

Farley P. Katz

Senior Counsel

Farley P. Katz's practice focuses on civil and criminal tax controversies, voluntary disclosures, white collar crime, defense of tax malpractice claims and representation of tax professionals in discipline proceedings. He has extensive experience representing clients in federal and state tax examinations and investigations, and has handled a great variety of tax cases in the United States Tax Court, United States District Courts, the Court of Federal Claims, Texas trial and appellate courts and the Texas Supreme Court.

Farley served five years with the Justice Department, Tax Division, where he briefed and argued numerous cases in the federal appellate courts involving a wide range of complex issues involving corporate and individual income tax, tax shelters, gift and estate tax, and tax procedure. He also briefed the government's Supreme Court victory in *Dickman v. Commissioner*, 465 U.S. 330 (1984). Mr. Katz has over 75 reported opinions. He is a frequent speaker and writer on a wide variety of substantive and procedural tax topics.

EXPERIENCE

SAMPLE CASES - CIVIL

- *Rent-A-Center, Inc. v. Hegar*, 468 S.W.3d 220 (Tex. App. - Austin June 11, 2015) (rent-to-own business is primarily engaged in 'retail trade' under SIC Manual and consequently subject to franchise tax at ½ percent rate, not 1 percent rate).
- *Beard v. United States*, U.S. Court of Federal Claims (2011) (IRS enjoined from suing taxpayers in district court where taxpayers first brought a refund suit in the Court of Federal Claims disputing her liability as a responsible person, under Code Section 6331(i))
- *Manning v. Commissioner*, TC Memo 2009-157 (2009) (commission rebates paid by a member of a broker/dealer to customers engaged in day trading were deductible business expenses and not in violation of Code section 162(c)(2))
- *Home Interiors & Gifts, Inc. v. Strayhorn*, 175 S.W.3d 856 (Tex. App. - Austin, 2005, pet. denied) (Texas franchise tax provisions governing "throwback" of out-of-state sales discriminated against interstate commerce and therefore violated the Commerce Clause).
- *Salzillo v. United States*, 66 Fed. Cl. 23 (2005) (CFO who signed most of company's checks was not responsible person because company's president completely controlled corporate finances and payments).
- *Estate of Russell v. Commissioner*, 76 T.C.M. 978 (1998) (awarding client attorney's fees to be paid by IRS).
- *Streber v. Commissioner*, 138 F.3d 216 (5th Cir. 1998) (amicus brief) (overturning imposition of negligence and substantial understatement penalties).
- *Bolding v. Commissioner*, 117 F.3d 270 (5th Cir. 1997) (shareholder, not S corporation, was borrower of bank loan, with result that shareholder had sufficient basis to deduct S corporation's losses).
- *Murphy v. Campbell*, 964 S.W.2d 265 (Tex. 1997) (Texas Supreme Court affirmed summary judgment that limitations expired for suing national accounting firm on tax advice).
- *American National Bank v. United States (In Re: Hawn)*, United States District Court, Southern District of Texas, Corpus Christi Division, No. C-93-102 (January 1996), aff'g, 149 B.R. 450 (Bankr. S.D. Tex. 1993) (federal tax lien was inferior to bank's lien on oil and gas production).
- *Gentry Company v. United States*, United States District Court, Southern District of Texas, Corpus Christi Division, Case No. C-93-346 (1995) (favorable jury verdict in accumulated earnings tax case).
- *Willie Nelson v. Price Waterhouse*, United States District Court, Northern District of Texas, Dallas Division, No. CA-3-90-1894-P (1994) (achieving confidential settlement for recording artist in his malpractice suit against national accounting firm).
- *De Cou v. Commissioner*, 103 T.C. 80 (1994) (taxpayer entitled to ordinary loss on discovery that building had hidden structural defects because that loss was not "on account of" the building's subsequent demolition).
- *Ponder v. Brice & Mankoff*, 889 S.W.2d 637 (Tex. App.--Houston [14th Dist.] 1994, writ denied) (affirming summary judgment in favor of attorneys in tax malpractice case arising from attorneys' legal opinion on a tax shelter); also *Sutton v. Mankoff*, 915 S.W.2d 152 (Tex. App.--Fort Worth 1996, writ denied) (same); *Sargent v. Brice & Mankoff*, 1996 WL 10277 (Tex. App.--Dallas 1996, writ denied) (same).
- *Lee v. United States*, 870 F. Supp. 137 (W.D. Tex. 1994) (summary judgment granted taxpayer on federal employment tax issues).
- *United States v. H.E. Butt Grocery Co.*, United States District Court, Western District of Texas, San Antonio Division, Civil Action No. SA-89-CA-0656 (1992) (jury verdict sustaining income tax refund based on air-



