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# 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

**SPECIAL FEATURE THIS YEAR:**

**TWO DAYS OF PROBLEM-SOLVING SESSIONS  
BRING A POWER OF ATTORNEY AND ADDRESS  
ISSUES IN PERSON WITH REPRESENTATIVES OF  
THE IRS AND NYC!**

## JUNE 20-21, 2019

**CROWNE PLAZA  
TIMES SQUARE MANHATTAN**

NEW YORK, NY

### **KEYNOTE ADDRESSES:**

**Charles P. Rettig, Esq.**, *Commissioner,  
Internal Revenue Service, Washington, DC*

**Michael R. Schmidt**, *Commissioner Nominee, New York State  
Department of Taxation and Finance, Albany, NY*

**Nina E. Olson, Esq.**, *National Taxpayer Advocate,  
Internal Revenue Service, Washington, DC*

### **CONFERENCE CO-CHAIRS:**

**Bryan C. Skarlatos, Esq.**, *Partner, Kostelanetz & Fink,  
New York, NY*

**David D. Aughtry, Esq.**, *Shareholder, Chamberlain, Hrdlicka,  
White, Williams & Aughtry, PC, Atlanta, GA*

**FINANCE AND LAW PROGRAMS**



**NYU****SCHOOL OF  
PROFESSIONAL STUDIES**

## 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

### CO-CHAIRS:

**Bryan C. Skarlatos, Esq.**, *Partner, Kostelanetz & Fink, New York, NY*

**David D. Aughtry, Esq.**, *Shareholder, Chamberlain, Hrdlicka, White, Williams & Aughtry, PC, Atlanta, GA*

### LEARNING OBJECTIVES

The NYU School of Professional Studies is pleased to present the 11th Annual Tax Controversy Forum. The Tax Controversy Forum brings together representatives from the government and expert private practitioners to compare perspectives on a variety of topics involving tax audits, appeals, and litigation. The Forum covers a wide range of topics across the tax compliance and enforcement spectrum, from policy updates, to procedural seminars, substantive programs, international issues, ethical problems, current enforcement initiatives, sensitive audits, and civil and criminal tax penalties.

Tax compliance and enforcement are essential elements of our federal tax system. The Tax Controversy Forum is an opportunity to stay current on new developments, exchange ideas, and share practice tips that can contribute to a better functioning system. Participants qualify for CPE, CLE, and CE credits.

As a premier educational institution, the NYU School of Professional Studies is committed to providing the highest standard of professional enrichment.

### WHO SHOULD ATTEND?

Accountants, attorneys, enrolled agents, in-house practitioners, and tax professionals at all levels who prepare for or handle audits, appeals, or tax litigation, as well as those involved in planning and transactional work who could benefit from a better understanding of the implications of their work for audit defense.

### SPECIAL IRS AND NYC IN-PERSON PROBLEM-SOLVING SESSIONS

#### POWER OF ATTORNEY REQUIRED

Representatives of the IRS and New York City Taxpayer Advocates will be available in designated areas at the Tax Forum location in the Crowne Plaza to help tax practitioners resolve current tax problems. The Taxpayer Advocates will provide one-to-one guidance, direction on next steps, and case building ideas. If a tax professional's client's problem meets the Taxpayer Advocate Service's criteria, a Case Advocate will be assigned to work with the tax professional to resolve the taxpayer's issue. To take advantage of problem-solving sessions, you must bring a fully executed IRS Form 2848 "Power of Attorney and Declaration of Representative" or NYC POA-2 "Power of Attorney."

