MurphyAustin
ATTORNEYS

Scott E. Galbreath

Of Counsel

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Practice Area(s): Corporate and Business, Labor and Employment, Nonprofits, Tax and Estate Planning, Employee Benefits and Executive Compensation

Overview

Scott E. Galbreath leads the Employee Benefits and Executive Compensation Practice Team. He has more than 30 years of experience representing employers in ERISA, employee benefits, and executive compensation matters. Scott also practices in the areas of tax, estate planning, business and nonprofit law.

Scott's benefits practice includes counseling for-profit, tax exempt and governmental clients on all aspects of employee benefits: choosing appropriate retirement, deferred compensation, equity compensation, cafeteria and other health and welfare benefit plans; using benefits to attract and retain key executive and management employees; using benefits (including ESOPs), in succession planning; ERISA, Internal Revenue Code section 401(a), 403(b), 409A and 457 compliance; CalPERS and PEPRA compliance; investments, prohibited transactions, and fiduciary duties; multiemployer plan funding and withdrawal liability rules; as well as drafting plan documents and correcting plan operational or document failures, and representing clients in IRS audits or Department of Labor investigations.

Prior to joining Murphy Austin, Scott led the Employee Benefits and Executive Compensation Services practice at the Burton Law Firm, a boutique business law firm, where he counseled for-profit, tax exempt and governmental clients on all aspects of employee benefits. Prior to his work with Burton Law Firm, Scott was a senior attorney with the Folsom employee benefits firm of Chang, Ruthenberg & Long P.C.

Scott was awarded his J.D. from IIT Chicago-Kent College of Law and also earned an LL.M in Taxation, *with honors*, from IIT Chicago-Kent College of Law. He has earned his certification as a specialist in Taxation Law by the State Bar of California Board of Legal Specialization. He was

Memberships

- Sacramento County Bar Association, Business, Labor and Employment, and Tax Law Sections
- Sacramento Chapter of National Institute of Pension Administrators
- Sacramento Chapter of Western Pension & Benefits Council
- Chicago Bar Association, Taxation Committee's Exempt Organization Division, Chair (1996-1997)
- Chicago Bar Association, Trade & Professional Associations Law Committee, Chair (1991-1992)

recognized as an *Illinois Leading Lawyer in Employee Benefits* in 2006 by the *Leading Lawyer Network*. Scott is a former officer of the Chicago Bar Association's Employee Benefits Committee and former Chair of its Executive Compensation Subcommittee.

After practicing for 20 years in Chicago, Scott moved to California where he has served as Chair of the Sacramento County Bar Association's Tax Section as well as President of the Sacramento Chapter of the Western Pension & Benefits Council. He has also served as a member of the Executive Committee of the Governing Board of the Western Pension & Benefits Council and is a board member of the Sacramento Chapter of the National Institute of Pension Administrators.

Scott is a frequent writer and speaker on new developments in employee benefits. In September 2007, he helped organize, spoke at and moderated the first annual Executive Compensation Institute sponsored by the Chicago Bar Association and the John Marshall Law School. He was also instrumental in helping to establish the Capital Forum on Pensions, the Sacramento area's annual employee benefits conference established in 2013. He is also a regular speaker at the Sacramento County Bar Association's Tax Symposium.

Scott was named a *Top Lawyer for Employee Benefits* on the 2015, 2016, and 2017 lists published by *Sacramento Magazine*.

