

REBECCA M. KYSAR

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Papers available at <http://ssrn.com/author=575387>

Last updated March 6, 2020

EDUCATION

YALE LAW SCHOOL, J.D., 2004

Yale Law Journal, Senior Editor

Coker Teaching Fellow

INDIANA UNIVERSITY, B.A., Religious Studies, *summa cum laude*, 2000

Phi Beta Kappa

Herman B. Wells Scholar (four-year, merit-based, full scholarship)

ACADEMIC APPOINTMENTS

FORDHAM UNIVERSITY SCHOOL OF LAW, New York, NY

Professor of Law

Fall 2018-present

Visiting Professor of Law

Fall 2017

Courses: Federal Income Taxation; International Taxation; Tax and Budget Policy Seminar

BROOKLYN LAW SCHOOL, Brooklyn, NY

Professor of Law

2014-2018

Associate Professor of Law

2011-2014

Assistant Professor of Law

2008-2011

Courses: Federal Income Taxation; International Taxation; Legislation

COLUMBIA LAW SCHOOL, New York, NY

Spring 2012

James S. Carpentier Visiting Professor of Law

OTHER EXPERIENCE

CRAVATH, SWAINE & MOORE LLP, New York, NY

2005-2008

Tax Associate

U.S. COURT OF APPEALS, SECOND CIRCUIT, Utica, NY and New York, NY

2004-2005

Judicial Law Clerk to The Honorable Richard J. Cardamone

YALE LAW SCHOOL, New Haven, CT

Fall 2003

Teaching Assistant to Visiting Professor Jeffrey J. Rachlinski

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, New York, NY

Summer 2003

Summer Associate

UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION, Washington, DC

Summer 2002

Law Clerk

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PUBLICATIONS AND WORKS IN PROGRESS

Interpreting by the Rules, 99 TEXAS L. REV. (forthcoming 2021)

The New Tax Legislative and Regulatory Process, NAT'L TAX J. (forthcoming 2020) (solicited)

Unraveling the Tax Treaty, 104 MINN. L. REV. 1755 (2020)

Value Creation: A Dimming Lodestar for International Tax, 74 BULL. INT'L TAX. (Mar. 25, 2020)

Dynamic Legislation, 167 U. PENN. L. REV. 809 (2019)

Will Tax Treaties and WTO Rules 'Beat' the BEAT?, 10 COLUM. J. TAX L. 140 (2019) (solicited)

The Games They Will Play: Tax Games, Roadblocks and Glitches Under the 2017 Tax Overhaul, 103 MINN. L. REV. (forthcoming 2019) (one of four primary co-authors)

Critiquing (and Repairing) the New International Tax Regime, YALE L.J. FORUM (2018) (solicited)

Taxes and the Eroding Budget Process, 81 LAW & CONTEMP. PROBS. 61 (2018) (solicited)

The Games They Will Play: Tax Games, Roadblocks, and Glitches Under The New Legislation (Dec. 2017) (one of four primary co-authors), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3084187

Temporary Tax Laws and the Budget Baseline, 157 TAX NOTES 125 (2017) (with David Kamin)

Reconsidering the Tax Treaty: Introduction, 41 BROOK. J. INT'L L. (2016) (with Steven Dean)

Interpreting Tax Treaties, 101 IOWA L. REV. 1387 (2016)

The 'Shell Bill' Game: Avoidance and the Origination Clause, 91 WASH. U. L. REV. 659 (2014)

Reconciling Congress to Tax Reform, 88 NOTRE DAME L. REV. 2121 (2013) (solicited)

On the Constitutionality of Tax Treaties, 38 YALE J. INT'L L. 1 (2013)

Penalty Default Interpretive Canons, 76 BROOK. L. REV. 953 (2011) (solicited)

Lasting Legislation, 159 U. PENN. L. REV. 1007 (2011)

Listening to Congress: Earmark Rules and Statutory Interpretation, 94 CORNELL L. REV. 519 (2009)

Tiered CFCs and Inbound Exchanges, 116 TAX NOTES 1145 (Sept. 24, 2007), reprinted in 48 TAX NOTES INT'L 179 (Oct. 8, 2007)

The Sun Also Rises: The Political Economy of Sunset Provisions in the Tax Code, 40 GA. L. REV. 335 (2006)

CONGRESSIONAL TESTIMONY

REBECCA M. KYSAR

TCJA: Design Flaws and Undemocratic Implementation, Testimony Before the U.S. House of Representatives Ways and Means Committee (Feb. 11, 2020)