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### DIVISION OF PROGRAMS IN BUSINESS

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**Kathleen Costello, CMP**, *Assistant Director*

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# CROWNE PLAZA TIMES SQUARE MANHATTAN NEW YORK, NY

JUNE 20-21, 2019

## PLANNING COMMITTEE

### PLANNING COMMITTEE CHAIR

**Sidney Kess, CPA, JD, LL.M.**, *Of Counsel, Kostelanetz & Fink, New York, NY*

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**Kevin Brown, Esq.**, *Principal, Leader, Tax Controversy and Regulatory Services, PricewaterhouseCoopers, Washington, DC*

**Sandra R. Brown, Esq.**, *Principal, PC, Hochman Salkin Toscher Perez, PC, Beverly Hills, CA*

**N. Jerold Cohen, Esq.**, *Partner, Eversheds Sutherland (US), Atlanta, GA*

**Steven Dean, Esq.**, *Professor of Tax Law; Faculty Director, Graduate Tax Program, NYU School of Law, New York, NY*

**Eli J. Dicker, Esq.**, *Executive Director, Tax Executives Institute, Washington, DC*

**Daniel A. Dumezich**, *National Leader of Federal Tax Controversy Services, Deloitte Tax, Chicago, IL*

**John Gamino, CPA, Esq.**, *Clinical Professor, Jindal School of Management, University of Texas at Dallas, Dallas, TX*

**Eric L. Green, Esq.**, *Partner, Green & Sklarz, New Haven, CT*

**Gershman Goldstein, Esq.**, *Stoel Rives, Portland, OR*

**Armando Gomez, Esq.**, *Partner, Skadden, Arps, Slate, Meagher & Flom, Washington, DC*

**Brian R. Harris, Esq.**, *Partner, Akerman, Tampa, FL*

**Lawrence M. Hill, Esq.**, *Partner, Winston & Strawn, New York, NY*

**Alan M. Katz, CPA, CFF**, *Senior Forensic Auditor, Monitoring and Investigations Practice, Guidepost Solutions, New York, NY*

**Kathryn Keneally, Esq.**, *Partner, Jones Day, New York, NY*

**Mark E. Matthews, Esq.**, *Member, Caplin & Drysdale, Chartered, Washington, DC*

**Sharon L. McCarthy, Esq.**, *Partner, Kostelanetz & Fink, New York, NY*

**Scott D. Michel, Esq.**, *Member, Caplin & Drysdale, Chartered, Washington, DC*

**Charles J. (Chad) Muller, III, Esq.**, *Shareholder, Chamberlain, Hrdlicka, White, Williams & Aughtry, PC, San Antonio, TX*

**Ellis L. Reemer, Esq.**, *Partner, DLA Piper (US), New York, NY*

**Leon M. Reimer, CPA**, *Partner, Citrin Cooperman, New York, NY*

**Martin A. Schainbaum, Esq.**, *Principal, Martin A. Schainbaum, P.L.C., San Francisco, CA*

**David A. Shuster, Esq.**, *Principal, International Tax; Director of Tax Controversy Services, Friedman, New York, NY*

**Robert E. Spierer, CPA, MBA**, *Partner, Perelson Weiner, New York, NY*

**Josh O. Ungerman, Esq., CPA**, *Partner, Meadows, Collier, Reed, Cousins, Crouch & Ungerman, Dallas, TX*

# 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

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## THURSDAY, JUNE 20, 2019

8:00 a.m.

### REGISTRATION AND DISTRIBUTION OF MATERIALS

#### CONTINENTAL BREAKFAST

8:30 a.m.

### WELCOME

**Kathleen Costello, CMP**, *Assistant Director, NYU School of Professional Studies, New York, NY*

### OPENING REMARKS

**Bryan C. Skarlatos, Esq.**, *Partner, Kostelanetz & Fink, New York, NY*

**David D. Aughtry Esq.**, *Shareholder, Chamberlain, Hrdlicka, White, Williams & Aughtry, PC, Atlanta, GA*

8:45 a.m.

### KEYNOTE ADDRESS: STATE OF THE IRS

**Charles P. Rettig, Esq.**, *Commissioner, Internal Revenue Service, Washington, DC*

9:15 a.m.

### TAX COMPLIANCE AND ENFORCEMENT UPDATE PART I

Voluntary compliance and enforcement of the tax law are at the heart of our tax system. Over the past several years, the IRS has been challenged to come up with new and more efficient ways to ensure that all taxpayers pay the correct amount of tax. This panel provides an update on new developments at the IRS and in the Tax Court.

