



THEORY *at* WORK

BRINGING TRANSPARENCY TO TAXATION

Professor Kristin Hickman's busy year included advising federal policymakers and hosting an international conference

BY KATHY GRAVES

When the U.S. Treasury Department and the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) agreed to review tax regulations for the first time in more than three decades, Professor Kristin Hickman was the first person they called, tapping her as special adviser. Hickman, a national authority in tax policy and administrative law, spent a year helping OIRA develop the process for reviewing federal tax regulations.

"When I walked into OIRA's office a couple weeks after my appointment, they were just getting started with implementing the agreement," says Hickman. "Treasury and OIRA have different norms and cultures, plus the 2017 Tax Cuts and Jobs Act had just been enacted, so it was a particularly challenging time."

With rare expertise at the intersection of administrative and tax law, Hickman says she functioned as a translator. "My job was to help the agencies understand each other and to learn how to communicate and work together."

Bringing Transparency and Accountability to the Tax System

A deep belief in transparency and accountability drives Hickman's work. "Government can seem abstract, but tax is concrete," says Hickman. "You can't have effective government without taxes, and you can't collect taxes without effective tax administration. The tax system is most people's primary interaction with the government. And in our current political climate, we all need to be concerned about perceptions of the legitimacy of government action."

Hickman practiced as a certified public accountant for five years before earning her J.D. at Northwestern University School of Law. While she went to law school with an eye toward being a tax attorney, her path diversified after she worked with Thomas Merrill, her administrative law professor, and then clerked for the U.S. Court of Appeals for the District of Columbia Circuit. Her law review article with Merrill, "Chevron's Domain," was cited in a U.S. Supreme Court decision (*United States v.*



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—Professor Kristin Hickman

Photo: Tony Nelson

◀ **Kristin Hickman: Distinguished McKnight University Professor; Harlan Albert Rogers Professor in Law; Associate Director, Corporate Institute; Stanley V. Kinyon Tenured Teacher of the Year, 2016-17.**

more broadly the APA, should apply to tax regulations. As a result, the number of cases at the intersection of tax and administrative law grew, leading to the 2018 Treasury-OIRA agreement.

Shining an International Spotlight on Taxpayer Rights

This past May, Hickman was instrumental in bringing the International Conference on Taxpayer Rights to Minneapolis (the conference had previously been held in Amsterdam, Vienna, and Washington, D.C.) The event brings together government officials, scholars, and practitioners from around the world to explore how taxpayer rights globally serve as the foundation for effective tax administration.

Mead Corp., 2001). As a clerk, she observed that roughly 60 percent of the cases were about administrative law, and she began to notice differences between tax regulations and those of other federal agencies.

After joining the University of Minnesota Law School faculty in 2004, Hickman conducted an empirical study of three years of regulatory tax packages. She discovered that the Treasury Department had a weak record of compliance with the Administrative Procedures Act (APA), which governs how federal agencies develop and issue regulations.

“The APA imposes several procedural requirements on unelected officials at federal agencies,” says Hickman. “If regulations aren’t aligned with the APA, it erodes transparency, accountability, and public participation in the development of rules that govern taxpayer behavior.”

In 2011, the U.S. Supreme Court accepted Hickman’s interpretation of the Chevron standard of judicial review of agency regulations, ruling in *Mayo Foundation for Medical Education and Research v. United States* that *Chevron*, and

“Taxpayer rights are about transparency and accountability, and how tax agencies interact with taxpayers,” says Hickman. “An effective tax system relies on voluntary compliance, but that compliance is highly dependent on taxpayer attitudes, which in turn are influenced by government behavior. This conference is a rare opportunity for academics, revenue officials, and tax practitioners to talk about taxpayer rights and responsibilities and how to improve tax administration.”

Watching for Progress

Hickman is watching closely as the OIRA begins to implement review of tax regulations through the processes she helped design. She is in the early stages of writing a law review article about the work. “OIRA is an executive branch watchdog,” she says. “It plays a highly influential role in the regulatory process, and it most certainly can help create a more legitimate tax system.”

By Kathy Graves, a Minneapolis-based writer.