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Education

J.D., Columbia University Law School, Manhattan, New York City, New York, 1977, Harlan Fiske Stone Scholar

B.A., with distinction, University of California, Los Angeles, Los Angeles, California, 1971, Phi Beta Kappa

State Bar Licenses

Texas

New York

Court Admissions

U.S. District Ct., N.D. of Texas

U.S. District Ct., S.D. of Texas

U.S. District Ct., W.D. of Texas

U.S. Supreme Court

U.S. Court of Appeals, 5th Circuit

U.S. Tax Court

conditioning equipment's eligibility for investment tax credit).

- Texas Comptroller of Public Accounts, CCH Texas Tax Reporter 401-854 (1995) (inventory-taking business not subject to sales tax as "data processing service"; hand-held calculator not a "computer").

SAMPLE CASES - CRIMINAL

- Represented numerous clients in IRS Voluntary Disclosure Program for Offshore Bank Accounts. (2009-Present).
- United States v. Herrera, 559 F.3d 296 (5th Cir. 2009) (affirming trial court's grant of new trial for former NBA player convicted of tax charges)
- United States v. Shang, 114 Fed. Appx 813 (9th Cir 2004) (Government proof of net worth was inadequate requiring reversal of conviction).
- Represented operator of a multi-state night club business in lengthy criminal tax investigations referred to the Department of Justice, but ultimately declined for prosecution. Subsequent civil audit alleging \$15 million in tax settled for \$15,000.

REPRESENTATIVE CASES WHILE IN GOVERNMENT PRACTICE

- Dickman v. Commissioner, 465 U.S. 330 (1984), aff'g, 690 F.2d 812 (11th Cir. 1982) (interest-free loans between family members result in taxable gifts).
- United States v. Ernst & Whinney, 735 F.2d 1296 (11th Cir. 1984) (court may enjoin accountants from marketing deceptive tax service under I.R.C. §§ 7402 and 7407).
- Southern Bancorporation, Inc. v. United States, 732 F.2d 374 (4th Cir. 1984) (post hoc allocation of bank purchase price rejected).
- Microdot, Inc. v. United States, 728 F.2d 593 (2d Cir. 1984) (corporation's acquisition of its stock for bonds was reorganization, thereby precluding original issue discount).
- David Metzger Trust v. Commissioner, 693 F.2d 459 (5th Cir. 1982) (family hostility does not override application of statutory stock attribution rules).
- Estate of Marcia Goldsborough v. Commissioner, 49 A.F.T.R. 2d 1469 (4th Cir. 1982) (I.R.C. 2040 requires inclusion in estate of value of jointly owned property, proportionate to cost supplied by decedent).
- Saviano v. Commissioner, 765 F.2d 643 (7th Cir. 1983) (purported debt in tax shelter is too contingent to be recognized as such for tax purposes).
- Raphan v. United States, 759 F.2d 879 (Fed. Cir. 1985) (partners' guarantee of nonrecourse debt requires allocation of liability to them under Reg. § 1.752-1(e)).
- United States v. Merchants Nat'l Bank of Mobile, 772 F.2d 1522 (11th Cir. 1985) and United States v. Jersey Shore State Bank, 781 F.2d 974 (3d Cir. 1986) (whether failure to give lender notice under I.R.C. § 6303 of its liability for employer's taxes under I.R.C. 3505 precludes suit to collect that liability); U.S. Supreme Court has since affirmed Jersey Shore. See 479 U.S. 442 (1987).
- Wehrly v. United States, 808 F.2d 1311 (9th Cir. 1986) (first commodity straddle tax shelter case to reach appellate courts).