Representative Matters

- Saved the qualified status of a 401(k) plan that had not been amended for over 20 years through the IRS Voluntary Correction Program.
- Designed executive compensation program involving restricted equity interests and a captive insurance company.
- Negotiated a voluntary closing agreement with IRS, unwinding a Rollover for Business Start-Up (ROBS) transaction with minimal tax consequences to taxpayer.
- Advised 501(c)(3) organization's board on operational issues threatening exempt status and assisted in implementing changes to reduce risk.
- Structured joint venture among three 501(c)(3) organizations to develop a public school curriculum to educate youth about risks

Bar Admissions

- State Bar of California
- State Bar of Illinois

Education

State Bar of California Board of Legal Specialization Certified Specialist in Taxation Law, 2017

IIT Chicago-Kent College of Law, Chicago, Illinois
LL.M. (Tax), *with honors*, 1991

IIT Chicago-Kent College of Law, Chicago, Illinois
J.D., 1986

Elmhurst College, Elmhurst, Illinois
B.A., *with high honors,* in Political Science and Urban Studies, double major - Criminology minor, 1983

and avoidance of a particular social issue.

- Regularly draft, review, and revise executive compensation agreements, employment agreements, and severance arrangements for compliance under Code section 409A.
- Regularly advise clients on avoiding prohibited transactions when using self-directed IRAs to invest in alternative investments, businesses, and real estate.
- Regularly form nonprofit corporations and obtain necessary federal and state recognition of tax exempt status.
- Regularly advise tax exempt organizations on whether activities give rise to unrelated business income tax and how to restructure transactions to avoid such tax.

Awards

- Named in *Sacramento Magazine's* Top Lawyers List, Employee Benefits (2015-2017)
- Recognized as an Illinois Leading Lawyer in Employee Benefits by Leading Lawyer Network (2007)
- IIT Chicago-Kent College of Law Bar & Gavel Society Award (1986)

Leadership

- Sacramento Chapter of National Institute of Pension Administrators, Member, Board of Directors (2013-present)
- Sacramento Chapter of Western Pension & Benefits Council, Program Chair, (2016-2017, 2013-2014); President (2009-2011); Member, Board of Directors (2008-present)
- Western Pension & Benefits Council, Member, Governing Board (2011-2013);
- Member, Program Committee, 2014 Western Benefits Conference (2014);
- Sacramento County Bar Association Tax Section, Chair (2010-2011)
- Appointed Adjunct Professor, John Marshall Law School Center for Tax Law and Employee Benefits (2007)
- Chicago Bar Association Employee Benefits Committee, Secretary (2007-2008)
- CBA Employee Benefits Committee's Executive Compensation

Subcommittee, Chair (2006-2007)

- CBA Employee Benefits Committee's ERISA Litigation Subcommittee, Chair (2004-2005)

Speaking Engagements

- "How Will Tax Reform Impact My Executive Compensation Programs?" National Institute of Pension Administration NAFE Forum & Expo, Las Vegas (May 22, 2018)
- "CalSavers: If You Don't Have a Retirement Plan, One Will Be Provided For You," Capital Forum on Pensions 2018 Workshop with Gary Allen, Scott E. Galbreath and Aaron Karr (May 16, 2018)
- "The Effects of New Tax Act on Nonprofits—What You Need to Know Now," The Impact Foundry Workshop (March 2018)
- "457, 401(k), & 403(b) Plans: Which is right for your client's organization?" Sacramento Chapter of National Institute of Pension Administrators, Co-Presenter (March 2018)
- "Tax Cut and Jobs Act Provisions Effecting Employee Benefits and Executive Compensation," Sacramento County Bar Association Tax Section (February 26, 2018)
- "What's Happening with Legislation and Regulations? Get the Latest Updates!," Co-Presenter, Sacramento Chapter of Western Pension & Benefits Council and National Institute of Pension Administrators Joint Meeting (January 25, 2018)
- "Tax Reform Effects On Employee Benefits and Executive Compensation," Sacramento Association of Corporate Counsel (January 25, 2018)
- "Murphy Austin Annual Employment Law Update," Sacramento, Panelist (December 2017)
- "Retirement Plan Issues for Tax Exempt Organizations," Workshop for The Impact Foundry's WHAT IF Conference, Presenter (October 2017)
- "457, 401(k), & 403(b) Plans: Which is right for your client's organization?" Western Pension and Benefits Council, Governing Board Webinar, Co-Presenter (June 2017)
- HR Legalcast Podcast - Hot topics in employee benefits, Aaron B. Silva in conversation with Scott E. Galbreath (June 2017)

