

## Tax Policy

Miller & Chevalier is widely recognized as a leader in tax policy. We are the first and only firm recognized in Band 1 for Government Relations: Specialist Tax Firms in *Chambers USA*. *Chambers* describes the firm as a "specialist tax boutique regarded as the preeminent firm for tax policy," noting that it "boasts enviable experience in dealing with Congress, Treasury, and the IRS." We were awarded the *International Tax Review's* Americas Top Tax Policy Firm of the Year in 2012, 2013, 2015, and 2016.

Miller & Chevalier's tax policy practice represents our clients' interests as Congress enacts laws and as Treasury and the IRS develop guidance to implement those laws. We understand the inner workings of government decision-making processes and have long-standing relationships with the Congressional tax-writing committees, Treasury, and the IRS. That understanding comes from our lawyers' experience in senior tax policy-making positions; two have served as Majority Tax Counsel to the U.S. House of Representatives Committee on Ways and Means and another is a former IRS Commissioner. The combination of our government experience with technical tax proficiency distinguishes our practice and offers our clients a distinct advantage.

Our tax policy practice creates and implements strategies to enact, modify, or oppose tax legislation. We analyze legislation for our clients and alert them to risks and opportunities. We help craft strategies and prepare materials to promote and support those strategies, including position papers, Congressional hearing testimony, proposed statutory language and legislative history, and revenue estimate requests. Once legislation is enacted, we represent clients before Treasury and the IRS, providing suggested guidance, written comments, and public hearing testimony regarding regulations and other administrative guidance.

Miller & Chevalier commissions an annual tax policy forecast survey that measures the perspective and attitudes of leading executives on the direction of tax policy. In addition, Miller & Chevalier's "DC Tax Flash" is an electronic newsletter service that provides our clients with real-time access to federal tax policy developments as they occur.

### 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 Act 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.
- *Representation of Alaska Native Corporation in "Landmark Purchase Agreement" with the United States Forest Service.* Representing Shee Atiká, Inc., an Alaska Native Corporation, before Congress and the United States Forest Service in connection with the acquisition by the federal government of approximately 22,000 acres within the Admiralty Island National Monument Wilderness. The representation involves resolution of several unique and precedent-setting appropriation, authorization, and budget issues. In announcing the transaction, the Forest Service and Shee Atiká referred to their "landmark purchase agreement" and noted that, upon completion, the purchase will represent 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. The firm continues to represent Shee Atiká through the completion of this multi-phase transaction ([second phase announced July 2017](#), [third phase announced June 2018](#)).
- *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.
- *Tax Representation of Foreign Government.* Represented the ministry of finance of a major Southeast Asian government before Congress, Treasury, and the IRS with respect to U.S. and international tax issues.
- *Tax Treatment of Governmental Entity.* Served as tax counsel to the treasury department of a governmental entity. In that capacity, the firm has assisted the government on a broad range of tax policy matters. The firm was the government's principal advisor in developing submissions to Congress, Treasury, and the IRS in support of tax reform proposals that would affect the government. The firm has also assisted in advocating for the extension of some expiring tax provisions of particular interest to the government. In addition, the firm advised the government in connection with its efforts to amend various U.S. tax treaties.
- *Tax-Related Congressional Investigations.* Represented clients in connection with tax-related investigations conducted by the U.S. House of Representatives Committee on Ways and Means, the U.S. Senate Committee on Finance, the U.S. Senate Permanent Subcommittee on Investigations, and the U.S. House of Representatives Committee on Energy and Commerce. These investigations have involved several topics, including energy tax credits, promotion of tax shelters, financial statement disclosure of tax matters, repatriation of foreign earnings, use of offshore subsidiaries, the tax treatment of certain religious organizations, and the treatment of certain health insurance plans under the ACA.
- *Congressional Testimony.* Represented clients in connection with tax-related hearings before the U.S. House of Representatives Committee on Ways and Means and the U.S. Senate Committee on Finance. Prepared written comments and public hearing testimony on several topics including comprehensive tax reform, transfer pricing, and the mortgage interest deduction.
- *Bonus Depreciation Legislation.* Successfully lobbied on behalf of a major corporation to enact Section 460(c)(6) of the Internal Revenue Code, which allows long-term contractors using the percentage-of-completion accounting method to benefit from bonus depreciation.

## **GOVERNMENT EXPERIENCE**

- Majority Tax Counsel, U.S. House of Representatives Committee on Ways and Means
- Assistant Chief of Staff, Joint Committee on Taxation
- Assistant Legislative Counsel, Joint Committee on Taxation
- Legislation Attorney, Joint Committee on Taxation
- Legislative Director, U.S. Senate
- Senior Counsel and Lead Economic Policy Advisor, Senior Member of the U.S. Senate Committee on Finance

- Tax and Trade Counsel, Senior Member of the U.S. House of Representatives Committee on Ways and Means
- Advisor to the Assistant Secretary for Tax Policy, U.S. Department of the Treasury
- Associate International Tax Counsel, U.S. Department of the Treasury
- Attorney Advisor, U.S. Department of the Treasury
- Honors Attorney, U.S. Department of the Treasury
- Commissioner, Internal Revenue Service
- Acting Chief Counsel, Internal Revenue Service
- Deputy Chief Counsel, Internal Revenue Service
- Counselor to the Commissioner, Internal Revenue Service
- Assistant Commissioner (Technical), Internal Revenue Service
- Attorney Advisor, Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service
- Honors Attorney, Office of the Associate Chief Counsel (International), Internal Revenue Service
- Tax Assistant to the Solicitor General, U.S. Department of Justice

## **RANKINGS AND RECOGNITION**

- *Chambers USA*: Government Relations – Specialist Tax Firms (Nationwide), Band 1, 2019
- *International Tax Review "Americas Tax Awards"*: Americas Tax Policy Firm of the Year, 2012 - 2013, 2015 - 2016
- *Legal 500*: Government: Government Relations (U.S.), 2015 - 2019
- *Chambers USA*: Tax Team of the Year, 2016
- *Chambers USA*: Tax: Controversy (Nationwide), 2007 - 2018
- *Chambers USA*: Tax (District of Columbia), 2003 - 2018
- *U.S. News - Best Lawyers*® "Best Law Firms": Tax Law (National), 2010 - 2020
- *U.S. News - Best Lawyers*® "Best Law Firms": Tax Law (District of Columbia), 2010 - 2020
- *International Tax Review*: World Tax (Washington, DC), 2012, 2014 - 2020
- *International Tax Review*: World Transfer Pricing (National), 2014 - 2020
- *International Tax Review*: Tier 1 U.S. Firm, Tax Planning Survey, 2018
- *International Tax Review "Americas Tax Awards"*: Washington, DC Tax Firm of the Year, 2013
- *International Tax Review "Americas Tax Awards"*: Washington, DC Transfer Pricing Firm of the Year, 2012
- *Legal 500*: Tax: Contentious (U.S.), 2007 - 2019
- *Legal 500*: Tax: Non-Contentious (U.S.), 2013 - 2019
- *Legal 500*: Tax: International Tax (U.S.), 2013 - 2019