



## Pat Derdenger

Pat Derdenger is a partner in Steptoe & Johnson LLP's Tax group. His practice emphasizes federal, state, and local taxation law. (Mr. Derdenger is certified as a tax law specialist by the Arizona State Bar.) Mr. Derdenger has been listed in *The Best Lawyers in America* since 1995 (published by Woodward/White, Aiken, SC) and has been listed in *Southwest Super Lawyers* for State, Local, and Federal Taxation since 2007.

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### ALTERNATE OFFICE

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### Areas of Practice

Tax  
  
State & Local Tax  
  
IRS Controversy & Tax  
Litigation  
  
Distressed Real Estate  
Litigation & Restructuring  
  
Construction  
  
E-Commerce/Internet

### Education

The George Washington  
University School of Law,  
LL.M. in Taxation, 1977  
  
University of Southern  
California Law School,  
J.D., 1974, M.B.A., 1971  
  
Loyola University of Los  
Angeles, B.A., 1968

### Bar & Court Admissions

Arizona  
  
California

### Federal Tax Law

Mr. Derdenger provides advice and representation on income tax matters, employment tax matters, independent contractor/employee issues, responsible officer penalties, information return filing penalties, and excise taxes, the transportation excise tax and the communications excise tax. Mr. Derdenger has extensive experience in advising clients on various employment tax and independent contractor issues, including the treatment of “leased employees” for employment tax purposes. He also represents business clients in tax controversy matters, income, employment and excise taxes with the Internal Revenue Service at the audit, appeals, and court levels, including the US Tax Court.

### Fuel Excise Taxes

Mr. Derdenger has extensive experience with both federal and state fuel excise taxes covering motor vehicle, aviation, and diesel fuel. Mr. Derdenger has represented both refiners and terminal operators in 637 registration matters and on compliance issues. His experience also extends to refund actions to recover overpayments of fuel excise taxes and protests and appeals of fuel excise tax assessments made by the IRS and states.

### State and Local Tax Law

In Mr. Derdenger’s extensive state and local tax practice, he advises and represents his business clients on corporate and individual income, sales, use, and property tax matters, including litigation of those matters at all levels—audits and appeals through various administrative stages, the tax court, court of appeals and supreme court. He represents his clients in tax litigation as well as counsels them on the state and local tax implications of their business transactions. Such clients include high-technology businesses, electric, natural gas and water utilities, telecommunications companies, mining and railroad companies, manufacturers, retailers and shopping centers banks, printers, mail order businesses, tax-exempt organizations, resorts, as well as various sized Arizona businesses. His practice also covers the e-commerce industry, advising clients on their multi-state and international income tax responsibilities and their multi-state sales tax and use tax collection obligations. Mr. Derdenger has obtained private tax rulings for clients on state and local tax issues as well as drafting state tax legislation for clients and industry groups. He advises and assists businesses wishing to locate in Arizona on various economic incentives and the benefits available here as well as on the tax ramifications of operating in-state.

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Following are more detailed descriptions of Mr. Derdenger's state and local tax practice by industry group and topic:

**Multi-State Tax Practice.** Mr. Derdenger advises businesses on various multi-state sales and use tax issues including advising e-commerce businesses on their multi-state sales and use tax collection obligations and on streamlined sales tax project registration and amnesty issues. He also advises multi-state businesses, on state corporate income tax issues, such as the "unitary" combination issue, allocation and apportionment issues, business/non-business income questions, Public Law 86-272 nexus issues, "throw-back" rule issues, and Appeal of Joyce/Finnegan issues. Mr. Derdenger also counsels clients on the multi-state taxation of flow through entities such as partnerships, S-corporations, and limited liability companies.

**Constitutional Issues.** Mr. Derdenger has 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.

**Corporate Income Tax Issues.** Mr. Derdenger has represented a newspaper publisher in tax court and the court of appeals on the issue of whether, for corporate income tax purposes, 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. In a related matter, he represented the newspaper publisher in a case of first impression involving the issue of whether distributions by an out-of-state partnership to an in-state corporate partner where the partnership is protected from income tax because of Public Law 86-272 (a federal law) can be taxed to the in-state corporate partner.

He has represented a 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.

He has also represented a 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

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investment management affiliate should be required to join in a combined return with the operating parent under Arizona's operational integration test for combination.

**Construction and Homebuilder Tax Issues.** Mr. Derdenger represents 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. He also advises and works with homebuilders on the marketing arm - contracting arm structure used in Arizona for state transaction privilege tax purposes, as well as assisting homebuilders and real estate developers deal with the municipal "speculative builder" tax. The speculative builder tax is unique to Arizona in that it imposes a municipal (not state) sales tax on the sale of "improved real property." In addition to advising clients on this tax, he has represented numerous clients in successfully appealing their speculative builder tax assessments.

**Sales Tax.** Mr. Derdenger represents clients in a wide array of sales tax issues, including advising: manufacturers, high tech companies, airlines, railroads, electric and telephone utilities and others on issues of whether the machinery and equipment they purchase and use in their operations qualifies for exemption from various states sales taxes; telecommunications companies on nexus issues and state and local tax collection obligations on inter-state and international calls; hotels and travel booking websites on sales and hotel tax issues; airlines and other air transportation companies on whether their sale or purchase of aircraft is subject to sales or use tax; out-of-state alarm monitoring services on nexus issues; 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; clients engaged in taxable and nontaxable business activities that have been taxed as if all receipts were from taxable business transactions; a bank in its protest of sales tax assessed on the sale of a debtor's business assets; water utilities on state and municipal privilege (sales) tax aspects of both constructing and operating water treatment and waste water treatment plants; petroleum companies on state fuel excise tax issues; providers of systems design, software development, and other computer services on exemptions from retail sales-and-use tax.

