
TAXATION

Foulston Siefkin's tax attorneys provide a broad range of tax related services including tax planning and representation before the IRS and other tax authorities and tax agencies. We are advocates for individuals and businesses alike.

Our attorneys develop structures for domestic and international business transactions that are optimal for the client's business and tax objectives and non-tax legal requirements. Our attorneys have considerable experience in the taxation of business organizations, corporate and partnership taxation, reorganizations, individual income taxes, pension and employee benefits, employee compensation planning, estate and gift tax, exempt organizations, foreign tax, excise, sales, use, ad valorem, and property taxes. Most of our attorneys hold advanced relevant degrees (LL.M. or M.B.A.) and many are recognized by their peers for their superior skills through membership in the American College of Tax Counsel (ACTC) and/or the American College of Trust and Estate Counsel (ACTEC).

AREAS OF REPRESENTATION

Business Tax Planning

- In conjunction with the firm's Business lawyers, we represent all forms of business enterprises from start-ups and family businesses to publicly traded companies. Our representation spans the business life cycle from business formation, developing and implementing tax-advantageous exit strategies, and bankruptcy and reorganization if the circumstances arise.
- Corporations. We assist corporations and their owners with all tax aspects affecting C corporations including the benefits of whether to incorporate as a C corporation under applicable tax and corporate laws. We have expertise structuring and implementing tax-advantaged corporate reorganizations and issues concerning the conversions between C and S corporations.
- Pass-through entities (LLCs, partnerships and Subchapter S corporations). We regularly deal with specialized tax problems of pass-through and non-corporate entities, including income and loss allocations, problems relating to allocation of liabilities for basis purposes, and employment and withholding tax issues. We also deal with issues that arise for partnerships/LLCs with tax-exempt or foreign partners, disguised sales and built-in gains issues that arise when appreciated property is contributed to, or distributed by, a partnership/LLC, and problems relating to allocation of liabilities for basis purposes.
- Mergers and Acquisitions. We assist all types of entities structuring and implementing both taxable and tax-free acquisitions and dispositions of equity and assets of public and private companies. We provide tax advice with respect to corporate finance transactions, in both domestic and cross-border contexts, including private and public offerings of debt and equity securities and financial products, and leases of equipment and facilities, including traditional leveraged and synthetic leases. We also advise clients in connection with strategic and venture capital investments, leveraged recapitalizations and management buy-outs.
- Start-ups and early stage companies. We have particular expertise in tax planning for start-ups and early-stage companies, including choice of entity, conversions from one form of business structure to another, technology licensing, joint ventures and strategic alliances, financing and going-public transactions, and compensating management.
- Closely held businesses and family business enterprises. Closely held businesses, including family businesses often present unique challenges in balancing the family dynamics in addition to tax and state business entity law. We aid clients with business succession planning and related aspects to provide for subsequent generations including those not connected with the business, all with an eye to maintaining the business in harmony while preserving tax benefits.
- Real estate. We assist clients with respect to the full range of real estate acquisitions, dispositions and tax-deferred exchanges, including complex multi-party and multi-property 1031 exchanges and non-simultaneous and reverse like kind exchanges, real estate leasing, real estate development and financing transactions.

- Bankruptcy and loan workouts. We have substantial experience with respect to tax problems arising from corporate restructurings, including tax issues posed by bankruptcy and non-bankruptcy work-outs, such as planning to minimize cancellation of indebtedness income and maximize preservation of net operating losses and other tax attributes and structuring reorganizations of distressed companies on a tax-free basis.

Tax Controversies and Disputes

We advise clients regarding all types of federal income tax issues and disputes beginning at the audit stage through litigation before the IRS, the Tax Court, the Court of Federal Claims, and other federal trial and appellate courts. Our tax lawyers also have considerable experience in state and local tax litigation, including property and income tax issues.

Our approach to tax controversies is to consider all of the possible opportunities to achieve the most favorable resolution. Once a dispute arises, we work closely with our clients to develop and implement a strategy to obtain the best result whether the facts call for settlement or other workout method or litigation before the proper tribunal. Our attorneys have experience and achieved success at all levels.

State and Local Taxes, Including Income, Property, Sales, Use and Excise Taxes

We have extensive experience in advising and representing our clients on state and local tax matters, whether they arise in Kansas, or throughout the United States. Our representation of clients with respect to state and local taxes covers the full spectrum of state and local taxes, including corporate franchise and income taxes, sales and use taxes, real and personal property taxes, local business license taxes, gross receipts taxes, excise taxes, severance taxes, capital stock taxes, documentary and other transfer taxes, and personal income taxes. We are uniquely experienced in understanding the needs and issues unique to multi-state corporations. Tax team lawyers regularly work with clients in the development and implementation of effective sales, use and property tax exemption and minimization strategies.

