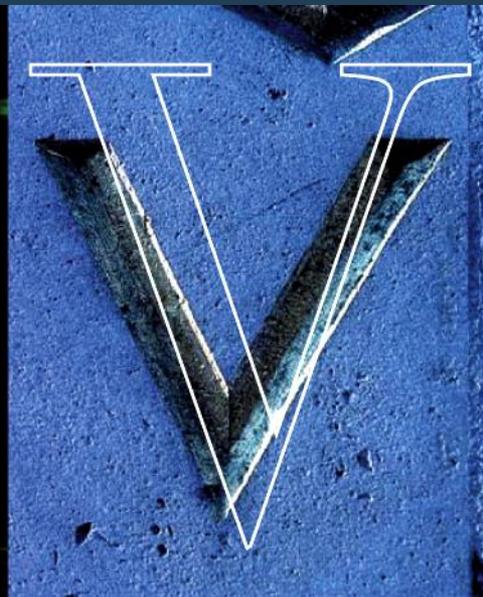
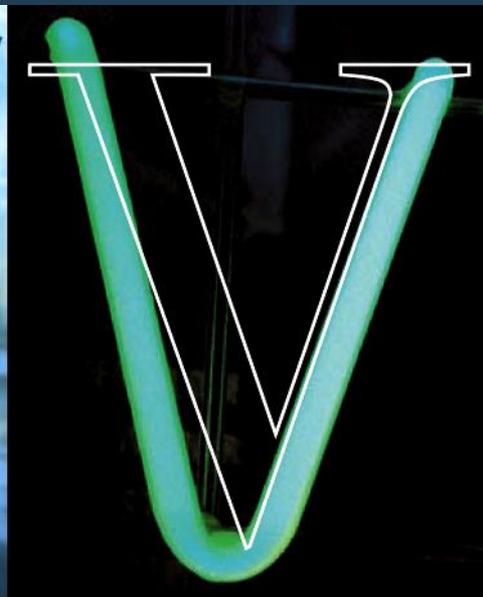
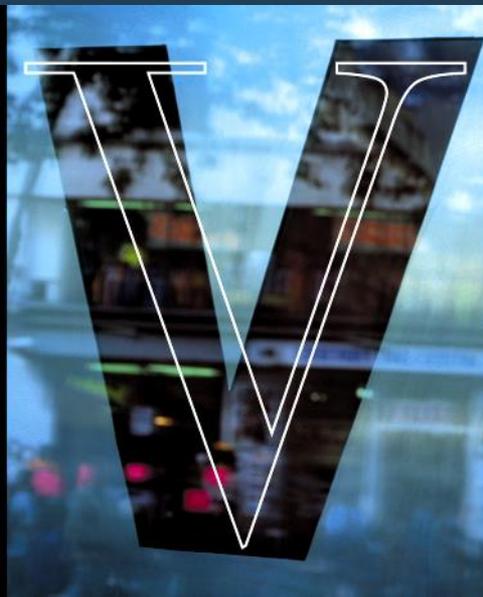
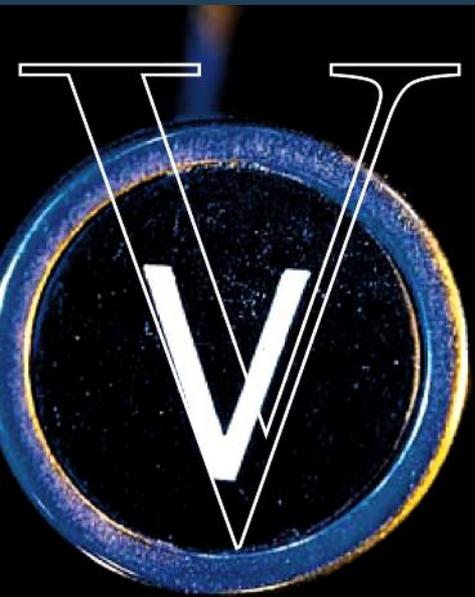


VENABLE[®]_{LLP}

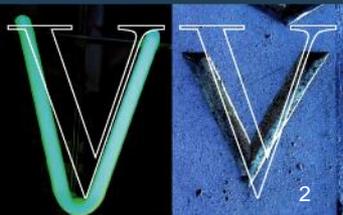
Heads Contracts: Compensation and Tax Implications

Caryn Pass & Harry Atlas
NBOA Webinar
December 10, 2015



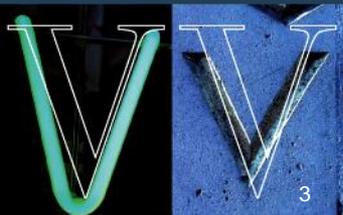
Overview

- Heads Retiring in Increasing Numbers
- Baby boomers held on to jobs
- Fewer applicants; more competition
- Contracts different then before
 - New heads are more sophisticated
 - Looking for more benefits
 - Looking for protections should they get terminated