Presentations

- *Hot Topics in Tax Controversy*, Strasburger's Tax Symposium (November 2017)
- *New Partnership Audit Rules and How they Affect the Drafting and Interpretation of Partnership Agreements*, Strasburger's Tax Symposium (November 2016)
- *Handling IRS-targeted Audits, Voluntary Disclosures and Reporting Foreign Assets*, Strasburger's Tax Symposium (September 2015)
- *Current Developments in Civil and Criminal Controversies*, Strasburger's Tax Symposium (August 2014)
- *How to (and How Not to) Fix Tax Screw-Ups on Corporate Documents, Tax Returns, and Elections*, Texas Society of CPAs (November 2002)
- *Rescission - Undoing a Transaction for Tax Purposes*, Strasburger Annual Tax Symposium (August 2002)
- *Lawsuit Recoveries and Attorney's Fees: Taxation, Reporting and Withholding*, NYU Tax Institute (2000)
- *IRS Collections: Fundamentals, Special Problems, and Recent Legislative Changes*, University of Texas Annual Taxation Conference (1998)

Publications

- *Warning for Taxpayers Prepaying Real Property Taxes in 2017*, Strasburger's Tax Strategies (December 2017)
- Co-author. *Changes to Partnership Audits under the Bipartisan Budget Act*, State Bar of Texas Advanced

- Tax Law Course (October 2016)
- Co-author. *Congress Makes Signification Changes to Partnership Audit Rules*, Today's CPA (July 2016)
- *Important New Partnership Audit Rules Change Taxation of Partnerships*, Procedurally Taxing (November 2015)
- *Back to Paleo-Audits*, Letter the Editor, Tax Notes (November 2015)
- *Important New Audit Rules Change Taxation of Partnerships*, Strasburger Tax Strategies (November 2015)
- *Alert: Benchmark Survey of U.S. Direct Investment Abroad (BE-10 Report) Due May 29, 2015* (Strasburger Tax Strategies May 2015)
- Co-author. *Tax Traps for Lawyers*, San Antonio Lawyer (December 2007)
- *A Practitioner's Guide to Handling IRS Appeals*, Texas Tax Lawyer, Vol. 34, No. 3 (October 2007)
- *The Art Of Taxation: Joseph Hemard's Illustrated Tax Code*, 60 Tax Lawyer 163 (2007)
- Co-author. *IRS Makes Important Changes to Its Voluntary Disclosure Policy*, Journal of Taxation (February 2003)
- *Clowning Around With the UBIT*, 87 Tax Notes 1277 (May 2000)
- *Reporting and Withholding Requirements for Litigation Settlements and Judgments*, 81 Tax Notes 1265 (December 1998)
- *The Infernal Revenue Code*, 50 Tax Lawyer 617 (1997)
- Co-author. *Finders' are No Longer 'Keepers' Under the Texas Unclaimed Property Law*, Today's CPA (December 1997)
- Co-author. *Independent Contractor or Employee? Understanding and Avoiding Tax Liabilities Based on Worker Classification*, San Antonio Lawyer (Spring 1997)
- *Disputing Unemployment Taxes in Texas - A Guide for Employers*, Texas Labor Letter (September 1996)
- Co-author. *Procedural Rights and Remedies Under the Texas Property Tax Code*, 18 St. Mary's Law Journal 1209 (1987)

Practices, Industries & Services

Tax & Estate Planning
White Collar Criminal Defense

Areas of Emphasis

Appellate
General Tax Planning
State & Local Tax
Tax Controversy & Litigation

Honors

- Named among Best Lawyers in America - Criminal Defense: White Collar, Litigation and Controversy-Tax, Tax Law by Best Lawyers (2007-2021)
- Named Texas Super Lawyer by Thomson Reuters (2012-2018)
- Named among the Best Lawyers by San Antonio Scene Magazine (2011-2012, 2014)

Presentations

- "What to do When the IRS Comes Calling: Dealing with IRS Controversies" Webinar