



One Firm WorldwideSM



STATE AND LOCAL TAX CONTROVERSIES

EXPERIENCED REPRESENTATION IN STATE AND LOCAL TAX CONTROVERSIES

Every business must conscientiously strive to minimize its tax burden. But sometimes, these efforts collide head-on with aggressive taxing authorities, resulting in the need for tax controversy representation. When this need arises, it is important to have experienced tax professionals on your side.

For more than three decades, members of Jones Day's State and Local Tax practice have provided clients with the experience necessary to successfully handle state and local tax controversies of all kinds. Jones Day is one of the few law firms with experienced attorneys located in each major region of the country who practice in the state and local tax area. Our attorneys regularly attend state administrative conferences, such as those held

by the Multistate Tax Commission; the California Tax Policy Conference; and the Federation of Tax Administrators and its affiliated regional organizations, such as SEATA. We are well qualified through our close professional relationships at state departments of revenue to provide effective representation at the state administrative level. Most state controversies are won or lost at the administrative level, and "knowing the players" and understanding the "unwritten policy" add significantly to our ability to shepherd a matter through the various departments of revenue. Similarly, we have effectively dealt with dozens of large municipal tax assessments, where often only minimal due process exists. The Jones Day State and Local Tax team has also successfully resolved many hotly contested audits and prevailed in numerous administrative hearings. Unfortunately, sometimes taxpayers must resort to litigation to protect their rights, and here too, Jones Day excels.

COMBINING TAX ACUMEN WITH LITIGATION STRENGTH

In appropriate situations, our tax lawyers partner with our talented Trial Practice and Issues & Appeals lawyers to ensure that the best talent available is focused on achieving a successful result for our clients throughout the process, from evidentiary hearings to arguments before the United States Supreme Court. Adding our Trial Practice or Issues & Appeals lawyers to the team aids us in developing a comprehensive record at trial and developing the optimum appellate strategy. This approach has resulted in many significant victories in courts throughout the country, including multiple appeals before the U.S. Supreme Court. The Firm is proud to have trial and appellate lawyers with extensive experience in trying complex tax matters.

Our experience ranges from serving as national counsel for a *Fortune* 50 retailer and a *Fortune* 50 health-care company on a wide variety of multistate tax controversies in jurisdictions across the country to handling discreet matters in a single jurisdiction. We represented North America's third-largest aluminum producer, with \$3.3 billion in assets and \$3.1 billion in debt, in a successful chapter 11 reorganization, including resolving billions of dollars of contested state and local tax income and property tax claims and advising on multistate structure planning. We provided many of the typical tax department services during the reorganization. While many of the matters in which Jones Day teams have represented clients in tax controversies remain confidential, listed below is a sampling of matters that provides a glimpse into the breadth of our experience.

FRANCHISE AND INCOME TAX

- Cocounsel to Home Interiors & Gifts on its successful challenge of Illinois's assessment on interest earned from investments of excess working capital. We demonstrated that the investment earnings failed to serve an "operational function" in violation of *Allied-Signal Corp. v. Director*, 504 U.S. 768. This followed two earlier wins on similar issues for American Home Products Corp.
- Represented a large oil refiner in a contentious evidentiary hearing regarding whether its businesses consisted of multiple separate unitary subgroups.
- Obtained a series of rulings for the Southland Corporation that its relationship with a partly owned subsidiary was not unitary, so that a substantial gain realized from the sale of stock was neither unitary income nor otherwise apportionable outside the company's home state.

- Persuaded the Ohio Supreme Court that a national department store chain emerging from bankruptcy had not adopted fresh-start reporting until three days after the start of its fiscal year and therefore was entitled to determine its Ohio franchise tax liability for the relevant tax year by reference to its net worth prior to emerging from bankruptcy—resulting in a tax savings of several million dollars.
- Obtained a ruling that it was proper to sustain a franchise tax assessment where Champion Spark Plug Company's interest income was derived from an in-state source and its commission income from its English subsidiary did not involve technical or other services rendered.
- Successfully defended a large international retailer against one of Texas's first assessments asserting inclusion of additional revenue in the tax base from an allegedly unitary affiliate by obtaining a decision the affiliate was not unitary.
- Represented a *Fortune* 500 manufacturer in establishing the bona fides of its Delaware operations and of its transfer pricing.
- Represented a Northeast-based financial institution in connection with its use of a mortgage REIT.
- Represented a utility in a sourcing-based controversy.
- Negotiated very favorable settlements of income tax assessments in Massachusetts and Maryland against an intangible trademark-holding company affiliated with a food-products company owned by a foreign parent.

SALES AND USE TAX

- Successfully defended Williams Power Company against claims by the City of Redondo Beach, California for utility users' taxes and obtained a finding that the city manager exceeded his authority in issuing the exceptionally large assessment.
- Persuaded the Ohio Supreme Court to reverse a lower-court decision that an automobile manufacturer was subject to Ohio's sales/use tax on amounts paid to its dealers for parts and labor provided in the performance of goodwill repairs. The court agreed that the manufacturer was not the consumer of the parts and labor and therefore was not subject to tax on the amounts paid for them.
- Successfully defended numerous e-commerce and technology companies in response to assessments whereby taxing authorities around the country asserted that their sales taxes apply to the electronic information, data, or other services provided by such companies. We have also proactively obtained favorable private letter rulings in several such situations prior to assessments.

