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Areas of Practice

Insurance Tax

IRS Controversy & Tax
 Litigation

Tax

Education

American University,
 Washington College of
 Law, J.D., 1972

Syracuse University, B.A.,
 1968

Bar & Court Admissions

District of Columbia

US Tax Court

US District Court

US Court of Federal Claims

US Courts of Appeal

US Supreme Court

Arthur L. Bailey

Art Bailey is a tax partner in the Washington office of Steptoe & Johnson LLP, where he is a member of the Tax group. He is an authority in tax controversy and tax litigation.

Prior to joining the firm, Mr. Bailey worked in the Office of Chief Counsel at the Internal Revenue Service and at the Tax Division of the Department of Justice, where he was a trial attorney. He was also vice president and tax counsel for a major life insurance company.

Tax Controversy and Tax Litigation

For 25 years at Steptoe, Mr. Bailey has worked with established clients in all phases of tax controversy matters. Trained in the Justice Department’s tax litigation group, he currently specializes in large, complex tax litigations including the defense of cross-border and tax-advantaged investments. Many of his cases require the production of large volumes of documents, the use of extranet document storage and retrieval, complex paper discovery, discovery of electronically stored information (ESI), discovery in foreign countries, and the assertion of privilege and work product protection for sensitive tax-related documents prepared by client tax departments and attorneys. Mr. Bailey is counsel to the taxpayer in the Textron tax accrual workpapers case. He also has recent experience in “get current” audit/appeals strategies, (e.g. CAP) and innovative global settlement procedures. He currently represents John Hancock Life Insurance Company in a recently filed Tax Court case.

In today’s high-profile tax controversy environment, taxpayers with significant tax disputes look for counsel with both substantive knowledge of the tax laws and solid tax litigation experience, including familiarity with the appellate courts. In a career spanning three decades, Mr. Bailey has handled tax cases in the three major Federal trial court forums (US Tax Court, US Court of Federal Claims, US District Court) as well as all but one of the 13 Federal courts of appeal.

Mr. Bailey is a frequent speaker at various bar association and bar-affiliated seminars. He recently published several articles explaining the workings of the new Circular 230 regulations that impose broad new practice requirements on written tax advice provided by tax practitioners and in-house tax advisors.

Noteworthy

- Listed under Tax Litigation and Controversy in *Best Lawyers in America* (2012)
- Included in *Washington, DC Super Lawyers* (2012)
- Ranked in Tax: DC in *Chambers USA: America’s Leading Business Lawyers* (2011)

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- Ranked in Tax Controversy: Nationwide in *Chambers USA: America's Leading Business Lawyers* (2011)
- Recommended for Tax Controversy by *Legal 500: US* (2011)
- Listed under Tax Law in *Best Lawyers in America* (2011)

Representative Matters

Cases at Steptoe & Johnson LLP:

- *John Hancock Life Insurance Company v. Commissioner*—Tax treatment of complex cross-border investments. (Pending Tax Court)
- *United States v. Textron*—Taxpayer prevails in quashing an administrative summons seeking disclosure of tax accrual workpapers. (District Court)
- *Fleet Bank v. Commissioner*—Government concedes. \$300 million loss allowed on sale of mortgage pools with mortgage servicing rights retained. Basis allocation issue. (Tax Court)
- *Phoenix Mutual v. Commissioner*—Taxpayer prevails on five issues despite adverse authority in other courts. Government does not appeal. (Tax Court)
- *Phoenix Mutual v. United States*—Same issues as above. Government agrees that it is collaterally estopped to oppose refund. \$50 million refund. (District Court)
- *National Life v. Commissioner*—Taxpayer denied double deduction (fresh start) due to unique facts. (CA 2)
- *New York Life v. United States*—Taxpayer wins \$34 million judgment in a “payment or deposit” case. Tucker Act jurisdiction. (Fed. Cir.) Government’s cert. pet. denied.
- *State Mutual et al v. United States*—District Court decision in favor of government reversed by DC Circuit. Procedural issues. (Rule 27 petition)
- *American Electric Power v. United States*—Court of Appeals follows decisions of CA 3 and CA 5 in similar COLI cases and upholds District Court decision in government’s favor. Six-week trial; electronic courtroom. (CA 6)

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- *Hughes Properties v. United States*—Amicus brief filed in Supreme Court supporting taxpayer’s accrual position with respect to “progressive jackpots.”

Government Appeals at the US Department of Justice:

- *Engineering Sales v. United States*—District Court reversed in Section 482 allocation case. Upholds constructive dividend. (CA 5)
- *Wendell Olk v. United States*—District Court decision in taxpayer’s favor reversed; “tokens” paid to casino dealers by gamblers are taxable income, not gifts. (CA 9)
- *Lee v. United States*—District Court affirmed in flower bond case. (CA 9)
- *Hicks Nurseries v. Commissioner*—Tax Court decision in favor of taxpayer reversed. Sub S qualification. (CA 2)
- *Monfort of Colorado, Inc. v. United States*—District Court decision in favor of taxpayer upheld; hedging used to adjust closing inventory cost. (CA 10)
- *Singleton v. Commissioner*—District Court decision in taxpayer’s favor reversed. Court of Appeals holds that payment (per tax sharing agreement) from sub to parent was in substance a dividend, not tax payment. (CA 5)
- *First National Bank of South Carolina v. United States*—District Court affirmed; bank’s payment of Visa membership fee was deductible. Precedent in other circuits followed. (CA 4)
- *North America Life and Casualty v. Commissioner*—Life insurance tax accounting; precedent favoring the taxpayer in other circuits followed. (CA 8)
- *Corex Corp. v. United States*—Excise tax; District Court decision in taxpayer’s favor reversed. In substance, Cortex was the real importer. (CA 9)

Taxpayer Appeals at the US Department of Justice:

- *Northwestern National Bank of Minneapolis v. United States*—Section 482 case; Section 482 “trumps” Section 351 in transaction between related parties. (CA 8)

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- *Ertegun v. Commissioner*—Tax Court upheld in change in accounting method case. Record company wanted to accelerate credit for returned records. (CA 2)
- *Klein v. Commissioner*—Tax Court upheld in case involving sale of patent rights and the “all substantial rights” test. (CA 7)
- *Pleasanton Gravel Co. v. Commissioner*—Tax Court upheld in sale vs. lease issue. (CA 9)
- *Youngblood v. Commissioner*—Tax Court upheld in amended return/change in accounting method case. (CA 8)

Select Seminars & Events

Codification of Economic Substance Doctrine - Is It an Idea Whose Time has Come and Gone?, February 14, 2008, (*A Steptoe-Sponsored Event*)

Selected Publications

Coltec and Its Consequences
October 26, 2006

Circular 230: Is the Hysteria Over?
January 2006

New Circular 230 Regulations Impose Strict Standards for Tax Practitioners
February 2005