

Tax Policy

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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 have been awarded the *International Tax Review's* Americas Top Tax Policy Firm of the Year multiple times.

Miller & Chevalier's tax policy practice represents our clients' interests as Congress enacts laws and as the Treasury Department (Treasury) and the Internal Revenue Service (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.

Representative Engagements

- *Favorable Administrative Guidance Regarding Treatment of Loss Carryforwards in Connection With Telecommunications Merger* . Secured favorable administrative guidance regarding the treatment of loss carryforwards to secure a significant tax benefit in connection with a telecommunications merger. As a result of the firm's representation before the Treasury Department and the Internal Revenue Service, the applicable regulations contained a delayed effective date and a transition rule to exclude the merger from proposed limitations on the use of loss carryforwards that would have impacted the pricing and financing of the transaction.
- *PFIC Legislation to Enhance the Availability and Affordability of Municipal Bond Insurance* . Representing the world's leading financial guaranty insurer to secure legislation to address an unintended consequence of modifications to the passive foreign investment company (PFIC) insurance exception enacted as part of the *Tax Cuts and Jobs Act* (2017). In 2020, this legislation was included in a bipartisan bill introduced in the U.S. House of Representatives (H.R. 5746) and, separately, was also included in H.R. 2, *The Moving Forward Act*, which passed the U.S. House of Representatives. The legislation was recently reintroduced in both the House and the U.S. Senate (as H.R. 4422 (2021) and S. 3217 (2021), respectively, and passed the House as part of HR. 5376, the *Build Back Better Act*, which is currently pending in the Senate. Enactment of the legislation will enhance the availability and affordability of municipal bond insurance to state and local governments.
- *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 2021* 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.
- *Tax Cuts and Jobs Act Technical Corrections Legislation* . The firm was 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 was 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, the technical correction was enacted in March of 2020 as part of the *Coronavirus Aid, Relief and Economic Security (CARES) Act* . In addition, the firm was also 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. This technical correction passed the U.S. House of Representatives in December of 2018 and has been reintroduced in a pending bipartisan bill introduced in the House (H.R. 2847).
- *Guidance Regarding Charitable Contributions of Inventory Property* . Working with the Treasury Department and the Internal Revenue Service to secure comprehensive guidance regarding the tax treatment of charitable contributions of food inventory. This guidance project has been included on every Treasury Department/Internal Revenue Service 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 the Treasury Department and the Internal Revenue Service by demonstrating the urgent need for immediate changes to the charitable-contribution regulations to eliminate the risk of reduced donations to these organizations.
- *Qualification of Staffing Companies for Pass-Through Deduction* . Working with a major industry trade association, secured qualification of staffing companies for the 20 percent 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 the Treasury Department and the Internal Revenue Service 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 20 percent 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 the Treasury Department and the Internal Revenue Service to ensure that administrative guidance was issued consistent with the provision.

- *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 U.S. Senate Committee on Finance and the U.S. House of Representatives Committee on Ways and Means requesting that the Treasury Department and the Internal Revenue Service 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.
- *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 was the "largest transfer of lands from a private inholding back into Forest Service-managed Wilderness in the history of the agency."
- *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 the Treasury Department and the Internal Revenue Service that Alaska Native settlement trusts are not subject to the 3.8 percent 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 the Treasury Department and the Internal Revenue Service to reverse their original decision to subject the settlement trusts to the tax.
- *Congressional Health Insurance Investigations*. Represented a large regional health insurance company before the U.S. House of Representatives Committee on Energy and Commerce in connection with two concurrent Democratic committee staff investigations regarding short-term limited duration health insurance plans and COVID-19 testing coverage. The representation involved engaging with the Democratic committee staff and making multiple submissions in response to information requests from the staff.

Government Experience

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

- Legislative Director, U.S. Senate
- Commissioner, Internal Revenue Service
- Assistant Commissioner (Technical), Internal Revenue Service
- Acting Chief Counsel, Internal Revenue Service
- Deputy Chief Counsel, Internal Revenue Service
- Counselor to the Commissioner, Internal Revenue Service
- 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, Office of the Associate Chief Counsel (International), Internal Revenue Service
- Honors Attorney, U.S. Department of the Treasury

Rankings and Recognition

- *Chambers USA*: Government Relations: Specialist Tax Firms (Nationwide), 2019 - 2022
- *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 - 2022