PROPERTY TAX

- Obtained an injunction enjoining collection of an unconstitutional property tax when no remedy to recover overpayments was available to the taxpayer.
- Represented three utility companies in cases challenging the value of coal-fired and nuclear power plants.
- Persuaded the Ohio Supreme Court that an agricultural cooperative was engaged in agriculture when it processed raw milk produced by its members into various dairy products and therefore was not subject to: (1) personal property tax on the value of property used in the processing operation, or (2) sales tax on the amounts paid for cleaning compounds used to clean the processing equipment.
- Successfully litigated through the Ohio Supreme Court the lead case in Ohio on the use of unitary appraisals to value the property of interstate businesses. *Texas Eastern Transmission Corp. v. Tracy*, 78 Ohio St. 3d 83, 67 N.E.2d 523 (1997).

NATIONAL NEXUS PRACTICE

- Represented a major computer manufacturer in sales tax nexus litigation nationally, including trying cases in Connecticut, Illinois, and New Mexico.
- Represented the nation's leading retailers in every category of sales channel—retail, mail order, direct marketing, call center, and internet—in connection with nexus issues. We have handled nexus matters in almost every state and established the nexus law at the supreme-court level in Connecticut, Pennsylvania, and Ohio. *SFA Folio Collections, Inc. v. Bannon*, 584 A.2d 666 (Conn. 1991), *cert. denied*, 111 S. Ct. 2839, 1991 U.S. Lexis 3611 (1991); *Bloomington's by Mail Ltd. v. Commonwealth Dept. of Revenue*, 591 A.2d 1047 (Pa. 1991), *aff'd*, 567 A.2d 773 (Pa. Commw. Ct. 1989), *cert. denied*, 504 U.S. 955 (1992); *SFA Folio Collections, Inc. v. Tracy*, 652 N.E.2d 693 (Ohio 1995).

UNCLAIMED PROPERTY/ESCHEAT

- Represented major national retailers, manufacturers, and service companies in unclaimed-property reporting and compliance, which has become a multibillion-dollar issue across the country. States have become very aggressive in auditing unclaimed-property disclosures, as this area has become lucrative for state departments of revenue.

HOTEL OCCUPANCY TAX

- National coordinating counsel for a major online travel company in its state and local tax litigation and administrative appeals nationwide. The matters include more than three dozen purported statewide class-action lawsuits

against all online travel companies, for which we coordinate with competitors' litigation and tax counsels and numerous state and local audits. The representation is complicated by the need to protect the client's confidential information and trade secrets.

AVOIDING CONTROVERSIES WHEN POSSIBLE

As part of Jones Day's state and local tax counseling efforts, we regularly assist clients in developing alternative tax-filing positions and in securing letter rulings that provide benefits on both a single-state and a multiple-state basis. These filing positions and rulings provide a noninvasive vehicle to significantly reduce an entity's state and local tax burden because no operational changes are required in most situations. In addition, proactively obtaining letter rulings, if properly managed, can provide additional support for state tax positions taken by companies and can minimize the chance of successful audit attack when state auditors don't like the tax result of the positions taken by the companies.

FULL-SERVICE BUSINESS TAX PRACTICE

Jones Day's State and Local Tax practice is an integrated part of an extensive worldwide business tax team. Our tax team includes more than 100 lawyers located in eight U.S. and seven non-U.S. offices. The Tax Practice covers U.S. federal income taxes, state and local taxes, and taxes assessed by foreign jurisdictions. The practice provides advice on tax planning, controversies, and legislative and regulatory matters. Through the various offices of the Firm, both in the U.S. and around the world, Jones Day tax lawyers are able to respond to the multi-jurisdictional concerns that clients frequently encounter.

The Firm's international tax presence has grown in response to the increasing globalization of business. Jones Day tax lawyers resident around the world have experience in the tax systems of most of the major developed countries and in many cases are nationals of and admitted to practice in those countries. Our tax lawyers are experienced in handling complex international transactions, such as cross-border investments, and in restructuring businesses to reduce multinational tax exposure. The Firm not only provides U.S. and non-U.S. tax advice on inbound and outbound investments but also has the capability in most countries that are major U.S. trading partners to provide related legal advice in other disciplines (including corporate, antitrust, trade, contracts, and dispute resolution). The Firm's lawyers who are qualified in non-U.S. tax law have considerable experience in dealing with U.S. businesses and are familiar with

U.S. business needs, priorities, and methods. In addition, the Firm's U.S.-based tax lawyers provide advice on transfer pricing, Subpart F, PFIC, foreign tax credits, sourcing, §936, deduction allocation, and FIRPTA matters.

The Firm has long provided sophisticated federal and state tax advice to privately and publicly held corporate clients that are in the process of acquiring or divesting businesses. Our lawyers participate in the planning for a large variety of such transactions, including mergers and acquisitions (taxable and tax-free), dispositions, and spinoffs. The Firm also provides counseling on the tax aspects of significant internal corporate matters, including restructurings, reviews of proposed transactions, and advice on tax-return reporting positions. Our tax lawyers advise on the tax implications of transaction alternatives, help develop appropriate deal structures, and draft and negotiate the tax provisions of related documents.

The Firm's tax attorneys also have extensive experience with tax-sensitive financial products and techniques and with the tax aspects of financings generally. This experience extends to the international arena, where differing tax, regulatory, and accounting treatments between and among jurisdictions can provide significant benefits. Our tax lawyers have been active in developing new tax-advantaged products,

including structured-finance products, often working closely with investment bankers and others in the business community. The Firm does extensive work with more traditional tax-oriented financial products, such as different types of leases and municipal bonds, as well as with asset securitization structures.

Jones Day is One Firm Worldwide—one integrated partnership operating in all our locations. Our organizational structure avoids the staffing shortcomings of many firms whose structure rewards the use of local personnel, whether or not those persons are the most qualified for the special project. Our structure, focused on client service, uses the best-qualified team for each client project, regardless of where those lawyers are located.

ADDITIONAL INFORMATION

For additional information regarding the State and Local Tax practice, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

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