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PRACTICES

Tax Policy

EDUCATION

- LL.M. (Taxation), Georgetown University Law Center, with distinction, 1998
- J.D., The George Washington University Law School, with highest honors, Order of the Coif, 1993
- B.B.A., Emory University, with high distinction, 1990

Marc J. Gerson

MEMBER
PRACTICE LEAD, GOVERNMENT AFFAIRS

Marc Gerson's practice focuses on federal tax policy, providing strategic advice and representation to clients before Congress, the U.S. Department of the Treasury (Treasury), and the Internal Revenue Service (IRS). Mr. Gerson was described by clients in *Chambers USA* as "incredibly responsive, a straight talker and well respected on Capitol Hill."

Prior to rejoining Miller & Chevalier, Mr. Gerson served as Majority Tax Counsel to the U.S. House of Representatives Committee on Ways and Means. In that role, he provided policy and technical analysis with respect to the development and evaluation of tax legislation. He counseled the Committee on Ways and Means on issues relating to international taxation, corporate taxation, tax shelters, financial services taxation, taxation of pass-through entities, tax-exempt bond financing, and tax accounting methods.

Mr. Gerson acted as the staff liaison to Committee on Ways and Means members, the U.S. Senate Committee on Finance, the Joint Committee on Taxation, and Treasury. He served as counsel on all major tax legislation enacted in the 109th Congress, including the *Gulf Opportunity Zone Act of 2005*, the *Tax Increase Prevention and Reconciliation Act of 2005*, and the *Tax Relief and Health Care Act of 2006*.

Prior to joining the Committee on Ways and Means staff, Mr. Gerson worked as Segment Tax Counsel for Textron Inc., a Fortune 200 multi-industry company, where he was responsible for all tax functions of its fastener and industrial product business segments.

Mr. Gerson is widely recognized for his expertise regarding tax technical corrections legislation. His article, "[Technically Speaking: The Art of Technical Corrections](#)" (Tax Notes) is regarded as the seminal work on the topic.

REPRESENTATIVE ENGAGEMENTS

- *Qualification of Staffing Companies for Pass-Through Deduction.* Working with a major industry trade association, secured qualification of staffing companies for the new 20% deduction for pass-through income enacted as part of the *Tax Cuts and Jobs Act* (2017). The representation involved preparing written comments and providing public hearing testimony before Treasury and the IRS to ensure that staffing companies qualified for the deduction.
- *Qualification of Engineering Companies for Pass-Through Deduction.* Working with a major industry trade association, secured qualification of engineering companies for the new 20% deduction for pass-through income enacted as part of the *Tax Cuts and Jobs Act* (2017). Although engineering companies were ineligible for the deduction in the bills originally passed by the U.S. House of Representatives and the U.S. Senate, a targeted provision was added in the conference report allowing these companies to qualify for the deduction. The firm also successfully represented the trade association before Treasury and the IRS to ensure that administrative guidance was issued consistent with the

- provision.
- *Tax Cuts and Jobs Act International Tax Administrative Guidance*. Representing several companies and trade associations before Treasury and the IRS to secure favorable administrative guidance under provisions in the *Tax Cuts and Jobs Act* (2017), including the base erosion and anti-abuse tax (BEAT), the section 965 transition tax, the global intangible low-taxed income (GILTI) regime, the foreign tax credit branch limitation, and repeal of the Subpart F downward attribution rule. These representations involve meeting with senior Treasury and IRS officials, preparing written comments, and providing public hearing testimony.
 - *Tax Cuts and Jobs Act Technical Corrections Legislation*. Marc Gerson is widely recognized for his expertise regarding tax technical corrections legislation. His article, "[Technically Speaking: The Art of Technical Corrections](#)" (*Tax Notes*) is regarded as the seminal work on the topic. As a result of this recognized expertise, the firm has been retained to pursue critical technical corrections to the *Tax Cuts and Jobs Act* (2017) to ensure that the legislation fully implements Congressional intent. Specifically, the firm has been retained to pursue a technical correction to clarify the application of the attribution rules under the Subpart F controlled foreign corporation rules to ensure that the repeal of the so-called "downward attribution" rule does not unintentionally impact common business ownership structures. In addition, the firm has been retained to pursue a technical correction to clarify that the cost recovery period for qualified improvement property is 15 years such that it is eligible for bonus depreciation. As a result of the firm's efforts, both technical corrections passed the U.S. House of Representatives in December of 2018 and are currently under consideration in the U.S. Senate. While these technical corrections are pending, the firm is working with the Treasury Department and the Internal Revenue Service to secure administrative guidance to implement these important technical corrections before their enactment into law.
 - *ITIN Technical Correction*. Successfully lobbied on behalf of a large real estate investment and management company for the inclusion of a technical correction in the *Consolidated Appropriations Act, 2018* to facilitate the investment by foreign individuals in U.S. real estate investment funds by means of the individual taxpayer identification number (ITIN) program. As part of this representation, the firm secured a so-called "Four Horsemen" letter from the Chairmen and Ranking Members of the Senate Committee on Finance and the House Committee on Ways and Means requesting that Treasury and the IRS issue administrative guidance to implement the technical correction before its enactment into law.
 - *S Corporation Legislation*. Successfully lobbied for the inclusion of a provision in the *Tax Cuts and Jobs Act* (2017) that encourages non-cash charitable contributions by subchapter S corporations owned by electing small business trusts (ESBTs). Similarly, successfully lobbied for the inclusion of a provision in the *Small Business and Work Opportunity Act of 2007* that allows ESBTs to finance the acquisition of S corporation stock.
 - *Guidance Regarding Charitable Contributions of Inventory Property*. Working with Treasury and the IRS to secure comprehensive guidance regarding the tax treatment of charitable contributions of food inventory. This guidance project has been included on every Treasury/IRS Priority Guidance Plan since 2015-2016 and is essential to ensure that