Term

- Sends message to head
- Give security without extending beyond reasonable period
- Newer heads -- 3 years
- Renewed contracts – 3/5/7
- Evergreen Clauses
 - Benefit vs. Detriment
 - Allows contract to roll over for additional time following end of “term”
 - Time options: Additional year, term of agreement
 - Notice of decision not to “rollover”
 - Timing
 - Prior to end of last year of contract
 - After 2nd or 3rd year for period to allow for continued same term

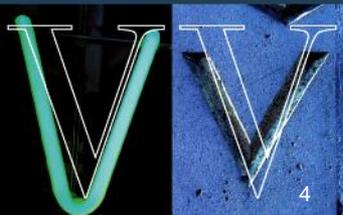


Compensation

- Salary
 - Amount to be paid in 1st year of contract
 - Each contract year in term

- Increase in salary
 - Determined by Board
 - Not less than “X” %
 - Same as faculty
 - Not less than prior year

- Bonus
 - Yearly or discretionary
 - Based on performance or result of “special performance”



403(b) Retirement Plan

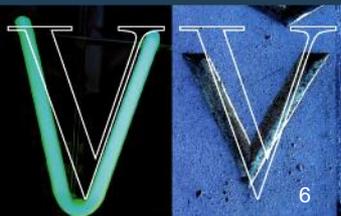
- Most independent schools are subject to nondiscrimination requirements which preclude special treatment of the Head under the 403(b) plan
- Certain types of schools closely related to a church (but not all church-affiliated schools) are exempt from the nondiscrimination requirements and can provide special 403(b) contributions for the Head

*Wise In The
School World*



Deferred Compensation – IRC Section 457

- 457(b) Plan
 - Fully vested at all times – a retirement benefit, not a golden handcuff
 - Annual contribution limit (\$18,000 for 2016)
 - Credited interest or participant-directed investment
 - Distribution elections made upon termination of employment with limited ability to change
 - Not eligible for IRA rollover
 - Section 457 is not applicable to certain types of schools closely related to a church



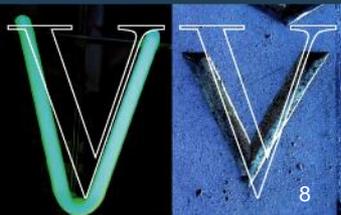
Deferred Compensation – IRC Section 457

- 457(f) Plan
 - Subject to taxation upon vesting – effective as a golden handcuff, less so as a retirement benefit
 - Can be subject to, or exempt from, IRC Section 409A, depending on whether payment of earnings is deferred beyond vesting date
 - No contribution limits
 - Credited interest or participant-directed investment
 - Distribution provisions must be set when each contribution credit is provided with limited ability to change
 - Not eligible for IRA rollover
 - Section 457 is not applicable to certain types of schools closely related to a church



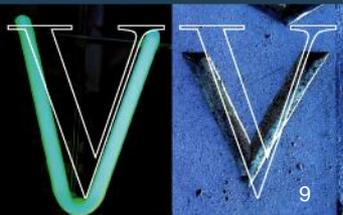
DOES
YOUR SCHOOL
HAVE A
457(b) PLAN?

*Wise In The
School World*



Tuition

- Tuition remission for a Head's children is non-taxable only if it meets IRS nondiscrimination requirements
 - Concept similar, but not identical, to the minimum coverage test for retirement plans
- Tuition remission must be *in addition to* salary; cannot be provided on a salary reduction basis
- Remission
 - If same as other employees, non-taxable
 - Greater than other employees: full amount taxable
- Payment of other institution tuition; taxable
 - Independent school or College
 - Amount of tuition of school
- Head executes enrollment document



School Provided Housing

- To be non-taxable under IRC Section 119(a):
 - School Housing
 - Property on or adjacent to campus
 - Condition of Employment
 - Used for benefit of employer
- “Qualified campus lodging” exemption under IRC Section 119(d) usually not helpful for off-campus housing because it only exempts rental value above 5% of the property’s FMV
- If not exempt, fair market rental value is subject to taxation.
- cleaning service, decorating budget, maintenance and repairs, etc.)
- value is taken into account when determining reasonableness of compensation

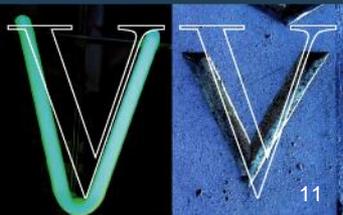
*Wise In The
School World*



Other Housing Options

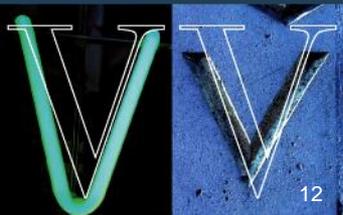
- Housing Allowance
 - Taxable income
 - Considered in the intermediate sanctions
 - Preferable to increasing the base salary for optics on 990 and isn't impacted by % increase on base salary
- Loan
 - Careful with regard to amount of loan
 - Reportable on 990, Considered possibly in intermediate sanctions
 - Arms length agreement
 - Written document
 - Market Interest rate, term of payment, collateral
 - Forgiveness of loan issues (question of whether it is truly a loan)
 - Give bonus in year of forgiveness as “payoff of loan”

*Wise In The
School World*



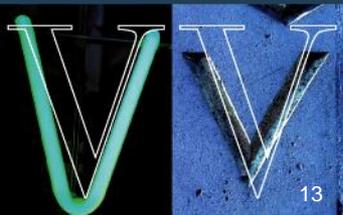
DOES YOUR
SCHOOL
OWN A HOME
FOR USE BY
THE HEAD?

