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State & Local Tax

Lawyers in Steptoe's Phoenix, Washington, Los Angeles, and Century City offices represent business clients of many types and sizes in state and local tax matters, in sectors as varied as technology, energy, manufacturing, transportation, and entertainment. Our lawyers litigate complex and varied income, sales and use, and property tax issues in administrative proceedings and state and federal courts, and they also seek legislative solutions to industry-wide concerns that affect our clients.

In addition, we counsel the firm's clients on the multi-state tax implications of their business transactions. For example, the firm advises its E-commerce industry clients on their complex multi-state income tax responsibilities and their sales and use tax collection obligations.

STATE AND LOCAL TAX LITIGATION

Steptoe's State and Local Tax group includes experienced tax litigators who have broad commercial litigation and tax litigation experience. Their practice is national in scope, including practice in many states. Steptoe partner and the firm's SALT Group head Pat Derdenger served in the US Department of Justice (DOJ), Tax Division, and has over 35 years of tax litigation experience, including property tax, sales and use tax and income tax litigation. Dawn Gabel, also a partner in our Phoenix office, has spent close to 20 years focused on tax litigation, primarily property tax litigation, and has litigated a broad range of commercial disputes including banking litigation, CERCLA litigation, toxic torts, bad faith insurance disputes and general contract disputes. The combination of trial tested litigation skills and up-to-date tax experience enables us to take on the most challenging cases and achieve outstanding results for our clients.

Our lawyers have proven skills and extensive experience in all aspects of tax controversy and litigation, including:

- Managing audits
- Prosecuting property tax valuation and classification appeals through the administrative hearing and review process
- Filing appeals of administrative actions in tax or superior court and bringing original actions in court
- Negotiating litigation settlements
- Trying cases in court
- Arguing appeals in state appellate courts

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In addition to our litigation experience—Steptoe lawyers litigate tax matters on a daily basis from the administrative level, through state tax or superior court, the courts of appeals and the Supreme Court—our tax department has diverse and extensive experience, including:

- Constitutional tax matters
- Corporate tax, partnership tax
- Combined and Consolidated state returns
- Multistate income tax issues
- Nexus issues
- Property tax matters
- Sales and use tax
- Tax-exempt organizations

We are widely recognized for our substantive tax knowledge and experience. Many members of our team have LL.M. degrees in taxation from, and teach classes at, top law schools, and are constantly researching, writing, and speaking to professional audiences on a broad range of substantive tax issues.

Pre-controversy Advice and Counsel: Our tax lawyers provide experience-based advice on reporting, document retention, and other pre-controversy matters to assist clients in effectively anticipating and planning for future controversies.

Settlement Efforts: Our experience encompasses not only direct negotiations for single clients, but also group representations of taxpayers with the same or similar issues. We work hard to achieve favorable results for our clients and to identify the most effective approach to resolve the matter, which in many cases is a favorable settlement for the client rather than prolonged litigation.

EXTENSIVE AND ONGOING TRIAL AND APPELLATE EXPERIENCE

Settlement of Cases in Litigation: When cases are not settled administratively, Steptoe can draw on a pool of talented litigators throughout the firm to favorably settle cases through litigation. With our extensive experience, Steptoe has history of achieving such settlements.

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Actual Trial Experience: Whether the case is presented by dispositive motion, or by trial, we have the skill and experience to handle intricate discovery and evidentiary disputes; prepare and examine fact and expert witnesses; and utilize the most sophisticated electronic trial presentation and briefing techniques to develop and implement efficient and effective trial strategies.

Appellate Advocacy: Steptoe tax lawyers have argued cases in state courts and every major federal Court of Appeals, as well as before the US Supreme Court. Our brief writing and appellate advocacy skills are recognized as leading in the bar.

Step-in Litigation Ability: Our reputation as experienced litigators, and our tax litigation experience specifically, has led clients to seek us out to litigate cases in which we were not involved in the administrative process, often successfully.