- "Taxes for Tax Exempt Organizations: An Introduction to the Unrelated Business Income Tax," SCBA Tax Section (April 2017)
- "457, 401(k), & 403(b) Plans: Which is right for your client's organization?" Western Pension and Benefits Council, Sacramento Chapter, Co-Presenter (April 2017)
- "The Final? DOL Fiduciary Regulations-an overview of the final regulations and the pending litigation challenging them," National Institute of Pension Administrators, Sacramento Chapter (August 2016)
- "Mission Possible? Correcting Common and Not-So-Common Plan Failures," Capital Forum on Pensions, Sacramento, Co-Presenter (May 2016)
- "Real Property in Retirement Plans, the Good, the Bad, and the Ugly," SCBA Tax and Real Property Sections (April 2016)
- "The Numerology of ERISA Fiduciaries: 3(21), 3(16), and 3(38)-What Does Your Future Hold?" National Institute of Pension Administrators, Sacramento Chapter (March 2016)
- "ACA Practical Choices For Employers," Western Benefits Conference, San Francisco (July 2015)
- "Using Benefits To Compensate Key Management & In Succession Planning," Sacramento County Bar Association Tax Section Tax Symposium (May 2015)
- "When and Why To Use Nonqualified Plans," Capital Forum on Pensions, Sacramento (May 2015)
- "Mission Impossible? How To Correct The Uncorrectable-Fixing Plan Issues That Don't Qualify For EPCRS," Capital Forum On Pensions, Co-Presenter (May 2015)
- "A Comparison of the Advantages and Disadvantages of Pre-tax and Post-tax Deferred Compensation in Employee Benefits Plans," Sacramento County Bar Association Tax Section Tax Symposium (May 2014)

Publications

- Boom goes the Dynamex! Worker Classification is not easy as ABC when it comes to Benefits, The Benefit of Benefits Blog, May 14, 2018
- Documents! Documents! Documents!, The Benefit of Benefits Blog,

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April 26, 2018

- California Secure Choice/CalSavers Retirement Savings Program Proposed Regulations Delayed, The Benefit of Benefits Blog, April 23, 2018
- No Fooling: New Disability Claims Procedures are Effective April 1, 2018, The Benefit of Benefits Blog, March 28, 2018
- Plan Mistakes are Now More Costly to Correct, The Benefit of Benefits Blog, March 15, 2018
- House Passes Its Tax Bill Without Deferred Compensation Changes; Senate Bill Also Drops Those Changes But Repeals Individual Health Coverage Mandate (November 2017).
- What will the Tax Reform Bill Mean for Employee Benefits: 401(k) Plans Untouched in House Tax Reform Bill but Executive Compensation May Drastically Change (November 2017).
- Choosing the Right Plan and Design for a Tax Exempt Organization or State and Local Government Requires Knowing the Rules and Motivation, New York University Review of Employee Benefits and Executive Compensation – 2017, chapter 1 (Kathryn Kennedy ed., LexisNexis Matthew Bender 2017).
- "IRS Clarifies Aspects of 409A Regulations," *Journal of Pension Benefits*, Winter, 2017.
- Galbreath, Scott. Interview. "Proposed regulations clarify, modify previous guidance on deferred compensation plans," *Business & Legal Resources*, October, 2016. Print.
- "Does One Need to Have Substantial Influence to Select a Top Hat?" *Journal of Pension Benefits*, Summer, 2016.
- "Howdy Partner!—Compensatory Equity Interests in Entities Taxed as Partnerships Transforms Employees to Partners—Tax Reform Proposals Don't Resolve Issue," *Journal of Pension Benefits*, Winter, 2015.
- "Reforming Public Pension Reform", California Labor & Employment Review, Official Publication of the State Bar of California Labor and Employment Law Section, July, 2013.