such contributions continue to satisfy the demand placed on food banks and hunger-relief agencies. This representation is the result of a prior engagement in which the firm received temporary guidance from Treasury and the IRS ([Notice 2008-90](#)) by demonstrating the urgent need for immediate changes to the charitable-contribution regulations to eliminate the risk of reduced donations to these organizations.

- *Treatment of Excess Pension Plan Assets.* Representing a Fortune 500 technology company in obtaining a change in federal tax law included in the pending *Retirement Security and Savings Acts of 2019* that allows excess pension plan assets to be used to fund retiree medical and life insurance benefits. This change would allow more employers to utilize assets from their overfunded pension plans to fund these important benefits, which is particularly important given the rising cost of health care and the decline of employer-provided retiree coverage in the United States.
- *Alaska Native Corporation in "Landmark Purchase Agreement" with the United States Forest Service.* Represented Shee Atiká, Inc., an Alaska Native Corporation, before Congress and the United States Forest Service in connection with the multi-phase acquisition by the federal government of approximately 22,000 acres within the Admiralty Island National Monument Wilderness. The representation involved resolution of several unique and precedent-setting appropriation, authorization, and budget issues. The Forest Service and Shee Atiká publicly referred to the transaction as a "landmark purchase agreement" and noted that the purchase is the "largest transfer of lands from a private inholding back into Forest Service-managed Wilderness in the history of the agency." Due to the size of the property, the purchase agreement established a method to acquire the property in segments ([first phase announced September 2016](#), [second phase announced July 2017](#), [third phase announced June 2018](#), [final phase announced January 2020](#)).
- *Alaska Native Settlement Trust Legislation and Regulations.* Successfully lobbied for the inclusion in the *American Taxpayer Relief Act of 2012* of a permanent extension of an election allowing Alaska Native settlement trusts to maximize the benefits they provide to Alaska Natives, a population that is generally recognized as among the most economically disadvantaged in the United States. The firm also secured final regulations from Treasury and the IRS that Alaska Native settlement trusts are not subject to the 3.8% net investment income tax enacted as part of the *Patient Protection and Affordable Care Act* (ACA). The representation involved preparing written comments and public hearing testimony and required convincing Treasury and the IRS to reverse their original decision to subject the settlement trusts to the tax.
- *Type III Governmental Supporting Organization Regulations.* Representing a Type III governmental supporting organization before Treasury and the IRS to secure guidance allowing the organization to continue providing support to a significant federal government program. This representation has involved drafting and submitting numerous written comments to Treasury and the IRS, which is necessitated by the unique role that this organization plays in supporting the federal government.
- *Medical Device Excise Tax Regulations and Pre-Filing Agreement.* On behalf of one of the largest global medical device manufacturers, submitted detailed comments to Treasury and the IRS in connection with the development of regulations and other guidance under the medical device excise tax as enacted by the ACA. The firm then advised the company regarding the implementation of the regulations including, by means of a pre-filing

agreement with the IRS, an agreed methodology to apply and calculate the tax with respect to the company's diversified product lines. It is our understanding that this pre-filing agreement was the first of its kind in the medical device industry.

- *Health Care Reform Legislation*. Represented one of the largest privately-owned insurance companies in the United States during consideration of the ACA. In particular, the firm represented the company's interests with respect to proposals involving the taxation of employer-provided insurance products. The representation included monitoring and analyzing proposed legislation, drafting material for congressional briefings, and representing the client's interests in meetings with members of Congress and their staffs. The representation of the company will continue to ensure that any ACA "repeal/replace" efforts do not negatively impact the taxation of the company's insurance products

GOVERNMENT EXPERIENCE

- Majority Tax Counsel, U.S. House of Representatives Committee on Ways and Means, 2005 - 2006

IN-HOUSE EXPERIENCE

- Segment Tax Counsel, Textron Inc., 2000 - 2003

RANKINGS AND RECOGNITION

- *Chambers USA*: Government Relations (Nationwide), 2015, 2017 - 2020
- *Chambers USA*: Tax (District of Columbia), 2018 - 2020
- *Legal 500*: Government: Government Relations, 2015 - 2020
- *Legal 500*: Tax: U.S. Taxes: Non-Contentious, 2015, 2019 - 2020
- *The Best Lawyers in America*[®]: Government Relations Practice, 2020
- Washington's Top Lawyers: Tax (*Washingtonian Magazine*), 2017 - 2018

AFFILIATIONS

- Fellow, American College of Tax Counsel
- Member, Advisory Board, *CCH International Tax Journal*
- Member, Board of Advisors, The S Corporation Association
- Member, Steering Committee, Section on Taxation, Federal Bar Association

ADMISSIONS

Bar Admissions

- District of Columbia

Court Admissions

- United States Tax Court
- United States District Court for the District of Columbia
- United States Court of Appeals for the Ninth Circuit