Substantive Tax Experience: Our specific experience and particular skills, as well the resources provided by our colleagues in other practice disciplines, provide Steptoe's tax litigation lawyers with the ability to effectively represent our clients in a variety of matters.

REPRESENTATIVE STATE AND LOCAL TAX LITIGATION MATTERS

- Represented financial institution in tax court and the court of appeals appealing the disallowance of bad debt refunds arising from retail sales tax paid on assigned receivables, where those receivables were assigned without recourse by the retailer to the financial institution.
- Represented newspaper publisher in the Arizona tax court and court of appeals on the issue of whether an affiliated corporation that was a partner in a partnership that manufactured newsprint satisfied the operational integration test for inclusion in the publisher's unitary group for corporate income tax purposes.
- Represented shopping centers and anchor tenants in administrative and tax court appeals dealing with the qualification for and the application of the statutory straight line building residual statutory valuation method for shopping centers.

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- Represented national homebuilder in tax court and court of appeals in a corporate income tax case dealing with the issue of whether the “gross receipts“ or “net receipts” as contended by the state, from the sale of mortgages on the secondary market are to be included in the denominator of the sales factor as well as whether the receipts for the sale of mortgages secured by Arizona property is to be sourced to Arizona or under the costs of performance test to the homebuilder’s corporate headquarters state.
- Represented national printing company at the tax court and court of appeals in a corporate income tax case involving the issue of whether the taxpayer’s trademark holding company, their receivables (factoring) affiliate and investment management affiliate should be required to join in a combined return with the operating parent under Arizona’s operational integration test for combination.

See our full list of representative state and local tax matters

TELECOMMUNICATION INDUSTRY TAX LAW

Our lawyers have considerable experience in dealing with federal and state and local telecommunications excise tax matters, including issues relating to the Mobile Telecommunications Sourcing Act. We have represented telecommunications clients on real and personal property tax matters, including valuation issues, and Steptoe lawyers have represented a start-up international telecommunications carrier in structuring its state and local telecommunications excise tax reporting requirements, including nexus issues. Our telecommunications clients in the tax area have included local, long distance, cell phone and satellite carriers.

ELECTRIC UTILITIES AND PIPELINES

Steptoe's state and local tax practice has considerable experience in representing electric utilities and pipelines in a wide range of state tax issues. We have represented electric utilities on property tax valuation matters, both generation and transmission and distribution facilities, including a nuclear generation station. [*See ADOR v. SRP and APS*, 212 Ariz. 35, 126 P.3d 1063 (App. 2006).]

We have also advised electric utilities on corporate income tax issues, including the sourcing of sales of electricity when generated in one state and sold in another (particularly the costs of performance and market tests dealing with the sales factor), nexus and Public Law 86-272 questions, as well as research and development tax credit issues. Our lawyers have also advised electric utilities on

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sales tax issues dealing with the construction of generation plants and the applicability of various sales tax exemptions to the construction of those facilities and operation of generation plants, including sales tax issues on the sale of the electricity both in-state and out-of-state.

In addition to electric utilities, we have represented natural gas pipelines on sales tax, income tax and property tax matters.

CONSTITUTIONAL TAX ISSUES

Step toe’s state and local tax lawyers have considerable experience with federal commerce clause, due process clause and equal protection clause issues, as well as state-specific constitutional provisions such as the uniformity clause, which deals with property taxes and requires that property taxes as imposed on a class of property be uniformly applied.

Commerce clause issues handled include not only income, sales and use tax nexus issues but also issues dealing with discriminatory treatment of interstate commerce. Equal protection clause matters have included challenges to a state’s unequal treatment of a taxpayer vis-à-vis the more favorable treatment provided to competitors. Additionally, Steptoe’s lawyers in the Washington office have represented insurance companies in actions before the US Supreme Court involving constitutional issues relating to state premium taxes.

