

PRACTICE

Tax Planning, Compliance & Controversy

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OVERVIEW

TAX PLANNING, COMPLIANCE & CONTROVERSY

Firm clients benefit from having members of our tax team as integral members of their transactional and corporate legal teams providing advice on structuring transactions and entity formation in a tax efficient manner to meet business objectives.

Clients include banks, insurance companies, professional corporations, real estate holding companies, partnerships, investment companies, and wealthy individuals. With more than 50 years of tax practice combined, there are few issues that we have not advised on or litigated.

As a consequence of our non-tax experience in partnership law, corporate law, real estate law, international law, and estate planning, we are often called on to draft the documents necessary to implement the solutions we propose and provide tax and business advice to meet business objectives.

Since federal, state and local taxing authorities continue to aggressively investigate and enforce the revenue laws, clients can rely on Bowditch's substantial trial experience representing businesses and individuals through all stages of civil and criminal tax related controversies.

And all members of the tax team possess a fundamental appreciation of the tax law, including the unique and often arcane procedural rules that can have a profound effect on the outcome of any tax position or dispute.

Experience shows us that most tax controversies can be resolved efficiently and advantageously through early intervention allowing the client to mitigate the costs and risk associated with protracted litigation and potential criminal consequences. The tax team is often called upon to consult with a client's other business advisors to identify and resolve minor issues before they blossom into major problems.

With that in mind, we encourage clients to involve our Tax Controversy group at the earliest stages to:

- Identify significant issues

- Develop key audit strategies
- Provide advice in responding to informational and document requests and summonses
- Establish procedures to identify and protect privileged documents
- Establish appropriate document retention procedures in order to preserve evidence

Although our Tax group regularly takes the lead role in complex tax matters at all levels of the state and federal court systems, many of our successes are achieved quickly and privately at the administrative level. Our clients also call upon us to address compliance issues and to provide advice with contemplated transactions in order to minimize potential tax consequences.

How we can help

- Foreign bank account reporting (FBAR) requirements
- IRS and State voluntary disclosure programs
- Trustee tax issues
- Employment tax issues
- Civil and criminal tax fraud allegations
- Partnership, LLC, joint venture and other disregarded entities
- Bankruptcy and non-judicial restructurings
- Private letter rulings and other guidance from the IRS
- Cross-border transactions
- Assist foreign nationals, dual nationals and expatriate U.S. citizens to come into compliance with their federal income tax responsibilities through compliance programs such as the IRS Offshore Voluntary Disclosure Program (OVDP) and Streamlined Filing Compliance Procedures
- Estate planning, probate administration and fiduciary income tax matters
- Requests for IRS Private Letter Rulings in complex cases
- Waivers and abatements of federal and state tax penalties
- Complex income tax, gift tax and information returns (such as Forms 3520, 5471, 5472, and FinCen Form 114 FBAR) for foreign nationals, business professionals and high net worth individuals
- Businesses and individuals in federal and state tax audits, including audits of income tax returns, payroll tax returns and state sales, use and meals tax returns
- Business and individual “non-filers,” including those with complex income tax matters, to come into compliance with their federal and state income tax responsibilities
- Defend businesses and individuals against aggressive collections activities from the IRS and DOR, including defense against liens and levies
- Negotiate Offers in Compromise with the IRS and Offers in Settlement with the Massachusetts Department of Revenue (DOR)
- Litigate Massachusetts tax and financial controversies (when necessary) before the Supreme Judicial

Court, Appeals Court, Appellate Tax Board, Superior Court and Probate and Family Court

- Litigate federal tax controversies (when necessary) before the U.S. Tax Court
- Negotiate installment agreements including partial payment installment agreements (PPIAs) and other payment arrangements with the IRS and DOR
- Prepare claims for “innocent spouse relief”

EXPERIENCE

An internal investigation neutralizes federal accusations against a New England business

When the part owner of a business in New England was suspected of money laundering, the federal government went after him hard with a forfeiture petition. We took the time to figure out how our client’s business made money and then sat him down in front of the U.S. Attorney, FBI and the IRS. Our client explained how his business worked, and everybody’s jaw dropped. The matter was resolved favorably for our client.

Substantiating business expenses for an IRS audit

An author turned to us for help when she was audited for her home office and research expenses. The IRS said that nothing she claimed was deductible. In response to the IRS, we compiled bank statements, pictures, receipts and other documentation. We organized everything into a single package and presented it to the IRS, which agreed with our position that the claimed expenses were allowable. This was an especially rewarding case because we were able to fully substantiate a somewhat unorthodox approach to deducting these expenses.

