

## TAXATION



## OVERVIEW

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Serving businesses ranging from Fortune 50 corporations to closely held companies and their accountants and CPAs, as well as charities and high-net-worth individuals, Foulston Siefkin's Taxation Practice Group helps clients minimize their tax exposure, develop and implement effective domestic and international tax planning strategies, and resolve complex tax controversies.

Based in Kansas with offices in Wichita, Topeka, and Kansas City, Foulston Siefkin's Taxation attorneys work with clients from major metropolitan cities and rural areas across the Midwest, and with international companies that do business in the U.S. Foulston Siefkin regularly represents for-profit and tax-exempt health systems; oil and gas companies; business owners and executives; high-net-worth individuals and families; real estate developers; franchisees; agribusinesses; charities and foundations; and others across the industry spectrum.

Foulston Siefkin's taxation practice's broad capabilities encompass:

- **Business Tax Planning**, including tax-advantaged business formations, restructuring, mergers, acquisitions, and transactions; bankruptcies and workouts; and compliance.
- **Tax Controversies and Disputes**, including advising clients in audits and investigations; negotiating settlements; and litigating before the IRS, U.S. Tax Court, the Court of Federal Claims, and other federal, state, or local courts and agencies.
- **U.S. and Foreign Tax Matters**, including tax counsel to U.S. companies with respect to their international activities and foreign corporations in connection with U.S. activities; and advising on state and local tax (SALT) and nexus requirements.
- **Pension and Employee Benefits**, including designing and administering benefit plans and related ERISA issues; structuring executive compensation packages; and advising employers on compliance and reporting requirements.
- **Estate, Gift, and Generation-Skipping Tax**, including providing trust and estate planning and administration services for individuals and fiduciaries; and advising family-owned businesses.

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- **Tax-Exempt Organizations**, including counsel on evolving requirements to obtain and maintain an entity's tax-exempt status.

Foulston Siefkin's tax attorneys understand the challenges facing clients today and stay informed on the latest rulings that reduce tax burdens. The firm regularly addresses issues ranging from the uncertainty of state and local tax codes and internet sales tax collections to accessing capital through nontraditional channels and identifying tax-advantaged economic incentives. The tax team includes attorneys inducted as Fellows of the American College of Tax Counsel and American College of Trust and Estate Counsel; those who hold LL.M. or master's degrees in taxation; and many who have been recognized by *Chambers USA*, *Best Lawyers*, and *Super Lawyers* as leaders in their field.

Foulston Siefkin's service to clients is also enhanced through cross-practice collaboration with other lawyers within the firm, including those from the Estate Planning & Probate, Business & Corporate Law, Real Estate, and Mergers & Acquisitions teams. This full-service approach is designed to seamlessly incorporate comprehensive tax counsel, as needed, to deliver value-added efficiencies and bottom-line benefits to clients.

## AREAS OF REPRESENTATION

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### Business Tax Planning

In conjunction with the firm's Business lawyers, we represent all forms of business enterprises from start-ups, small businesses and family businesses to publicly traded companies. Our representation spans the business life cycle from opening a business and business entity formation, developing and implementing tax-advantageous exit strategies, and bankruptcy and reorganization if the circumstances arise.

- **Corporate and Business Tax.** 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 (M&A).** 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

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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 tax.** 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

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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.

For more information, [click here](#).

## 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

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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. For more information, [click here](#).

## 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. For more information, [click here](#).

## RELATED LINKS

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- [ABA Tax Section](#)
- [Internal Revenue Service](#)
- [Internal Revenue Service: Forms, Instructions, and Publications](#)
- [Kansas Department of Revenue](#)
- [Social Security Administration](#)
- [AICPA Online](#)
- [Department of Treasury](#)
- [Tax Analysts](#)
- [CCH Incorporated](#)
- [Exempt Organizations Database \(IRS\)](#)
- [Research Institute of America](#)

## EXPERIENCE

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- Structured and implemented tax-efficient activities of U.S. businesses in Mexico, Japan, Canada, U.K, France, and Virgin Islands
- Responsible for providing advice and opinion to major aircraft manufacturer in connection with the application of Kansas sales tax exemptions to taxable sales, and tax-free Section 1031 forward and reverse exchanges of corporate jets
- Negotiated and closed numerous tax-free forward and reverse triangular mergers involving public and privately held banks, hospitals, oil and gas companies and restaurants
- Represented Fortune 50 companies in connection with Kansas corporate income and sales tax disputes
- Assisted numerous tax-exempt organizations (public charities, private foundations, social welfare organizations, employee organizations, associations, recreational organizations, etc.) with formation and obtaining tax-exempt status.

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- Assisted numerous tax-exempt organizations in structuring joint ventures and developing for-profit and tax-exempt subsidiaries.
- Successfully defended IRS challenges involving revocation of exempt status, unrelated business income tax, inurement/private benefit, and attempts to collapse for-profit and tax-exempt entities.
- Obtained private letter rulings regarding unrelated business income, for-profit subsidiary, rural healthcare, hospital fitness center, and other issues.
- Assisted numerous charitable organizations with acquisition, disposition, and licensing issues involving both for-profit and tax-exempt activities.