Judging the New International Tax Regime, Testimony before the U.S. Senate Committee on Finance (Apr. 24, 2018)

SHORTER WORKS

The Big Problem with Wealth Taxes, N.Y. TIMES (Nov. 7, 2019) (with Daniel Hemel)

Can Congress Force Trump to Hand Over His Tax Returns?, VOX (Apr. 15, 2019) (contributor)

The Built-in Instability of the G.O.P.'s Tax Bill, N.Y. TIMES (Dec. 19, 2017) (with Linda Sugin)

The G.O.P.'s 20th Century Tax Plan, N.Y. TIMES (Nov. 15, 2017)

The Tricks That Will Deliver Tax Reform, SLATE (June 1, 2017)

Republicans' Dangerous Plan to Ram Tax Reform through Congress, SLATE (Jan. 5, 2017)

Is Trump's Tariff Plan Constitutional?, N.Y. TIMES (Jan. 3, 2017)

Resurrecting a Lasting, Not Temporary, Tax Code, BROOKLYN LAW SCHOOL LAW NOTES (2011)

Ending the Endogeneity of Earmark Rules, LEGAL WORKSHOP (May 21, 2009)

Transition Rules and Statutory Interpretation, TAXPROF BLOG, (April 28, 2009)

SELECTED COURT CITATIONS, EXCERPTS, HONORS, AND REVIEWS

#23 most downloaded law author on SSRN of all time (as of January 2020)

#10 most downloaded tax law author on SSRN of all time (as of January 2020)

Unraveling the Tax Treaty, 104 MINN. L. REV. (forthcoming 2020)

Reviewed by David Elkins in TaxProf Blog

The Games They Will Play: Tax Games, Roadblocks, and Glitches Under The New Legislation (with Avi-Yonah et al., one of four primary co-authors), available at

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3084187.

#1 most downloaded paper on SSRN in first year after posting

The Games They Will Play: An Update on the Conference Committee Bill, (with Avi-Yonah et al., one of four primary co-authors), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3089423

#2 most downloaded paper on SSRN in first year after posting

The 'Shell Bill' Game: Avoidance and the Origination Clause, 91 WASH. U. L. REV. 659 (2014)

Cited by Sissel v. United States Department of Health and Human Services, 799 F.3d 1035 (D.C. Cir., Aug. 7, 2015) (Kavanaugh, J., dissenting)

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Cited by Hotze v. Sebelius, 4:13-cv-01318 (S.D. Texas, Jan. 10, 2014) (upholding Affordable Care Act against Origination Clause challenge)

Cited by Sissel v. United States Department of Health and Human Services, Memorandum Opinion, 1:10-cv-01263 (D.D.C., June 28, 2013) (upholding Affordable Care Act against Origination Clause challenge)

Reviewed by Kristin Hickman in JOTWELL

On the Constitutionality of Tax Treaties, 38 YALE J. INT'L L. 1 (2013)

Cited by Retfalvi v. United States, Order, 5:17-cv-00468 (E.D.N.C., Aug. 15, 2018)

Cited by Sissel v. United States Department of Health and Human Services, Memorandum Opinion, 1:10-cv-01263 (D.D.C., June 28, 2013) (upholding Affordable Care Act against Origination Clause challenge)

Excerpted in CURTIS A. BRADLEY & JACK L. GOLDSMITH, FOREIGN RELATIONS LAW: CASES AND MATERIALS (6th ed. 2017)

Reviewed by Ruth Mason in JOTWELL

Lasting Legislation, 159 U. PENN. L. REV 1007 (2011)

Winner of 2011 Federalist Society Young Legal Scholars Paper Competition

Response by Frank Fagan & Michael Faure in U. PENN L. REV.

Listening to Congress: Earmark Rules and Statutory Interpretation, 94 CORNELL L. REV. 519 (2009)

Excerpted in WILLIAM N. ESKRIDGE, PHILIP P. FRICKEY, ELIZABETH GARRETT, & JAMES J. BRUDNEY, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY (5th ed. 2014).

The Sun Also Rises: The Political Economy of Sunset Provisions in the Tax Code, 40 GA. L. REV. 335 (2006)

Excerpted in LAWRENCE LESSIG, REPUBLIC, LOST (2011) and REPUBLIC, LOST 2.0 (2016)

Amicus Briefs

Brief of Amici Curiae Law Academics and Professors in Support of Petitioner in in Opposition to the Petition for Rehearing En Banc in *Altera v. Commissioner* (9th Circuit, filed Sept. 6, 2019).