#### IRS OFFICE OF CHIEF COUNSEL UPDATE

**Michael J. Desmond, Esq.**, *Chief Counsel, Internal Revenue Service, Washington, DC*

**Interviewer: Miriam L. Fisher, Esq.**, *Global Chair of Tax Controversy, Latham & Watkins, Washington, DC*

#### IRS LARGE BUSINESS & INTERNATIONAL DIVISION UPDATE

**Douglas W. O'Donnell, CPA**, *Commissioner, Large Business & International Division, Internal Revenue Service, Washington, DC*

**Interviewer: Sharon Katz-Pearlman, Esq.**, *National Principal-in-Charge, Tax Controversy Services, KPMG, New York, NY; Global Head, Tax Dispute Resolution and Controversy, KPMG International*

#### IRS SMALL BUSINESS/SELF-EMPLOYED DIVISION UPDATE

**Mary Beth Murphy**, *Commissioner, Small Business/Self-Employed Division, Internal Revenue Service, Washington, DC*

**Lisa Beard-Niemann, CPA**, *Acting Deputy Commissioner, Small Business/Self-Employed Division, Internal Revenue Service, Washington, DC*

**Interviewer: Dennis L. Perez, Esq.**, *Principal, PC, Hochman Salkin Toscher Perez, PC, Beverly Hills, CA*

#### IRS COLLECTION OPERATIONS UPDATE

**Paul J. Mamo**, *Director, Collection, Internal Revenue Service, Covington, KY*

**Interviewer: Mary E. Wood, Esq.**, *Partner, Meadows, Collier, Reed, Cousins, Crouch & Ungerman, Dallas, TX*

#### TAX COURT UPDATE

**The Honorable Maurice B. Foley**, *Chief Judge, United States Tax Court, Washington, DC*

**Interviewer: Todd Welty, Esq.**, *Chief Legal Officer, ThreeCo, Atlanta, GA*

11:00 a.m.

### REFRESHMENT BREAK

# 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

11:15 a.m.

## ROCK—PARTNERSHIP REPRESENTATIVE—HARD PLACE

Who do “Partnership Representatives” represent: the partnership, the general partner, the limited partners, or someone else? How can PRs carry out their responsibilities and wade through the numerous conflicting interests and privacy concerns in light of all the obligations and elections they may have under the new partnership audit rules, the partnership agreement, their own contracts with the partnership, fiduciary obligations, and most importantly, the professional responsibility and ethical rules? What do PRs have to think about and would you want to be one? Come and find out.

**Moderator:** **Diana L. Wollman, Esq.**, *Partner, Cleary Gottlieb Steen & Hamilton, New York, NY*

**Guinevere M. Moore, Esq.**, *Partner, Johnson Moore, Chicago, IL*

**Christopher S. Rizek, Esq.**, *Member, Caplin & Drysdale, Chartered, Washington, DC*

**Drita Tonuzi, Esq.**, *Deputy Chief Counsel (Operations), Internal Revenue Service, Washington, DC*

**Clifford M. Warren, Esq.**, *Senior Level Counsel, Office of the Associate Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service, Washington, DC*

12:15–1:15 p.m.

## LUNCHEON

Buffet lunch served

1:15–2:15 p.m.

## BREAKOUT SESSIONS

### TRACK I

#### WHAT'S NEW AT LB&I: KEY DEVELOPMENTS AND INITIATIVES

As businesses become larger, more complex, and multinational, the IRS must continue to re-calibrate existing programs and launch new initiatives to address taxpayers' changing needs. LB&I's job has become even more challenging with passage of the Tax Cuts and Jobs Act. Hear directly from LB&I Commissioner Doug O'Donnell and senior members of his management team as they discuss important new programs and innovations for the coming year.

