



The Role of the Tax Attorney

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Fundamentals of Taxation Program
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The Role of the Tax Attorney - Agenda

- Professional Backgrounds
- Tax planning and structuring transactions
- Comparing Professionals
- Transactional Advisor
- Unique Circumstances
- Litigator
- Other Roles

Backgrounds

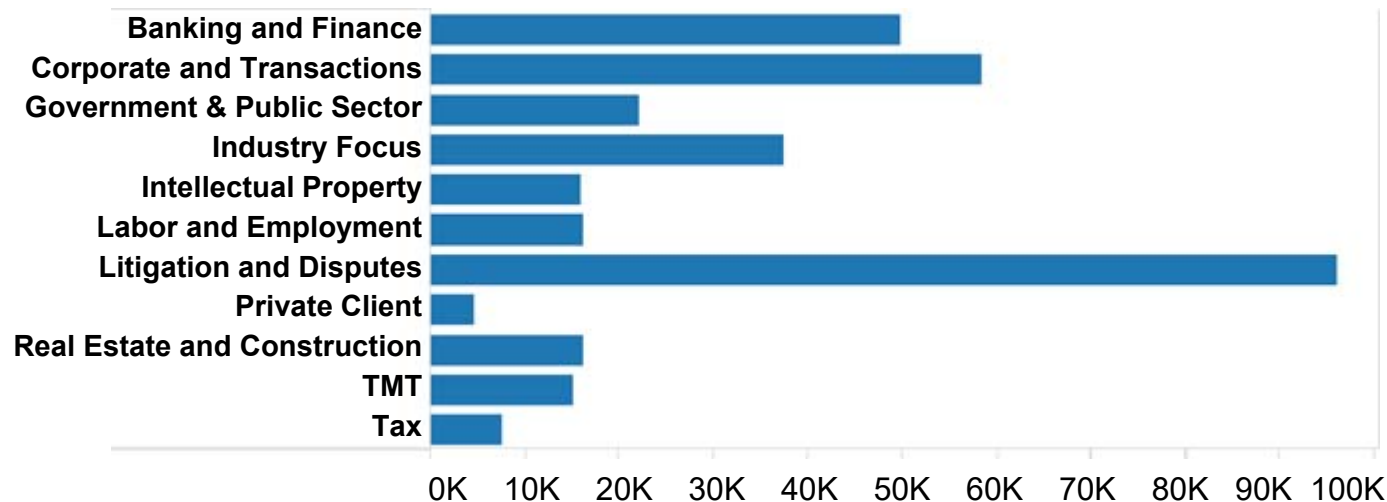
- Areas of specialties
 - Mergers & Acquisitions
 - Tax Controversies
 - Estate and gift tax
 - Employee benefits
- Type of tax
 - Federal
 - International
 - SALT
- Many different roles
 - Dedicated to tax
 - Generalist versus specialist
- Tax planning and structuring transactions
 - Drafting tax provisions in deal documents
 - Drafting certificates and obtaining tax clearances
 - Obtain private letter rulings

Backgrounds

- **Tax lawyers** handle a variety of tax-related issues for individuals and corporations
- Tax lawyers may help clients navigate complex tax regulations, so that they pay the appropriate tax on items such as income, profits, or property
 - For example, they may advise a corporation on how much tax it needs to pay from profits made in different states to comply with the Internal Revenue Service (IRS) and state tax laws, rules & regulations
- J.D.; J.D./CPA; J.D./LLM.
- Ask not, “Do I need a tax attorney or an accountant?” Instead, understand why you need both a tax attorney and an accountant
 - Unless you have both, you are leaving yourself potentially exposed to financial and legal liability

Top Practice Areas by Headcount

AM LAW 200 Practice Areas by Headcount



While numbers are not generally available across all law firms, in the AM Law 200 Tax is the second smallest practice area by headcount.

Tax Professionals Lawyers v Accountants

- As of 2016, there are 1,315,561 Licensed Lawyers in the United States of America
- Consider the only statistics we have publicly available for PTIN holders:
 - Total: 733,834
 - Attorneys - 4% (31,700)
 - Unlicensed/unenrolled - (nearly 60%) 429,209
- There are more than half a million actively licensed individual CPAs in the United States, according to the National Association of State Boards of Accountancy (NASBA)
 - The official count was 664,532 licensees as of April 22, 2016

Roll as a Transactional Advisor

- Tax planning and structuring transactions
 - Drafting tax provisions in deal documents
 - Drafting certificates and obtaining tax clearances
 - Obtain private letter rulings
- Interacting with M&A attorneys, other professionals (e.g., accountants and appraisers), and clients
- Negotiating with tax specialist counterparts
- Due diligence; Preparation and review of disclosure schedules
- Such tax work encompasses the full range of tax issues applicable to a transaction, from federal and state income and franchise taxes to state sales and property taxes
- In every acquisition, restructuring and financing transaction we undertake for our clients, tax lawyers are anticipating the tax consequences and working closely with clients and other lawyers to structure the transaction to best meet the business needs in a tax-efficient manner
- Experiences advising clients may be focused on specific industries:
 - Energy, including upstream oil and gas, pipelines, liquefied natural gas, power and petrochemical projects
 - Financially troubled businesses
 - Oilfield services
 - Real estate investment trusts and real estate mortgage investment conduits

Mergers & Acquisitions

- Tax attorney
 - Drafts legal documents
 - Directly involved in negotiation
 - Makes strategic decisions
- Tax Attorneys and accountants
 - Tax Planning and structuring
- Accountant
 - Due diligence
 - Prepares tax returns
 - Reviews tax returns
 - Reviews legal documents
 - Reviews disclosure schedules for accuracy
 - Models alternatives
 - After tax proceeds
 - Gross up calculations
 - Loss limitations
 - May be closer to the facts

Unique Circumstances – Counselor

Risk Disclosures and Mitigation

- Rendering tax opinions
 - FIN 48 analysis
 - Tax-related portions of SEC filings
 - Fund Formation
- 280E - In 1982, Congress enacted Internal Revenue Code Section 280E, which basically states that someone who is doing something illegal can only deduct their COGS
 - Circular 230

Role as a Litigator

- Confidentiality
- Privileges
- Appeals/Informal Conference
- Strategic paths for litigation
- Settlement Strategies
- Hazards of litigation
- Decisions impact on Subsequent Periods
- Kovel letters
- Rules of Evidence
- Strategy about transitioning from CPA/audit team to JD/litigation team

Other Roles for Tax Attorneys

- Lobbyist
- Consultant
- Government
- Corporate

QUESTIONS?

NEXT Segments - 9:00 a.m.

- **Core Track:**

Types of Taxes & Basics of Income Taxation

Julie May, Ernst & Young LLP, Detroit

John Gatti, Kerr, Russell and Weber, PLC, Detroit

- **Advanced Track:**

Tax Aspects of Mergers & Acquisitions

Aaron Feinberg, General Motors Tax Staff, Detroit