Brief of Amici Curiae Tax Law Professors and Economists in Support of Petitioner in *South Dakota v. Wayfair*, No. 17-494 (Supreme Court of the United States, filed Mar. 5, 2018).

Brief of Amicus Curiae on behalf of 19 Tax Law and Administrative Law Professors, *Altera v. Commissioner*, Nos. 16-70496, 16-70497 (9th Circuit, filed July 5, 2016).

SELECTED PRESS APPEARANCES AND DISCUSSION OF RESEARCH

REBECCA M. KYSAR

Associated Press; The Atlantic; Chicago Tribune; CNN; CNNMoney; Fiscal Times; Fox Business; Forbes; Law 360; Marketplace; New York Magazine; New York Times; Philadelphia Inquirer; Politico; Reuters; Slate; Tax Notes; Wall Street Journal; Washington Post; WNYC

SELECTED PRESENTATIONS

Unraveling the Tax Treaty, International Tax Governance and Justice Workshop, University of Oxford (online, July 14, 2020)

The New Tax Legislative Process, National Tax Association Spring Meeting (online, May 14, 2020)

Interpreting by the Rules, Tax Policy Workshop, Georgetown University Law Center (online, March 17, 2020)

Interpreting by the Rules, Legislation Works-in-Progress Roundtable, Yale Law School, New Haven, CT (Feb. 28, 2020)

Discussant, *Value Creation & Tax Treaty Interpretation*, Tax Treaty Interpretation After BEPS Interdisciplinary Conference, Lausanne, Switzerland (Dec. 19-20, 2019)

Unraveling the Tax Treaty, Tax Law and Policy Speaker Series, University of Pennsylvania Law School (Nov. 6, 2019)

Unraveling the Tax Treaty, Tax Forum, The University Club, New York, NY (Nov. 3, 2019)

Unraveling the Tax Treaty, Tax Policy Colloquium, McGill University Faculty of Law (Oct. 28, 2019)

Unraveling the Tax Treaty, Summer Tax Workshop, Columbia Law School, New York, NY (May 23-24, 2019)

Unraveling the Tax Treaty, Pepperdine Tax Policy Workshop, Pepperdine School of Law, Malibu, CA (Apr. 8, 2019)

Dynamic Legislation, Theories of Statutory Interpretation Seminar, Yale Law School, New Haven, CT (Feb. 26, 2019)

Unraveling the Tax Treaty, Duke Tax Policy Workshop, Duke University School of Law, Durham, NC (Feb. 7, 2019)

Unraveling the Tax Treaty, NYU Tax Policy Colloquium, New York University School of Law, New York, NY (Jan. 29, 2019)

Unraveling the Tax Treaty, James Hausman Tax Law and Policy Workshop, Faculty of Law, University of Toronto, Toronto, CA (Jan. 23, 2019)

Unraveling the Tax Treaty, Michigan Law School Tax Policy Workshop, Ann Arbor, MI (Nov. 7, 2018)

Dynamic Legislation, Statutory Interpretation Seminar, University of Pennsylvania Law School, Philadelphia, PA (Nov. 13, 2018)

Unraveling the Tax Treaty, Michigan Law School Tax Policy Workshop, University of Michigan Law School, Ann Arbor, MI (Nov. 7, 2018)

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Panelist and Organizer, *The Future of the New International Tax Regime Symposium*, Fordham Law School, New York, NY (Oct. 26, 2018)

Unraveling the Tax Treaty, Northwestern University School of Law Colloquium on Advanced Topics in Taxation, Chicago, IL (Oct. 19, 2018)

Discussant, Summer Tax Workshop, Columbia Law School, New York, NY (May 17-18, 2018)

Profit Shifting and Offshoring in the New International Tax Regime, Economic Policy Institute, Washington, D.C. (May 7, 2018)

Judging the New International Tax Regime, Testimony Before the U.S. Senate Committee on Finance, Washington, D.C. (Apr. 24, 2018)

Taxes and the Eroding Budget Process, Boston College-Tulane Tax Policy Roundtable, Boston College Law School, Boston, NY (March 23, 2018)

Taxes and the Eroding Budget Process, Legislation Roundtable, Fordham University School of Law, New York, NY (March 2, 2018)

Taxes and the Eroding Budget Process, Tax Law Speaker Series, University of San Diego School of Law, San Diego, CA (January 8, 2018)

Discussant, Virginia Autumn Invitational Tax Conference, University of Virginia School of Law, Charlottesville, VA (November 17, 2017)

Discussant on Fadi Shaheen, *Destination-Based Cashflow Taxes and Tax Treaty Compatibility*, NYU/UCLA Tax Policy Symposium, New York University School of Law, New York, NY (October 27, 2017)