**Moderator:** **Sharon Katz-Pearlman, Esq.**, *National Principal-in-Charge, Tax Controversy Services, KPMG, New York, NY; Global Head, Tax Dispute Resolution and Controversy, KPMG International*

**Douglas W. O'Donnell, CPA**, *Commissioner, Large Business & International Division, Internal Revenue Service, Washington, DC*

**Theodore D. Setzer, Esq.**, *Assistant Deputy Commissioner (International), Large Business & International Division, Internal Revenue Service, Washington, DC*

**Jennifer L. Best, Esq.**, *Director, Treaty & Transfer Pricing Operations Practice Area, Internal Revenue Service, Washington, DC*

**Barbara L. Harris, Esq.**, *Director, Northeastern Compliance Practice Area, Internal Revenue Service, New York, NY*

### TRACK II

#### ADVISING NON-COMPLIANT TAXPAYERS: WHEN IS THE UPDATED VOLUNTARY DISCLOSURE PRACTICE THE BEST CHOICE?

In November 2018, the IRS changed its long-standing voluntary disclosure practice for both domestic and offshore voluntary disclosures. The new guidance provides less procedural detail and penalty assurance than the old OVDP but also sets out a general framework for handling all voluntary disclosures. This panel discusses the details of the new IRS practice, when it is the right choice for your clients, and what other alternatives may be available.

**Moderator:** **Lawrence A. Sannicandro, Esq.**, *Associate, McCarter & English, Newark, NJ*

**Larry A. Campagna, Esq.**, *Shareholder, Chamberlain, Hrdlicka, White, Williams & Aughtry, PC, Houston, TX*

**Emily P. Hughes, PC, Esq.**, *Partner, Kirkland & Ellis, Washington, DC*

**Carolyn A. Schenck, Esq.**, *Assistant Division Counsel (International), Internal Revenue Service, St. Paul, MN*

2:15 p.m.

## REFRESHMENT BREAK

2:40-3:40 p.m.

## BREAKOUT SESSIONS

### TRACK I

#### LITIGATING FOREIGN ASSET REPORTING TAX PENALTIES: THE CONTROVERSIES CONTINUE

It's been more than a decade since the wall of Swiss bank secrecy fell revealing the extent to which US taxpayers had unreported foreign assets. In the intervening years, the IRS has continued its focus on finding and penalizing those assets. The law and procedures regarding FBAR, 5471, 8938, and 3520 penalties have been developing rapidly as taxpayers contest the assessment of liabilities that can be unexpectedly large. This panel discusses the latest developments relating to foreign asset reporting penalties, as well as practical tips for representing taxpayers contesting the imposition of such penalties.

**Moderator: Phillip Colasanto, Esq.,** Associate, Agostino & Associates, PC, Hackensack, NJ

**Jeffrey A. Neiman, Esq.,** Partner, Marcus Neiman Rashbaum & Pineiro, Fort Lauderdale, FL

**Lindsey D. Stellwagen, Esq.,** Special Counsel (International), Internal Revenue Service, Washington, DC

**Steven R. Toscher, Esq.,** Principal, PC, Hochman Salkin Toscher Perez, PC, Beverly Hills, CA

### TRACK II

#### FOLLOWING THE MONEY: THE INS AND OUTS OF CONSTRUCTION INDUSTRY AUDITS AND INVESTIGATIONS

Construction projects often involve large amounts of money changing hands among a large number of people, creating a situation that is ripe for mistakes and even fraud. In response, the government has developed investigative techniques specifically for uncovering tax non-compliance in the construction industry. This panel reviews how the government approaches audits and investigations in the construction industry and offers practical tips for representing taxpayers who are faced with having to explain where their money came from and where it went.

**Moderator: Christopher M. Ferguson, Esq.,** Counsel, Kostelanetz & Fink, New York, NY

**Thomas E. Bishop,** Senior Manager, National Forensic, Litigation and Valuation Services, Baker Tilly Virchow Krause, New York, NY

**Jonathan D. Larsen,** Acting Special Agent-in-Charge, Internal Revenue Service, Criminal Investigation, New York Field Office, New York, NY

**Burton T. Ryan, Jr., Esq.,** Assistant United States Attorney, United States Attorney's Office, Eastern District of New York, New York, NY

**Philip J. Wilson, CPA,** Office Managing Partner, Marcum, Costa Mesa, CA

3:40 p.m.

## REFRESHMENT BREAK

4:00-5:00 p.m.