*Wise In The
School World*



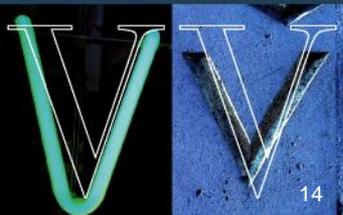
Termination

- By Head
 - Notice period by Head
- Mutual
 - Parties agree as to time and transition
- Death or Disability
 - Payment of Salary, Cobra, House
- Expiration of Agreement
- Term for Cause
 - Define cause, Appearance before Board, Ability to cure, Notice in writing
- Without Cause
 - Notice period (6/12/18 months)
 - Execution of release
 - COBRA or other benefit continuation defined



Severance

- Bona fide severance is exempt from the “tax when vested” rule of IRC Section 457(f)
- Severance can be exempt, in whole or in part, from IRC Section 409A
 - Short-term deferral (payment within 2-1/2 months after year-end)
 - Separation pay (limited amount within limited period)
- Be specific about timing of execution of release of claims relative to beginning of severance payments



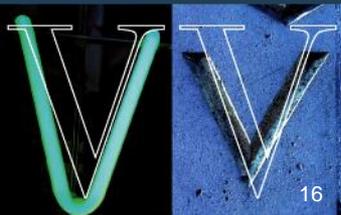
Extras

- Car
- Blackberry, laptop and cell phone
- Child Care
- Country Club
- Relocation Assistance
 - Moving, house sale, purchase expenses
- Attorney Fees
- Financial Advisor
- Executive Coach
- Accounts
 - Heads discretionary Account, Professional Development, Entertainment and travel
- College Accounts
- Copyright
- Use of Pictures, Videos and images
- Non compete/Non solicitation
- Sabbatical



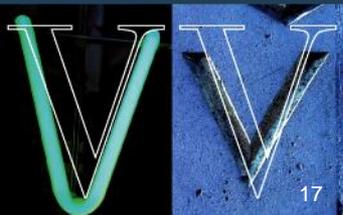
DOES YOUR
SCHOOL
CONDUCT AN
INTERMEDIATE
SANCTION
REVIEW?

*Wise In The
School World*



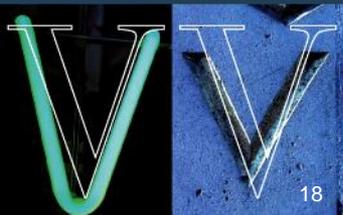
Intermediate Sanctions

- Obligations
 - Intermediate sanctions impose a 25% excise tax on any “disqualified person” who receives an “excess benefit” from a tax-exempt organization
 - If excess benefit is not repaid or otherwise restored to the school within a certain amount of time, the disqualified person is subject to an additional 200% tax.
 - Any officers, directors, trustees or school managers who knowingly and willingly approve (or fail to vote against) the excess benefit arrangement will also be taxed up to 10% or \$10,000, whichever is less.



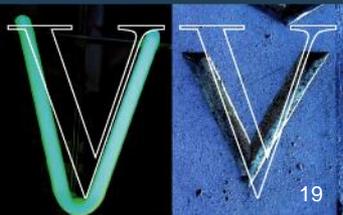
Safe Harbor

- Components
 - No Conflict of interest
 - Decision makers are in compliance with Board Conflict of Interest Policy
 - Comparable Data
 - Information and figures of similarly situated qualified persons taken into consideration
 - Documentation of Basis of Decision
 - Review of documents and maintenance



Comparable Data

- Factors to consider when selecting schools:
 - Years as Head of the School
 - Total experience as a Head
 - Total Budget of School
 - Grades at School
 - Total Enrollment at School
 - Tuition
 - Faculty numbers
 - Other programs
 - Property
 - New projects or programs; construction, addition of grades



Venable Independent School Law Practice

wise in the school world

www.Venable.com/education

@schoollawyer

Caryn Pass

cpass@venable.com

(DC) 202.344.8039

(NY) 212.370.6260

(Cell) 202.222.8026

Harry Atlas

hatlas@venable.com

(BA) 410.528.2848

(DC) 202.344.8296

Washington, D.C.:

575 7th Street, N.W.
Washington, D.C. 20004

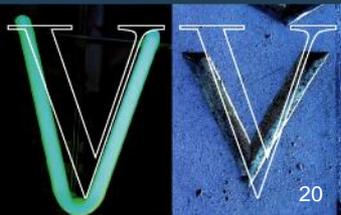
Baltimore, MD:

575 7th Street, N.W.
Washington, D.C. 20004

New York:

1270 Avenue of the Americas
New York, NY 10020

*Wise In The
School World*



New York Washington D.C.

Los Angeles

San Francisco

Baltimore

the road ahead
is bright

*Wise In The
School World*

