

# Jeffry J. Erney

## Partner



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Washington, DC  
D +1 202 496 7511

jeffry.erney@dentons.com

## Overview

Jeff Erney is the chair of the US Tax Controversy practice, which was recognized by *The Legal 500* in 2020 for outstanding work in contentious tax. Jeff focuses his practice on tax litigation and dispute resolution. When representing clients faced with complex issues, he draws on years of experience as a senior tax attorney for the Office of Chief Counsel with the Internal Revenue Service (IRS), as well as his background as a certified public accountant (CPA), to most effectively provide counsel. His background, both in private practice and as a government attorney, provides him with the tools to assess the strengths and risks of each issue, negotiate favorable settlements with the government and, if necessary, litigate the matter before the appropriate court. Jeff easily adapts to the venue in which he finds himself practicing, whether it is in front of the IRS or at trial, and he does not lose focus of his clients' objectives throughout the representation process.

Jeff has obtained over 100 favorable settlements from negotiations with the IRS at the Examination and Administrative Appeals. The matters settled involved both international and domestic issues, with many of the such matters requiring expert testimony from Appraisers and Economists.

Jeff is recognized as a leading lawyer in *International Tax Review Tax Controversy Leaders* and in *The Best Lawyers in America* for 2016-2020. Jeff has been a frequent speaker before the Tax Executive Institute and the American Bar Association's Tax Section.

## Experience

### Current tax controversy/litigation

- **US Real Estate.** Lead counsel before the Internal Revenue Service in assertion of a promoter penalty under Section 6700 related to conservation easements.
- **US Cannabis Company.** Lead counsel for a dispute before the United States Tax Court involving issues related to Section 280E, inventory method, and change in accounting method.
- **European Manufacturing Company.** Lead counsel for a dispute involving the following issues: debt vs. equity, cancelation of indebtedness and the insolvency exception.

- **US Financial Institution.** Lead counsel for dispute involving timing of bad debt losses.

## Pre-litigation controversy and advice

- Lead counsel in obtaining complete concession at IRS Exam for a \$8.4 Billion matter involving debt vs. equity and cancellation of indebtedness issues.
- Lead counsel in formulating efficient use of two structure cannabis operations involving both manufacturing and intellectual property entities.
- Lead counsel in obtaining a favorable ruling from the Internal Revenue Service granting relief from an involuntary revocation of a company's S-Corporation status.
- Lead counsel in formulating position for Section 1341 benefit for public utilities; for profit hospitals and other entities in which such benefit will apply.
- Counsel to US manufacturing company on the creating and structuring of a foreign entity to transfer and hold intellectual property.
- Lead counsel in obtaining favorable settlement at IRS Appeals for transfer pricing issues for US greeting card manufacturer.
- Co-Counsel to US manufacturer in obtaining Competent Authority of transfer pricing issue.
- Lead counsel in obtaining favorable ruling from the IRS National Office involving the treatment of renewable energy credits (RECs).
- Lead counsel in obtaining Section 7805(b) relief for a previous ruling incorrectly issued by the IRS National Office. Preserved \$2.1 billion in immediate deductions to the client.
- Lead counsel in obtaining a favorable ruling from the IRS National Office relating to a factoring company for international manufacturer.
- Lead counsel in obtaining favorable ruling from the IRS National Office relating to the treatment of expenditures for the deregulation of public utility power generation.
- Obtained a US\$27 million settlement from the IRS for public utility in a matter involving a federal research tax credit.
- Provided a legal opinion to establish the timing of a US\$57 million foreign worthless stock deduction, which was accepted by the IRS during the audit of such issue.
- Member of the team that secured a US\$57 million investment tax credit for a telecommunication company.
- Lead counsel with respect to three substantial tax issues, including capitalization of a portfolio of leases, a captive insurance company and the exemption from discharge of indebtedness income for an individual member. All issues were favorable settled in the appeals division.

## Completed tax litigation

- ***Parker Hannifin Corporation v. United States***, United States Court of Federal Claims: Successfully defended a motion to dismiss for lack of subject matter jurisdiction, in a matter involving an overpayment of deficiency interest.
- ***AWG Leasing Trust v. United States***: Trial counsel to a partnership, in which KeyCorp. and PNC Financial Services Group, Inc. were partners. Defended a challenge to a sale-in-lease out (SILO) transaction involving a German waste-to-energy facility. Also responsible for 56 other SILO transactions resolved in IRS appeals.
- ***1770 Sherman Street, LLC, Martin Wohnlich Tax Matters Partner v. Commissioner***: Lead counsel in defending a challenge to a charitable contribution of interior and exterior historic conservation easement.