## BREAKOUT SESSIONS

### TRACK I

#### HOW WELL DO YOUR SECRETS TRAVEL? UNDERSTANDING THE SCOPE OF PRIVILEGES IN CROSS-BORDER AUDITS AND INVESTIGATIONS

International tax enforcement is a top priority of the IRS and the Department of Justice. Audits and investigations routinely involve the collection of information, documents, and testimony outside the United States, leaving tax practitioners to determine what, if any, privilege applies and how those privileges can be preserved in various jurisdictions. This panel of experienced tax controversy attorneys addresses common privileges that arise in tax matters, the holder and scope of those privileges, the extent to which such privileges can be waived or set aside, and how to navigate these waters in foreign and cross-border audits and investigations.

**Moderator: Caroline D. Ciraolo, Esq.,** Partner, Kostelanetz & Fink, Washington, DC

**Mark D. Allison, Esq.,** Member, Caplin & Drysdale, Chartered, New York, NY

**Mark F. Daly, Esq.,** Litigation Counsel, Tax Division, US Department of Justice, Washington, DC

**Sarah E. Paul, Esq.,** Partner, Eversheds Sutherland (US), New York, NY

**Carolyn A. Schenck, Esq.,** Assistant Division Counsel (International), Internal Revenue Service, St. Paul, MN

# 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

## TRACK II

### OUT OF TIME, OUT OF LUCK? HOW TO REQUEST RELIEF FOR A LATE OR MISSED ELECTION

Just because a taxpayer missed an election does not mean he or she is completely out of luck. So called "Section 9100 Relief" may provide taxpayers a second chance for certain regulatory elections. This panel reviews the rules for late election relief under Treas. Reg. Sections 301.9100-1 to -3, including how to maximize your chances of obtaining such relief and other ways to fix late elections outside of the Section 9100 process.

**Moderator: Mary I. Slonina, Esq.,** *Director, Tax Controversy and Regulatory Services, PricewaterhouseCoopers, Washington, DC*

**Eduardo S. Chung, Esq.,** *Director, Tax Practice and Procedures Group, Mazars USA, New York, NY*

**David A. Lifson, CPA,** *Partner, Crowe, New York, NY*

**Rosemary Sereti, MST, CPA,** *Managing Director, Washington National Tax, Tax Controversy Services, Deloitte, Washington, DC*

**Shamik Trivedi, Esq.,** *Senior Manager, Washington National Tax Office, Grant Thornton, Washington, DC*

5:00 p.m.  
RECESS

## FRIDAY, JUNE 21, 2019

8:00 a.m.  
REGISTRATION AND DISTRIBUTION OF MATERIALS  
CONTINENTAL BREAKFAST

8:30 a.m.  
KEYNOTE ADDRESS: STATE OF THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE

**Michael R. Schmidt,** *Commissioner Nominee, New York State Department of Taxation and Finance, Albany, NY*

9:00 a.m.  
TAX COMPLIANCE AND ENFORCEMENT UPDATE PART II

Voluntary compliance and enforcement of the tax law are at the heart of our tax system. Over the past several years, the IRS and DOJ have been challenged to come up with new and more efficient ways to ensure that all taxpayers pay the correct amount of tax. This panel provides an update on new developments and priorities across the IRS and DOJ.

### IRS CRIMINAL INVESTIGATION DIVISION UPDATE

**Don Fort, CPA,** *Chief, Criminal Investigation Division, Internal Revenue Service, Washington, DC*

**Interviewer: Jeremy H. Temkin, Esq.,** *Principal, Morvillo Abramowitz Grand Iason & Anello PC, New York, NY*

### DEPARTMENT OF JUSTICE UPDATE

**Richard E. Zuckerman, Esq.,** *Principal Deputy Assistant Attorney General, Tax Division, US Department of Justice, Washington, DC*

**Interviewer: Caroline D. Ciraolo, Esq.,** *Partner, Kostelanetz & Fink, Washington, DC*

### IRS WHISTLEBLOWER OFFICE UPDATE

**Lee D. Martin, PMP,** *Director, Whistleblower Office, Internal Revenue Service, Washington, DC*

**Interviewer: Dean Zerbe, Esq.,** *Partner, Zerbe, Miller and Fingeret, Houston, TX*

10:00 a.m.  
REFRESHMENT BREAK



10:15 a.m.