Unraveling the Tax Treaty, Annual Mid-Career Tax Conference, University of Arkansas School of Law, Fayetteville, Arkansas (May 22, 2017)

Dynamic Legislation, Tax Policy Colloquium, Maurer School of Law at Indiana University, Bloomington, IN (February 2, 2017)

Interpreting Tax Treaties, Faculty Workshop, Pace University School of Law, White Plains, NY (October 28, 2015)

Panelist and Organizer, Symposium on Reconsidering the Tax Treaty, Brooklyn Law School, Brooklyn, NY (Oct. 23, 2015)

The Affordable Care Act and the Origination Clause, Yale Law School Federalist Society, New Haven, CT (Sept. 28, 2015)

Discussant, Summer Tax Workshop, Columbia Law School, New York, NY (July 1-2, 2015)

Dynamic Legislation, Annual Mid-Career Tax Conference, Moritz College of Law at Ohio State University, Columbus, OH (June 4, 2015)

Interpreting Tax Treaties, Faculty Workshop, University of Virginia School of Law, Charlottesville, VA (March 6, 2015)

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Interpreting Tax Treaties, Seminar on Tax Law, Policy, and Practice, Harvard Law School, Boston, MA (March 4, 2015)

Discussant on Lee Sheppard, *Beyond Tax Avoidance: Managing Multinationals' Tax and Contractual Relationships with Developing Countries*, New York University School of Law, New York, NY (February 23, 2015)

Interpreting Tax Treaties, Faculty Workshop, Rutgers-Camden School of Law, Camden, NJ (February 11, 2015)

Panelist, *Tax Reform and the Legislative Process*, AALS Annual Meeting, New York, NY (January 5, 2014)

The 'Shell Bill' Game: Avoidance and the Origination Clause, Faculty Workshop, Fordham Law School, New York, NY (Sept. 5, 2013)

On the Constitutionality of Tax Treaties, Yale Law School, New Haven, CT (April 23, 2013) (Oona Hathaway, discussant)

The 'Shell Bill' Game: Avoidance and the Origination Clause, Conference on the Hundredth Anniversary of the Sixteenth Amendment, University of Southern California Gould School of Law, Los Angeles, CA (February 7, 2013)

Reconciling Congress to Tax Reform, Symposium on The American Congress: Legal Implications of Gridlock, Notre Dame Law School, South Bend, IN (November 16, 2012)

Discussant, Summer Tax Workshop, Columbia Law School, New York, NY (July 11-13, 2012)

Panelist, *A Conversation about Economic Growth and Tax Policy*, Columbia Law School Alumni Reunion Weekend, New York, NY (June 8, 2012)

Interpreting Tax Treaties, Tulane Tax Policy Roundtable, New Orleans, LA (April 13, 2012)

On the Constitutionality of Tax Treaties, Columbia Law School Faculty Workshop, New York, NY (April 12, 2012)

On the Constitutionality of Tax Treaties, Yale Law School Federal Courts Seminar, New Haven, CT (March 30, 2012)

On the Constitutionality of Tax Treaties, Northwestern University School of Law Colloquium on Advanced Topics in Taxation, Chicago, IL (February 9, 2012)

On the Constitutionality of Tax Treaties, University of Florida Levin College of Law Tax Policy Colloquium, Gainesville, FL (January 13, 2012)

On the Constitutionality of Tax Treaties, Yale Law Women Reading Group, New Haven, CT (March 30, 2012)

On the Constitutionality of Tax Treaties, University of Notre Dame Law School Faculty Colloquium, South Bend, IN (September 23, 2011)

On the Constitutionality of Tax Treaties, St. John's University School of Law Faculty Workshop, Queens, NY (September 12, 2011)

On the Constitutionality of Tax Treaties, Junior Tax Scholars Conference, Irvine School of Law, Irvine, CA (June 28, 2011)

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Moderator, *Tax Policy Responses to the Current Economic Climate and the Long-Term Fiscal Crisis*, ABA Section of Taxation Winter 2011 Meeting, Boca Raton, FL (January 21, 2011)

Penalty Default Interpretive Canons, Legislation and Law of the Political Process Section Panel, AALS Annual Meeting, San Francisco, CA (January 8, 2011)

Lasting Legislation, Young Legal Scholars Panel (competitively chosen paper), Federalist Society Conference, San Francisco, CA (January 7, 2011) (Richard Epstein, discussant)

Penalty Default Interpretive Canons, Symposium on Statutory Interpretation: How Much Work Does Language Do?, Brooklyn Law School, Brooklyn, NY (November 19, 2010).

