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THE UNEASY CASE FOR THE RETIREMENT OF PROFESSOR DOUGLAS A. KAHN

Jeffrey H. Kahn*

In the fall semester of 1964, a young Douglas Kahn joined the faculty of the University of Michigan Law School. During the spring semester of 2016, he will teach his final course as a full-time faculty member. For the interim fifty two years, he has been a fixture of the Michigan law school community. As a tax professor, former student, and his son, I am pleased and honored to write this introduction for an edition of the *Michigan Business & Entrepreneurial Law Review* honoring Professor Kahn's tenure at the University of Michigan.

Over his long years of service, Michigan Law School, legal academia and the legal profession have changed substantially. Despite these changes in the norms and fads of legal academia, Professor Kahn's work has not substantially changed throughout his tenure. His work is generally doctrinal and he has described it at times as "micro policy." That is, it is not merely descriptive of the law, but instead focuses on the policy justifications for and against provisions and tax workings. He is a careful, tireless and creative researcher. Even those who disagree with the positions he takes or the conclusions he draws (and there are many) concede that his scholarship is well-argued and valuable. In an era when many from the legal industry complain that legal scholarship is divorced from the practice of law,¹ his work speaks to all audiences: students, practicing lawyers and academics. Through his long career, he has written numerous books, general law review articles, and pieces for professional tax journals.

There is no overarching macro-level theme to Professor Kahn's scholarship, but it is clear that, at times, he enjoys playing the contrarian. For example, in what is his most cited piece, he was a critic of the tax expenditure budget;² he has defended the accelerated depreciation deduction sys-

* Harry W. Walborsky Professor of Law, Florida State University. I would like to thank Yusuf Salloom and the editors of the *Michigan Business & Entrepreneurship Law Review* for their hard work setting up this edition in honor of Professor Douglas Kahn. For example, when he first joined the faculty, the University of Michigan Law School had approximately 35 tenured faculty members and just a few adjunct professors. As he retires, the full-time faculty has more than doubled, and many adjuncts and lecturers have joined it.

1. In 2011, Chief Justice John Roberts remarked: "Pick up a copy of any law review that you see and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something, which I'm sure was of great interest to the academic who wrote it, but isn't of much help to the bar." Debra Cassens Weiss, *Law Prof Responds After Chief Justice Roberts Disses Legal Scholarship*, ABA JOURNAL (Jul. 7, 2011), http://www.abajournal.com/news/article/law_prof_responds_after_chief_justice_roberts_disses_legal_scholarship/.

2. Douglas A. Kahn & Jeffrey S. Lehman, *Tax Expenditure Budgets: A Critical View*, 54 TAX NOTES 1661 (Mar. 30, 1992). As a side note, this piece is likely the only piece of legal scholarship to compare tax experts to zookeeping experts. *Id.* at 1665.

tem;³ additionally he provided the definitive policy justification for the current tax treatment of gifts which are excluded from income.⁴ These publications are just a few examples of his work that have made him a giant in the field of taxation.

Professor Kahn's tenure at the University of Michigan Law School, however, will not be defined solely by his research. Although he enjoys that aspect of the job, teaching has always been his true passion, and the University of Michigan law students have always been his pride and joy. Professor Kahn has visited at several outstanding schools throughout his career (Stanford, Duke, University of North Carolina, and Fordham), but his Michigan students hold a special place in his heart. When asked why he stayed at Michigan when he had received offers from other schools, he once stated, "I have never had any group of students that I have enjoyed as much as the ones that I've had here."⁵

Both as Professor Kahn's son and his student, I have witnessed that joy of teaching and love for his students. I particularly remember one incident when, as a young child walking with my father in downtown Ann Arbor, a law student stopped him to say hello. The student said that my father's tax class was his favorite class in law school. He noted that although not initially interested in the topic, he ended up loving tax law and had learned so much from the course. This encounter struck a chord with me as a child. It planted a seed in my mind that I too wanted a job where people would stop you on the street to tell you how much they enjoyed your work. Furthermore, the student's sentiments were not unusual. Whether interested in tax or not (and most students came away with an appreciation of the topic that they did not think was possible), Michigan law students emerged as better lawyers for having taken a class with Professor Kahn. His passion for the subject, his desire to help students learn and his joy of teaching were evident in every course that he taught. My father treasures his time in the classroom. I know it will be what he misses most about the University of Michigan.

The University of Michigan Law School will not be the same without the highly esteemed Professor Kahn. Many will find it strange that he is not walking the hallways, teaching a group of students the complexities of the tax code by using the problem method (a method of teaching tax that he helped pioneer), or arguing with colleagues about anything and everything in the faculty lounge, especially the play-calling in the last Wolverine

3. See, e.g., Douglas A. Kahn, *Accelerated Depreciation – Tax Expenditure or Proper Allowance for Measuring Net Income?*, 78 MICH. L. REV. 1 (1979).

4. Douglas A. Kahn & Jeffrey H. Kahn, "Gifts, Gifts, and Gifts" – *The Income Tax Definition and Treatment of Private and Charitable "Gifts" and A Principled Policy Justification for the Exclusion of Gifts from Income*, 78 NOTRE DAME L. REV. 441 (2003).

5. Meg Barnard & Lisa Blackburn, *40 Years in the Making: Professor Kahn Talks Tax, Teaching*, RES GESTAE, Oct. 12, at 8, 2004, http://students.law.umich.edu/rg/issues/2004/04_10_12/04_10_12.pdf.

football game. The school will be quieter without his loud and infectious laughter.

It is a testament to his legacy that the *Michigan Business & Entrepreneurial Law Review* has been able to bring together such a strong and diverse group of professionals in this edition to honor Professor Kahn's time and work at the University of Michigan. The edition is privileged to have contributions from his fellow Law School tax colleagues—Professors Reuven Avi-Yonah, Jim Hines, and Kyle Logue. The rest of the authors, including myself, are former students. After fifty two years of teaching, there is a long list of people who could have contributed. But the group assembled, which includes not only non-tax lawyers but also non-lawyers, is a wonderful and representative group of the students that he influenced through the years.

Finally, there is Professor Kahn's own contribution to this edition. When asked to write a piece for the journal, he was unaware that the edition was a tribute to him. Yusuf Salloum, the editor in chief of this law review and a student in his class, asked him to write a piece for the journal. He agreed without question. It is a quintessential Kahn piece: a perceptive analysis of a challenging topic (he takes issue with a proposed change to the tax treatment of guaranteed payments under the partnership tax system), carefully researched and clearly written using examples to illustrate his arguments. It is a fine example of why his work has been so influential through his long career.

My father has often remarked that he always feels incredibly lucky to have the career that he has had. He truly looks back with no regrets, never wondering if he should have gone a different route. Probably very few people feel the same about their own careers. He has been blessed. While he was fortunate to spend his career at an institution as strong as the University of Michigan Law School, the school was also fortunate to have him on the faculty. The school will continue on and remain a world class institution, but it will never be able to replace Professor Douglas Kahn. Without him, the faculty lounge will be a bit quieter, the Internal Revenue Code will seem a bit more complicated, and students will not be able to take a class with one of the most gifted and caring teachers legal academia has ever known.