#### AREAS OF CONTROVERSY UNDER THE TCJA

The TCJA made sweeping changes to the Internal Revenue Code, and while Treasury and the IRS have done a Herculean job of providing guidance, many of the changes are complex and there is scant legislative history to reveal what Congress intended. Certain provisions of the TCJA will be caught in a cross-current of complexity and ambiguity that may lead some taxpayers to take aggressive reporting positions. This panel identifies some of those provisions and the areas in which controversies are likely to ensue.

**Moderator: Michael Sardar, Esq.,** *Partner, Kostelanetz & Fink, New York, NY*

**Claudia Hill, EA, MBA,** *President, TaxMam, Cupertino, CA*

**Fred F. Murray, Esq., CPA,** *Professor of Law, University of Florida Levin College of Law, Gainesville, FL*

**Tamera Ripperda, CPA,** *Deputy Commissioner, Small Business/Self-Employed Division, Internal Revenue Service, Washington, DC*

**Andrew R. Roberson, Esq.,** *Partner, McDermott Will & Emery, Chicago, IL*

11:30 a.m.

#### KEYNOTE ADDRESS: OFFICE OF THE TAXPAYER ADVOCATE—20 YEARS LATER

**Nina E. Olson, Esq.,** *National Taxpayer Advocate, Internal Revenue Service, Washington, DC*

12:00 p.m.

#### LUNCH RECESS

1:15–2:15 p.m.

#### BREAKOUT SESSIONS

### TRACK I

#### A PRIMER ON THE EFFECTIVE USE OF EXPERTS IN TAX COURT CASES

Some cases, such as those involving valuation of property, clearly require the use of an expert. In other cases, the value of expert testimony is less obvious. When should you consider using an expert, what is the role of expert testimony in a Tax Court case, what is the best way to present your expert's opinion, and how can you most effectively attack the other party's expert evidence? This panel discusses these and other issues to help you determine whether and how you should use an expert in your next tax controversy.

**Moderator: Frank Agostino, Esq.,** *President, Agostino & Associates, PC, Hackensack, NJ*

**Marc L. Caine, Esq.,** *Senior Counsel, Office of Chief Counsel, Small Business/Self-Employed Division, Internal Revenue Service, Westbury, NY*

**The Honorable Maurice B. Foley,** *Chief Judge, United States Tax Court, Washington, DC*

**David W. Foster, Esq.,** *Partner, Skadden, Arps, Slate, Meagher & Flom, Washington, DC*

**Brian W. Kittle, Esq.,** *Partner, Mayer Brown, New York, NY*

### TRACK II

#### PRACTICAL TIPS FROM THE TRENCHES: DEALING WITH OVERBROAD INFORMATION DOCUMENT REQUESTS AND DEMANDS TO INTERVIEW THE TAXPAYER

An audit is a forum for exchanging information and the IRS often takes the first step by issuing wide-ranging information document requests, and lately, there has been an uptick in IRS requests to personally interview the taxpayer, even at the beginning of the audit. Broad demands for information and interviews raise questions of ability to produce, relevance, and privilege. Often, the practical way in which the parties approach the information exchange process is more important than the law governing the process. This panel of expert tax litigators provides practical tips and examples of how to address difficult or sensitive requests for information by the IRS.

**Moderator: Richard J. Sapinski, Esq.,** *Partner, Sills Cummis & Gross PC, Newark, NJ*

**Jenny L. Johnson Ware, Esq.,** *Partner, Johnson Moore, Chicago, IL*

**Barbara T. Kaplan, Esq.,** *Partner, Greenberg Traurig, New York, NY*

**Walter Pagano, CPA, CFE, CFF,** *Partner, Tax Controversy Practice Leader, Forensic Accountant and Litigation Consultant, EisnerAmper, New York, NY*

# 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

## TRACK III

### NEW YORK STATE'S USE OF THE FALSE CLAIMS ACT AS A TOOL OF TAX ENFORCEMENT

In 2010, New York amended its False Claims Act to apply to violations of the New York State Tax Law. The NYS FCA is a powerful tool for tax enforcement because, under certain circumstances, it provides for treble damages, allowing the state to triple the amount of tax, penalties, and interest that is due. The NYS FCA also allows private whistleblowers to initiate claims and to receive an award equal to a percentage of the damages recovered. This panel outlines how the NYS FCA works, when it applies, and what practitioners should consider when representing clients who face liability under the FCA.