An assessment substantially reduced after correcting a faulty methodology

Our client, a dual U.S.-foreign citizen, made a voluntary disclosure of her U.S. income tax liabilities through the IRS Offshore Voluntary Disclosure Initiative (OVDI). The original agent assigned to her case proposed an additional tax assessment of several hundred thousand dollars. We conducted a comprehensive review of the amended tax returns and the client’s foreign tax returns. In our argument to the IRS, we showed that the methodology and the proposed assessment were erroneous based on the amount of foreign taxes paid and the applicable tax treaty. As a result, the IRS substantially reduced the client’s proposed tax assessment and, following her “opt out” of the OVDI, waived all accuracy-related penalties and refunded the taxes that she overpaid for closed tax years.

An all-encompassing corporate income tax audit concluded with a “no change” letter

A tax return preparer attempted to file an extension for one of his corporate clients, but instead filed a return listing zero income and expenses for a particular tax year. After comparing this return with the credit card payments reported on Forms 1099-K for that year, the IRS subjected the taxpayer to a comprehensive audit of all income and expense items that the company attempted to report on an amended income tax return. The auditor told us that the preparer sent him a box of unsorted documents and that he had no idea where to start. We asked him to return the box to us so that we could organize and re-present the material in a cohesive way. By establishing consistency between the company’s financial records and copies of all the invoices for each expense category, we were able to obtain the best possible result for our client—a “no change” letter.

An invoicing investigation uncovers widespread fraud

When we were hired by a Massachusetts manufacturer after the HR director of the company realized

that invoices were being padded, we investigated who was involved and determined how we were going to prove it. As we proceeded to investigate the client's allegation of fraudulent invoice and expense practices, we began to unravel a widespread scheme involving several employees. Our report to the client could have served as an indictment. It resulted in several employees being terminated with cause and saved the client hundreds of thousands of dollars annually.

Advised an out-of-state engineering firm on multi-jurisdiction tax issues

A client headquartered and incorporated outside of Massachusetts recently established an office and registered to do business here as a foreign corporation. Several of the shareholder/employees who would be working here were residents of other New England states. The Bowditch team drafted an advisory for the employer describing payroll tax obligations as well as potential tax reporting and liability issues with respect to each shareholder/employee in each jurisdiction.

OTHER EXPERIENCE

- National digital marketing company in a tax controversy involving sales tax audit and employee classification issues. Identified the appropriate structure to minimize tax burden.
- The simultaneous sale of a southeastern Massachusetts elder care services corporation to a competitor with the resolution of past due taxes owed to the IRS, Massachusetts Department of Revenue ("DOR"), and Massachusetts Department of Unemployment Assistance ("DUA"). We were able to resolve the crushing debts owed to the tax authorities, the sale of the client's assets for fair market value, and eliminate any pass through tax liabilities to the client's shareholders.
- Partners of a multi-tiered commercial real estate development at the Massachusetts Appellate Tax Board ("ATB") who allegedly failed to report certain cancellation of debt as income to the partnership. We successfully showed DOR counsel why the cancelled debts were not income to certain partners resolving the matter for a nominal sum before incurring the costs of trial preparation.
- In a series of cases docketed in the United States Tax Court as *Spanish Village Realty Group, Joseph Irom, TMP v. Commissioner*, USTC Docket 27502-07; *Prince Manor Apartment Associates, David Kraus, Partner v. Commissioner*, USTC Docket 23574-06; and *Regency Plaza Associates, Auchter, TMP v. Commissioner*, USTC 7150-08 and 7197-08; we successfully challenged notices of deficiency to the partners of these real estate commercial development projects, totaling more than \$8 million, and won refunds for those who originally paid the IRS assessments after discovery revealed substantial errors by the IRS in their calculation of income following the bankruptcy proceedings of each of these partnerships.
- Negotiated the wind-down and resolution of a company saddled with crushing tax debts owed to IRS and DUA that resulted from the 2008 recession and organized the formation of a new business allowing the promoters to continue in business.
- Advice and counsel to clients, board members of a local bank, in response to a variety of questions including matters such as income tax basis of OREO property acquired, treatment of loan loss reserves, compensation of bank executives, and retirement plans.
- Significant net-worth client, including a high seven-figure income, in an income tax audit before the IRS Worcester office. The audit raised a number of issues, including substantial capital gains, installment sale income and charitable contributions arising out of the client's multi-million dollar payout from the sale of the client's former employer. The engagement required representation before several audit conferences and intensive document production and resulted in a "no change" report issued to the client.