CORPORATE INCOME TAX

- Advised and represented corporations in controversies over “unitary” combination issues—*i.e.*, whether a particular affiliate is a member of the unitary group or not under the various tests the states use for determining unitary combination (such as operational integration or functional integration).
- Advised and represented homebuilders on the issue of whether the “gross receipts” or “net receipts” as contended by the state, from the sale of mortgages on the secondary market are to be included in the denominator of the sales factor as well as whether the receipts from the sale of mortgages secured by Arizona property is to be sourced to Arizona or under the costs of performance test to the homebuilder’s corporate headquarters state.

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- Advised and represented corporations on income tax nexus issues, particularly with respect to the application of the protection from state income tax afforded by Public Law 86-272 (which prohibits a state from imposing a net income tax where the company's only contact with the state is the solicitation of orders where those orders are sent back to the home office for approval and filling).

See our full list of representative corporate income tax matters

TAX CONSEQUENCES OF MERGERS & ACQUISITIONS

Our lawyers counsel clients on the state and local tax consequences of mergers and acquisitions, both income tax and sales tax, including whether an asset sale is a casual sale for state sales tax purposes. We also work with corporate counsel to draft tax provisions for merger and acquisition agreements.

MULTI-STATE TAXATION & NEXUS ISSUES

- Advised Internet and other remote sellers on nexus issues relating to the obligation of the remote seller to collect the destination state's sales or use tax on sales made into the state, as well as advising clients in general on the sale and use tax implications of interstate sale transactions.
- Advised multi-state businesses on state income tax issues, including allocation and apportionment issues, business/non-business income questions, Public Law 86-272 nexus issues, throwback rule issues, Appeal of Joyce-types of issues, and intangible holding company issues and intangible nexus issues.
- Counseled clients on the multi-state taxation of flow-through entities such as partnerships, S-corporations, and limited liability companies.
- Advised telecommunications clients, including satellite telecommunications providers, on their multi-state sales and excise tax reporting obligations, including sourcing issues under the Mobile Telecommunications Sourcing Act.
- Advised clients on the Streamlined Sales Tax Project, including registration and amnesty issues.

SALES & USE TAXES, PRIVILEGE TAXES, AND EXCISE TAXES

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- Advised high-technology businesses, telecommunication companies, and manufacturers on gross receipts and other privilege taxes imposed by various jurisdictions.
- Advised international telecommunications company on nexus issues and state and local tax collection obligations on international calls.
- Advised airlines and other air transportation companies on whether their sale or purchase of aircraft is subject to sales or use tax.
- Advised out-of-state alarm monitoring services on nexus issues.

See our full list of representative sales and use tax matters

PROPERTY TAX

Our real and personal property tax representation spans the full administrative process, including state tax boards of review, state superior and tax courts, and appellate courts of appeals. In addition, we are active members of the National Association of Property Tax Attorneys, a national non-profit organization committed to providing exceptional property tax representation for its members' clients.

- Represented retailers in administrative and tax court valuation appeals, including shopping centers and anchor tenants in administrative and tax court appeals dealing with the qualification for and the application of the statutory straight line building residual statutory valuation method for shopping centers.
- Obtained private tax rulings and drafted state tax legislation for clients and industry groups.
- Represented heavy and light industrial manufacturers, high-technology businesses, multi-family residential rental owners, golf course and common area land owners, and other property owners in real property tax valuation and classification appeals.
- Represented major electric utility in property tax litigation over the value of a nuclear generating plant, the treatment of contributions in aid of construction, and other valuation issues.
- Represented operators of federally owned national park facilities seeking refunds for erroneous assessments of property tax.

See our full list of representative property tax matters

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CONSTRUCTION & HOMEBUILDER TAX ISSUES

Our lawyers represent construction contractors, both general and subcontractors, and homebuilders on a wide array of federal, state and local tax issues, including construction manager tax issues, hospital construction projects and issues dealing with the installation of exempt machinery and equipment.

We also advise and work with homebuilders on the marketing arm-contracting arm structure used in Arizona for state transaction privilege tax purposes, as well as assist real estate developers deal with the Arizona “speculative builder” tax.