Lasting Legislation, New York City Junior Faculty Colloquium, Fordham Law School, New York, NY (December 6, 2010)

Penalty Default Interpretive Canons, Symposium: Statutory Interpretation: How Much Work Does Language Do?, Brooklyn Law School, Brooklyn, NY (November 19, 2010)

Panelist, *Sunsetting Legislation*, University of Connecticut Faculty Workshop, Hartford, CT (October 6, 2010)

Lasting Legislation, Brooklyn Law School Faculty Workshop, Brooklyn, NY (September 16, 2010)

Lasting Legislation, NYU Tax Policy Colloquium, New York, NY (March 4, 2010)

Lasting Legislation, UCLA Tax Policy and Public Finance Colloquium, Los Angeles, CA (February 11, 2010)

Lasting Legislation, McGill University, Tax Policy Workshop, Montreal, Canada (February 2, 2010)

Lasting Legislation, Columbia Law School Tax Policy Colloquium, New York, NY (November 12, 2009)

Lasting Legislation, Brooklyn Law School, Junior Faculty Workshop, Brooklyn, NY (August 13, 2009)

Lasting Legislation, Junior Tax Scholars Workshop, Brooklyn Law School, Brooklyn, NY (June 6, 2009)

Listening to Congress: Earmark Rules and Statutory Interpretation, Yale Law Journal Reading Group, Yale Law School, New Haven, CT (May 7, 2009)

Free Standing Doctrine, Critical Tax Conference, Indiana University Maurer School of Law, Bloomington, IN (April 4, 2009)

Discussant on Anita Krishnakumar, *Evolution of the Reconciliation Process*, Federal Budget and Tax Policy for a Sound Fiscal Future, Washington University School of Law, St. Louis, MO (March 21, 2009)

Discussant on George K. Yin, *Temporary-Effect Legislation, Political Accountability, and Fiscal Restraint*, Federal Budget and Tax Policy for a Sound Fiscal Future, Washington University School of Law, St. Louis, MO (March 21, 2009)

Listening to Congress: Earmark Rules and Statutory Interpretation, Tax Law Association Alumni Event, Brooklyn Law School, Brooklyn, NY (March 5, 2009)

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Listening to Congress: Earmark Rules and Statutory Interpretation, Loyola Tax Policy Colloquium, Loyola Law School, Los Angeles, CA (Nov. 3, 2008)

Listening to Congress: Earmark Rules and Statutory Interpretation, Junior Tax Scholars Conference, NYU School of Law, New York, NY (June 7, 2008)

SERVICE

MAJOR LAW SCHOOL SERVICE

Fordham University School of Law

Appointments Committee, Member (2019-2020)

Curriculum Committee, Member (2018-2020)

Faculty Scholarship and Colloquia Committee, co-chair (2018-2019)

Brooklaw Law School

BROOKLYN JOURNAL OF INTERNATIONAL LAW, faculty advisor (2013)

BROOKLYN JOURNAL OF INTERNATIONAL LAW Symposium, *Reconsidering the Tax Treaty*, co-organizer (Fall 2015)

BROOKLYN LAW REVIEW Symposium, *How Much Work Does Language Do?*, co-organizer (Fall 2010)

Career Services Committee, member (2010-11)

Curriculum Committee, member (2017-18)

Faculty Workshop Committee, co-chair (2008-2012)

Dennis J. Block Center for the Study of International Business Law Steering Committee, member (2008-present)

Edward V. Sparer Public Interest Committee, member (2010-2014)

Lateral Appointments Committee, member (2009-10, 2011-12, 2012-13, 2013-15), chair (2015-2017)

Long-Range Planning Committee, member (2008-09)

Status Committee, member (2014-2015, 2017-2018)

SERVICE TO THE LEGAL PROFESSION AND LEGAL ACADEMY

National Tax Association Annual Conference, Program Committee Member (2020)

AALS Section on Legislation and Law of the Political Process, Chair emeritus (2018-19); Chair, (2017-18);

Chair-Elect (2016-17); Executive Committee member (2012-13, 2015-16)

Annual Junior Tax Scholars Conference, co-organizer (2009-2013)

Annual Association for Mid-Career Tax Law Professors Conference, co-organizer (2014-15)

PROFESSIONAL AFFILIATIONS

ABA Tax Section, member

AALS Section on Taxation, member

AALS Section on Legislation and Law of the Political Process, member

Bar Admission: New York State (2005)

National Tax Law Association, member

Tax Forum, member

Tax Notes Editorial Advisory Board, member