**Telecommunication Industry Tax Law.** Mr. Derdenger has considerable experience in dealing with federal and state and local telecommunications excise tax matters, including issues relating to the Mobile Telecommunications Sourcing Act (sources cell phone calls for purposes of local taxation). He has represented telecommunications clients on real and personal property tax matters, including valuation issues. Of note, Mr. Derdenger represented a start-up international telecommunications carrier in structuring their state and local telecommunications excise tax reporting requirements, including nexus issues. Our Telecommunications clients in the tax area have included local, long

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distance, cell phone and satellite carriers.

**Utilities.** Mr. Derdenger's practice includes the representation of electric utilities and pipelines in a wide range of state tax issues. He has 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).] He has 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. He has also advised electric utilities on 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, Mr. Derdenger has represented natural gas pipelines and both publicly and privately owned and operated water utilities on sales tax, income tax and property tax matters.

**Property Tax Law.** Mr. Derdenger handles property tax valuation appeals for various types of industrial and commercial properties such as electric utilities (including the valuation of a nuclear generating plant as well as transmission and distribution facilities), and long distance telecommunications companies and satellite communications networks. He has represented major retailers in valuation appeals. He has also represented Arizona copper mines in property tax litigation over the value of the producing mine and the appropriate valuation approach to use in valuing a mine.

Mr. Derdenger has represented large high-tech manufacturers in tax court trials over the valuation of their Arizona facilities and equipment. He has 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. In addition, Mr. Derdenger has represented non-profit corporations in tax court to obtain and retain property tax exemptions.

### Professional Activities

Mr. Derdenger is a member of the Institute for Professionals in Taxation, the National Tax Association, the Arizona Tax Research Association Tax Practitioners' Committee, and the Arizona Association of Industries Tax Committee. He is also an active member of the National Association of Property Tax Attorneys, a national non-profit organization committed to providing exceptional property tax representation for its members' clients.

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Even further, he serves as the Chair of the Arizona Chamber of Commerce's Tax Policy Committee. He also serves on the Board of Directors of the Phoenix Tax Institute and is the past chair of the Arizona Bar Association Section of Taxation. Mr. Derdenger currently serves on the Arizona State Bar Tax Advisory Committee, and was the past chair of the committee (the committee recommends tax lawyers for the designation of specialists in taxation law). He also served on the Arizona Property Tax Oversight Commission from 1997 to 2000. He is also a member of the American Bar Association Tax Section Committee on State and Local Taxation.

In addition to those professional memberships, Mr. Derdenger is a frequent lecturer on state and local tax subjects to a wide variety of professional audiences. Such audiences include continuing legal education programs for the State Bar of Arizona, the American Bar Association Section of Taxation, Committee on State Taxation (COST), Tax Executives Institute (TEI), the Arizona Tax Conference, the Arizona Tax Institute, the Institute for Professionals in Taxation, the Arizona Federal Institute of Taxation, the Governor's Conference on Small Business, the National Business Institute, and the Lorman Business Center.

### Noteworthy

- *Best Lawyers'* 2012 Phoenix Litigation & Controversy – Tax Lawyer of the Year
- *Best Lawyers in America*, Tax Law, 2012
- *Best Lawyers in America*, Tax Litigation and Controversy, 2012
- *Southwest Super Lawyers*, State, Local, and Federal Taxation, 2011
- *Arizona's Finest Lawyers*, 2011
- *Legal 500*, Tax Controversy, 2011
- *Legal 500*, Domestic Tax: West Coast, 2011
- *Business Journal of Phoenix*, Best of the Bar: Tax, 2005-2011
- *Arizona Business Magazine Top Lawyers*, Tax Law, 2008-2010
- *Southwest Super Lawyers*, "Top 100 attorneys in Arizona," 2009
- Advisory Board, Sales and Use Tax Alert, Strafford Publications

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### Select Seminars & Events

Debt Workout Issues for Flow-Through Entities, CPAmerica International, January 26, 2012

The New IRS Voluntary Classification Settlement Program, The Phoenix Tax Workshop, January 21, 2012

Arizona Sales & Use Tax, December 9, 2011

Sales and Use Taxation of Internet Sales: The Evolving Case Law, November 30, 2011

"The Tax Things You Need to Know When Starting a Business," *SCORE*, September 22, 2011

Eighth Annual Construction Industry Tax Issues Seminar, June 22, 2011, (*A Steptoe Sponsored Event*)

### Selected Publications

Arizona Announces a Tax Amnesty Program but Taxpayers Must Act Fast!

2010 Arizona Tax Update

American Bar Association, Property Tax Deskbook, Author Arizona Chapter

American Bar Association, Sales and Use Tax Deskbook, Author Arizona Chapter

Arizona Court Holds that Public Law 86-272 Does Not Protect Partnership Distributions

December 2009, *Institute for Professionals in Taxation - December Tax Report*

Sales and Use Taxation of Internet Sales: The Evolving Case Law, 2009-2011

"Making Work Pay" Tax Credit - New Withholding Tables for Employers. March 2009

2009 Arizona Tax Update