STATE AND LOCAL TAX LITIGATION MATTERS (CONT'D)

- Represented electric utility in tax court and the court of appeals in the valuation for property tax purposes of its transmission and distribution network, and specifically whether contributions in aid of construction are to be included in the valuation base.
- Represented national apartment developer in tax court and the court of appeals in the proper application of the state transaction privilege tax to construction managers.
- Represented developer of low-income housing tax credit projects in tax court and the court of appeals over the method to be used in valuing the apartment projects for property tax purposes, specifically whether the value of the federal tax credits is to be included in the valuation base, and whether for the income method of valuation, the income stream is to include the actual rents paid by the tenants (which is restricted) or market rent.
- Represented clients in tax litigation challenging the inclusion of federal tax credits in the valuation of low-income rental housing.
- Represented construction contractor in tax court and the court of appeals in establishing that the state could be stopped from imposing taxes based on its communications and positions in past correspondence and audit assessments.
- Defended a judgment for an operator of self-storage facilities in tax court and the court of appeals in an action challenging property tax classification of housing provided for on-site managers.

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- Represented pharmaceutical company in tax court and the court of appeals in appealing state income taxes imposed on an out-of-state business based on protections for “solicitation of sales” under Public Law 86-272.
- Represented semiconductor manufacturer in court to challenge the ad valorem valuation of its state-of-the-art fabrication facility.
- Represented semiconductor manufacturers in hearings before state administrative review boards to reduce the value of their personal property caused by market-driven economic obsolescence.
- Representing global electronic transaction processing company in tax court on the issue of whether the sale of a subsidiary pursuant to an IRC § 338(h)(10) election generates business or nonbusiness income under the standard Uniform Division of Income for Tax Purposes Act definition of business income.
- Representing national financial services and investment company before the California Franchise Tax Board on listed transaction and sourcing sales of financial services.
- Representing large pipeline company in state court on whether the assembly and construction of pipeline qualifies for certain exemptions from Arizona’s sales tax on construction activities.
- Representing national bakery in state court on whether baking equipment used in retail bakeries qualifies for Arizona’s machinery and equipment exemption.
- Advising large service provider on sourcing its sales of internet services under various states’ sales factor sourcing mechanisms.
- Advising international renewable energy companies on state income tax incentives for renewable electric generation plants and manufacturing facilities.
- Representing national software retailer in an administrative appeal on whether the retailer has sufficient nexus under the Commerce Clause for the state to impose sales tax.
- Representing international software company in state court on whether software used in production processes qualifies for Arizona’s sales tax exemption for machinery and equipment used in manufacturing or processing.

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- Represented large service provider on sourcing its sales of internet services under various states' sales factor sourcing mechanisms.

CORPORATE INCOME TAX MATTERS (CONT'D)

- Advised and represented companies on business income vs. non-business income issues (business income is apportioned to the various states the company does business in using factor apportionment while non-business income is allocated entirely to the source state). Some examples include gain on the sale of stock of a foreign subsidiary, the sale of a plant that had been closed for a number of years, the sale of land that had been acquired to build a new facility but where plans changed, royalty income from patents, income from court-awarded judgments.
- Assisted E-commerce clients with state income tax planning, particularly with nexus and Public Law 86-272 issues.
- Advising international renewable energy companies on state income tax incentives for renewable electric generation plants and manufacturing facilities.
- Advised and represented clients on intangible holding company issues and whether for separate return reporting states such a holding company has nexus with a taxing state based on the presence of the holding company's intangibles in the state (e.g., trademarks, trade names). Also advised and represented clients on whether such an intangible holding company is properly included in a unitary group based upon the particular state's unitary test.
- Represented companies in tax court and the court of appeals protesting and appealing disallowed income tax credits for pollution control equipment, and specifically whether pollution control equipment installed on leased and rented automobiles qualifies for the credit and whether retroactive legislation providing that the credit does not apply to automotive pollution control equipment is constitutional.
- Represented a newspaper publisher in tax court and the court of appeals on the issue of whether the flow-through income from an out-of-state partnership to the publisher (the publisher was a general partner) where the partnership had no nexus with the taxing state was protected from taxation by Public Law 86-272.