## PUBLICATIONS

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### 2021

- Tax-Efficient Strategies Create Win-Wins for Donors and Charitable Organizations

### 2020

- Deductibility Goal Posts for Captive Insurance Arrangements  
-Tax Notes Federal, Vol. 169, Tax Analysts
- Coronavirus: Year-End Stimulus Legislation Provides PPP Enhancements and Other COVID-19 Relief
- Coronavirus: Evaluating Your Estate Planning Strategies
- Coronavirus: Kansas Gov. Issues Statewide Stay-At-Home Order
- Coronavirus: Key Tax and Business Provisions
- Coronavirus: Tax and Employee Benefit Considerations

### 2019

- All Out-of-State Sellers Now Required to Pay Kansas Sales Tax

## PRESENTATIONS

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### 2014

- Estate Planning for Oil, Gas and Other Mineral Interests (Foulston Siefkin LLP)
- The Winds(or) of Change (Foulston Siefkin LLP)
- Estate Planning for Qualified Retirement Plans and IRAs (Foulston Siefkin LLP)

### 2012

- Tax and Accounting Issues for the Occasional Financial Lawyer (Topeka Bar Association)
- Discretionary Trusts (Edward Jones – Coffee Club)
- Estate Planning for Family Harmony (Wichita State University Accounting & Auditing Seminar)

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- Estate Planning for Family Harmony (Kansas Christmas Tree Growers Association)
- Support and Discretionary Trusts (Foulston Siefkin Summer Estate Planning Forum)
- Discretionary Trusts and Charitable Lead Trusts (Washburn Law School Foundation)
- Using Trusts in Medical Planning: Avoiding Hazards & Maximizing Benefits (KBA "Hot Topics" in Elder Law (Junction City))
- Estate Planning for Family Harmony (Derby Kansas Community Foundation)
- Governmental Resource Benefits Planning, "Boot Camp" (Foulston Siefkin Winter Estate Planning Forum)

### 2011

- Support & Discretionary Trusts: Considerations and Hazards (KBA Plaza Lights)
- Planned Giving: Legal Implications for the Donor (Non Profit Chamber of Service)
- Important Tax Issues Practitioners Often Overlook (Kansas Bar Association Seminar)
- Medicaid Planning and Estate Planning for Second Marriages (Western Kansas Estate Planning Council)
- Family Harmony (CoreFirst Bank)
- Estate Planning for Second Marriages (KBA "Slam Dunk" Seminar)
- Legal Issues Involved with E-Assets (Foulston Siefkin Winter Estate Planning Forum)

### 2010

- Estate Planning for Non-Traditional Couples (Foulston Siefkin)
- Estate Planning for Non-Traditional Couples (Foulston Siefkin Summer Estate Planning Forum)
- Problem Areas in Drafting Trusts (Community Foundation of Southeast Kansas, Pittsburg)
- Recent Developments in Federal and State Tax Law (Community Foundation of Southeast Kansas, Pittsburg)
- Achieving Family Harmony in Estate Plans/Practice Tools and Trust Provisions (National Academy of Elder Law Attorneys (NAELA))
- Resting in Pieces/Achieving Family Harmony in Estate Planning (Kansas Association of Legal Assistants)
- Problem Areas in Drafting Trust Documents (Foulston Siefkin Winter Estate Planning Forum)
- Estate Planning and Competency Issues: Legal Practical Standards and Drafting Techniques (Wichita Bar Association)
- Part 2, Family Harmony Drafting Issues (Kansas Bar Association Teleconference)
- Part 1, Family Harmony Counseling Issues (Kansas Bar Association Teleconference)
- Resting in Pieces: How Traditional Estate Planning Fosters Family Harmony (Kansas/Missouri Two State ACTEC Meeting)
- Preserving Family Harmony in the Estate Planning Process (KBA Annual Plaza Lights Seminar, Kansas City)
- Medicaid Planning for Long-Term Care: A Change in Direction (Foulston Siefkin)

### 2009

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- Resting in Pieces, How Traditional Estate Planning Can Destroy Family Harmony (Wichita Probate Practice Committee)
- “Sticky Points” in Estate Planning (Foulston Siefkin Summer Estate Planning Forum)
- Big Mistakes in Estate Planning: Not Properly Addressing Income Tax Issues (Foulston Siefkin Winter Estate Planning Forum)
- Planning for IRAs, 401Ks, and Other Tax Deferred Assets (Foulston Siefkin Winter Estate Planning Forum)

## 2008

- Irrevocable Life Insurance Trusts (ILIT): Care and Feeding of an Old Workhorse (Foulston Siefkin Summer Estate Planning Forum)
- Biggest Mistakes in Estate Planning (Foulston Siefkin Summer Estate Planning Forum)
- Legislative Update/Family Harmony Estate Planning Strategies (Central Kansas Planned Giving Roundtable)
- Family Harmony Estate Planning Strategies (EPlanners (National Estate Planning Group))
- Family Harmony (Wachovia)
- Maximizing Asset Protection in Third Party Trusts (WBA Probate Committee)
- KS and Federal Legislative Update; Family Harmony (National Association of Insurance and Financial Advisors group (Wichita, KS))
- Estate Planning for Second Marriages (Foulston Siefkin Summer Estate Planning Forum)

## 2007

- Medicaid Planning (Wichita Financial Planning Association)
- Asset Protection Trusts (American College of Trust and Estate Counsel (ACTEC), Asset Protection Committee, (Salt Lake City))
- Strategies to Preserve Family Harmony (Western Kansas Council on Planning and Giving (Hays, KS))
- Estate Planning for Family Harmony (American College of Trust and Estate Council (ACTEC), Oklahoma Chapter (Oklahoma City, OK))
- Family Harmony: An All Too Frequent Casualty of the Estate Planning Process (Wichita Area Chapter of Kansas CPAs)



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