The work of the state and local tax lawyers include planning and consulting with respect to state and local tax issues, representation in the audit process and administrative controversies, and prosecution of appeals through court litigation, including the Kansas Board of Tax Appeals.

U.S. Taxation of International Corporations

We advise clients in connection with their foreign activities and foreign corporations in connection with their U.S. activities. Our advice includes structuring of acquisitions, dispositions, joint ventures and strategic alliances. Where necessary, we work with local tax advisors to determine optimal structures. We are well versed in the special tax considerations that apply to U.S. persons holding interests in foreign entities, including the rules applicable to controlled foreign corporations, passive foreign investment companies and foreign personal holding companies. We assist clients in developing and implementing agreements relating to the cross-border sales of tangible and intangible property, and in the sale, licensing and development of intangible property.

Pension and Employee Benefits

We counsel our clients regarding all aspects of employee benefits from design and implementation to reviewing ongoing compliance and counseling on the ever changing laws. Our tax attorneys are also actively involved in the employee benefits and executive compensation aspects of corporation acquisitions, mergers and reorganizations. In this respect, we provide advice relating to structuring of transactions in order to avoid or minimize employee-related liabilities.

- Plan design and administration. We have extensive experience designing and implementing qualified and nonqualified employee benefit plans, including pension, profit sharing, 401(k), deferred compensation, and health plans. We ensure the plans comply with the numerous changes affecting this area of law. We also assist clients comply with their ERISA fiduciary standards with trainings and implementing proper procedures and protocols.
- Executive compensation. We represent both employers and individual executives in connection with a variety of stock-based compensation arrangements (including incentive and non-qualified stock options, discounted stock options,

phantom stock, stock purchase plans and stock appreciation rights), deferred compensation agreements and golden parachute contracts. We have designed insurance-related compensation vehicles and “rabbi trust” arrangements, which provide security for the payment of deferred compensation. Our extensive qualified plan experience and executive compensation practice have allowed us to design sophisticated non-qualified deferred compensation arrangements supplementing executive benefits under qualified plans.

- Health Plans. With the passage of the Affordable Care Act, HIPAA, and other laws, employers must comply with a wide array of laws when evaluating their existing health plans or creating new plans. Our tax lawyers routinely advise employers with these obligations and prepare plan amendments with each new law change. With the rapid expansion of wellness programs, we advise clients with the implementation and operation of such programs, which have unique and evolving rules.
- Human Resources support. We help employers comply with their administrative obligations arising under the multitude of laws associated with employee benefits. We work closely with human resource departments in planning and implementing procedures to comply with these laws, including plan enrollment, coverage issues, and evaluating benefit claims.
- ERISA litigation. We represent both plaintiffs and defendants in pursuing and defending claims arising under ERISA and related laws. Our experience includes defending threatened ERISA fiduciary claims, pursuing claims against ERISA fiduciaries arising out of a collapsed ESOP, and enforcing claims by plan participants for their benefits and other rights provided by ERISA.

Estate, Gift and Generation Skipping Tax

Our trusts and estates lawyers represent individuals and fiduciaries in all aspects of estate planning and the administration of estates and trusts, both foreign and domestic. This includes tax and estate planning for executives of public corporations and closely-held businesses. We advise clients with respect to the income taxation of estates, trusts, and beneficiaries; estate, gift, and generation-skipping transfer tax matters; the use of charitable-giving techniques to implement estate plans of philanthropists and others; special problems relating to closely-held business owners; legal services programs and deferred compensation packages for executives; marital and domestic partner property agreements; complex tax and other problems involving estates, trusts, and beneficiaries; and international aspects of estate planning and administration.

Tax Exempt Organizations

We represent a broad spectrum of tax-exempt organizations and advise them on the numerous and evolving requirements to obtain and maintain their tax exempt status and avoid or minimize excise taxes. Our representation includes public charities, religious organizations, social welfare agencies, environmental organizations, research groups, political action committees (PACs) broad-based publicly supported charities of diverse character, amateur sports competition groups, supporting organizations and private operating and non-operating foundations.

REPRESENTATIVE CLIENTS

- American Restaurant Partners, L.P.
- Bank of America, N.A.
- Bank of Kansas
- BEREXCO, Inc.
- Bombardier Aerospace Learjet
- Cancer Center of Kansas, P.A.
- Cargill, Inc.
- Catholic Diocese of Wichita
- Cereal Food Processors, Inc.
- Cessna Aircraft Company
- Cochener Garvey Capital Partners, Inc.
- Hays Medical Center, Inc.
- Koch Industries, Inc.
- Martin K. Eby Construction.Co., Inc.
- Ritchie Associates, Inc.
- Spirit AeroSystems, Inc.
- The Boeing Company
- Via Christi Health