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- Obtained private corporate income tax rulings and drafted state income tax legislation for clients and industry groups.

SALES AND USE TAX MATTERS (CONT'D)

- Advised contractors and homebuilders on the state and local tax treatment of their construction and homebuilding activities.
- Represented clients during a state or local audit to avoid or limit an assessment before it is issued.
- Represented developers and construction contractors appealing assessments of state and municipal privilege taxes.
- Worked with homebuilders to prepare and appeal denials of refund claims where land deduction claimed on tax returns was substantially less than the deduction allowed by statute.
- Advised E-commerce clients on sales and use tax collection obligations in the various states where their customers are located and where the orders are shipped.
- Represented clients in protests and appeals of tax assessments disallowing exemptions from sales and use tax claimed by clients engaged in mining, construction contracting, natural gas pipelines, advertising, and printing and publishing.
- Represented clients engaged in taxable and nontaxable business activities that have been taxed as if all receipts were from taxable business transactions.
- Represented bank in its protest of sales tax assessed on the sale of a debtor's business assets.
- Represented petroleum companies on state fuel excise tax issues
- Advised providers of systems design, software development, and other computer services on exemptions from retail sales-and-use tax.
- Advising internet and other remote sellers on nexus issues relating to the obligation of the remote seller to collect the destination state's sales or use tax on sales made into the state, as well as advising clients in general on the sale and use tax implications of interstate sale transactions.

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- Advised national trucking company on the sales and use tax implications of purchasing a fleet of vehicles from another shipping company when the vehicles were located throughout the United States upon closing the transaction.
- Advised national and international manufacturers regarding the sales tax implications of constructing a manufacturing plant in Arizona.
- Advised fuel refiner on the sales tax implications of selling its fuel storage and terminal assets.
- Advising national homebuilders on sales tax issues relating to the construction and marketing of homes, including the dual marketing-arm, contracting-arm structure used in Arizona and other states.
- Advising telecommunications clients, including satellite telecommunications providers, on their multi-state sales and excise tax reporting obligations, including sourcing issues under the Mobile Telecommunications Sourcing Act.
- Advising and representing motor fuel blenders on obtaining federal 637 registration and re-registration and on federal and multiple states' fuel excise taxes.
- Representing motor fuel refiners, blenders, and marketers before the IRS and state taxing authorities on fuel excise tax audits and appeals.
- Advised retail seller of electronic payment processing services on nexus issues and multi-state sales tax compliance.
- Advised and represented clients on aircraft registration and licensing tax issues, exemptions and residency status.

PROPERTY TAX MATTERS (CONT'D)

- Represented clients in tax litigation challenging the inclusion of federal tax credits in the valuation of low-income rental housing.
- Represented clients faced with Notice of Change or Notice of Correction proceedings and in obtaining refunds and/or valuation changes through Notice of Claim proceedings and in tax court and the court of appeals.

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- Represented non-profit corporations in tax court to obtain and retain property tax exemptions.
- Represented owners of improvements on land leased from governmental entities.
- Represented industrial manufacturers in personal property audits and valuation appeals in tax court and the court of appeals involving issues of value and obsolescence.
- Representing owners of a major petroleum pipeline in both administrative and judicial appeals over the valuation of the pipeline.
- Representing cable company providing VoIP telephone service on whether it is to be valued as a telecommunications company or a cable company.
- Represented electric utility company on valuation of its generation and distribution system.
- Represented owners of apartment complexes on the proper method of valuing those properties that were eligible for and received low-income housing tax credits under IRC § 42.
- Advised renewable energy companies on property tax impacts of developing, constructing and operating renewable energy power plants, including state-specific renewable energy incentives and the effect of federal incentives on state and local taxes.
- Advising nonprofit organizations on entitlement to property tax exemptions.