- ***Sherwin Preserve v. Commissioner***: Lead counsel for a challenge to an allowance of a charitable contribution for the donation of a parcel of land to a tax-exempt conservancy. Obtained a 95 percent concession from IRS counsel prior to trial.
- ***Ohio Edison Company (subsidiary of FirstEnergy) v. Commissioner***: Lead counsel for a challenge to the allowance of a Research and Development Credit for internal use software. Obtained a favorable settlement from IRS counsel prior to trial.
- ***Pennsylvania General Energy Company v. Commissioner***: Trial counsel for a challenge to a charitable contribution for the donation of 13,000 acres to the state of Pennsylvania.
- ***Gibson Greetings, Inc. (subsidiary of American Greetings Corp.) v. Commissioner***: Lead counsel for a challenge of a contingent earn-out agreement, and whether the event was a closed transaction. Favorable settlement obtained from IRS counsel prior to trial.
- ***Burlington Group v. Commissioner***: Lead counsel for a challenge to a charitable contribution taken for the donation of an aquifer to the local township for use in its water supply. Reached a favorable settlement with IRS counsel prior to trial.
- ***Fishermen's Hospital, Inc. v. Commissioner***: Lead counsel for a petition for declaratory judgment (exempt organization). Sustained the client's status as an exempt Section 501(c)(3) entity.
- ***Argo Sales Co. v. Commissioner***: Lead government counsel to defend the IRS' position that certain items of income were properly treated as built-in gain pursuant to Section 1374 (D)(5) of the Internal Revenue Code. Received a favorable opinion from the court.
- ***Rondy, Inc. v. Commissioner***: Lead government counsel to defend the IRS' position that certain items of income were properly treated as built-in gain pursuant to Section 1374 (D)(5) of the Internal Revenue Code. Received a favorable opinion from the court.
- ***Southwestern Energy v. Commissioner***: Lead government counsel to defend the IRS' position that the return of over-recovered gas costs to the utility's customers through a reduction in future rates does not qualify as a Section 162 business expense, merely a reduction in the future income. Received a favorable opinion from the court on all issues.
- ***Edward and Rosalie v. Commissioner***: Lead government counsel to defend the IRS' position that advances made by the taxpayer were equity rather than debt and that such losses were no subject to ordinary loss under Section 1244 of the Internal Revenue Code, along with other various issues. Received a favorable opinion from the court on all issues.
- ***Steven and Betty Babin v. Commissioner***: Lead government counsel to defend the IRS' position that the discharge of recourse mortgage was not excludable from taxpayers' income. Received a favorable opinion from the court.

## Recognition

- Recognized as a leading lawyer in *International Tax Review Tax Controversy Leaders*, 2016-2021
- Ranked, *Legal 500 US*, Contentious Tax, 2020
- *The Best Lawyers in America*
  - Washington D.C.: Litigation & Controversy - Tax, 2019–2020
  - Washington D.C.: Tax Law, 2019–2020
  - Cleveland: Litigation & Controversy - Tax, 2007–2016
  - Cleveland: Tax Law, 2007–2016

- *Ohio Super Lawyers*, 2008–2009, 2011–2016
- Internal Revenue Service Performance Award, 1989, 1990, 1994, 1996
- Chief Counsel's Office: National Award for Advisory Opinions, 1995
- Chief Counsel's Office, Central Region: Attorney of the Year, 1993

## Insights

- Panel chair for Practice and Procedure, Cleveland Tax Institute (2015, 2013, 2011, 2008, 2006)
- "Representation Before The United States Tax Court" (Thomson West 2014), primary author since 2007
- Presenter, "The Changing Atmosphere of Tax Controversy," Tax Executives Institute Tri-Chapter, May 2007

## Activities and Affiliations

- American Bar Association
- Regulated Public Utilities Section, 1992, 1994, 1996
- Cleveland Metropolitan Bar Association
- Cleveland Tax Bar Association
- Cleveland Tax Institute
  - Chair, 2009
  - Vice chairman, 2008
- Tax Club of Cleveland
  - President 2008–2009

## Prior and Present Employment

- Tax partner, chair of Tax Controversy & Litigation Group, Baker Hostetler, 2008–2015
- Tax partner, Thompson Hine, 2000–2008
- Managed IRS Practice & Procedure Group in Cleveland, Akron/Canton and Toledo Ernst & Young offices, 1999 and 2000
- Tax counsel, Cliffs Natural Resources, 1997–1999
- Internal Revenue Service, 1988–1997
  - Senior tax attorney for chief counsel
  - Counsel for Utilities Industry Specialization Program, 1990–1997

## Areas of focus

### Practices

- Tax Litigation and Dispute Resolution

- Tax Credits and Tax-Advantaged Investing
- International Taxation
- Subnational Taxation

## Industry sectors

- Manufacturing
- Financial Institutions
- Energy
- Real Estate
- Private Equity
- Health Care
- Global Private Services (GPS)

## Education

- Case Western Reserve University School of Law, 1988, JD
- Cleveland State University, 1982, BS, Beta Alpha Psi

## Admissions and qualifications

- District of Columbia
- Ohio
- Certified Public Accountant (CPA)
- US Court of Federal Claims
- US District Court for the Northern District of Ohio

## Languages

- English