax is key in any tax practice
    • Other areas will really depend on where you see your career heading
      • Employee benefits
      • Financial instruments
      • REITs/MLPs/RICs
      • Estate, trust & gift
      • Exempt organizations
  • How do you learn best?
Ryan Montgomery
Morgan Lewis
The Young Lawyer’s Perspective

Young lawyers generally want/need training, but that training may vary. And how do you get training?

• Guidance/Mentorship
  − Partners
  − Professors
  − Colleagues/Senior Associates

• Technical, or “In the Weeds” Training
  − Daily Assignments/Projects (research and working with others)
  − Co-author an article on a specific topic
  − CLEs
  − Panels, Trainings, Webinars
  − LLM, Coursework
The Young Lawyer’s Perspective

How to Get Training, continued…

• Hands on Training
  – Pro Bono work
  – Law school clinics
  – Smaller Projects

• Broader Context or “Big Picture” Training
  – Associations and industry groups (national and local)
  – Blogs/News Articles
  – Legislative and regulatory updates
  – Colleagues/Peers

Experience/Training will happen both “on” and “off” the clock!
The Young Lawyer’s Perspective

• Training may vary depending on your career path, but a few thoughts from an informal survey of young tax lawyers:
  – Get a broad base of experience/training;
  – Stay organized/catalogue trainings, webinar materials, etc., for future reference;
  – Being proactive often leads to additional opportunities for experience;
  – Be prepared for what could be a relatively steep learning curve; and
  – Work to stay up to date on legislative/regulatory developments.
The Young Lawyer’s Perspective

• Challenges/Hurdles to Getting Training
  – Balancing billable hours/work demands with a broad range of training.
    – Possible solutions. Patience, Planning to the extent possible, Be efficient with trainings and use technology (apps; podcasts, etc.)!
  – Always try to see the big picture.
    – Possible solutions: Ask questions; Read articles/publications.
  – Focus (but don’t dwell) on the short- and long-term.
    – Possible solutions: Take time to step back from daily assignments.

• It’s a Marathon, Not a Sprint!
Questions?
Comments?

(And thanks to all of our panelists!)