**Moderator: Randall M. Fox, Esq.,** *Partner, Kirby McInerney, New York, NY*

**Thomas Teige Carroll, Esq.,** *Chief, Taxpayer Protection Bureau, New York State Office of the Attorney General, New York, NY*

**James N. Mastracchio, Esq.,** *Partner, Eversheds Sutherland (US), Washington, DC*

**Timothy P. Noonan, Esq.,** *Partner, Hodgson Russ, New York, NY*

.....  
**2:15 p.m.**

### REFRESHMENT BREAK

.....  
**2:40–3:40 p.m.**

### BREAKOUT SESSIONS

## TRACK I

### PRESERVING YOUR CHALLENGES UNDER THE ADMINISTRATIVE PROCEDURES ACT: MORE IMPORTANT NOW THAN EVER

With the blizzard of guidance promulgated under the TCJA, challenges to many new regulations are a virtual certainty. In the meantime, the Tax Court has developed its jurisprudence on application of the APA to tax cases. Have we reached the end of “tax exceptionalism”? What does Treasury’s “Policy Statement on the Tax Regulatory Process” mean for deference in tax litigation? How will the APA apply to the blizzard of new regulations under the TCJA? This panel addresses these questions and explores the current state of the law on the Administrative Procedures Act as it applies to tax.

**Moderator: S. Starling Marshall, Esq.,** *Special Counsel, Covington & Burling, New York, NY*

**Diana L. Erbsen, Esq.,** *Partner, DLA Piper (US), New York, NY*

**Steven R. Dixon, Esq.,** *Member, Miller & Chevalier Chartered, Washington, DC*

**Kelley C. Miller, Esq.,** *Partner, Reed Smith, Washington, DC*

## TRACK II

### I WOULD RATHER PAY LESS PLEASE: HOW TO MAKE EFFECTIVE OFFERS IN COMPROMISE

Offers in Compromise are an essential tool of tax enforcement because the IRS realizes that it is often better to get half a loaf of bread than none at all. However, for the fiscal year 2017, even though millions of taxpayers owed billions in unpaid taxes, the IRS received only 62,000 Offers in Compromise and it accepted approximately 25,000 of those, or a little less than half. This panel identifies when an Offer in Compromise should be considered and what makes a good offer so that you can increase the likelihood of having your next offer accepted.

**Moderator: Robert E. McKenzie, Esq.,** *Partner, Saul Ewing Arnstein & Lehr, Chicago, IL*

**Sarah A. Fields, EA,** *Tax Controversy Specialist, Prager Metis, Cranbury, NJ*

**Fran Obeid, Esq.,** *Founder, MFO LAW, PC, New York, NY*

**Daniel S. Rosefelt, Esq., CPA,** *Tax Attorney, Daniel Rosefelt & Associates, Bethesda, MD*

## TRACK III

### KNOCK, KNOCK, DOES ANYBODY RESIDE HERE? REPRESENTING TAXPAYERS IN NYS RESIDENCY AUDITS

One of the most complex and ambiguous terms in the NYS Tax Law is “residency.” A myriad of facts, circumstances, and evidence can affect the determination of whether a taxpayer is an NYS “resident.” Based on the tax dollars involved, it is no wonder that NYS aggressively pursues the issue at audit, at administrative hearings, and in court. This panel discusses recent developments in the law and procedures affecting NYS residency audits and provides tips for practitioners trying to prove that their clients are not NYS residents.

**Moderator: Karen J. Tenenbaum, Esq., LLM (Tax), CPA,** *Partner, Tenenbaum Law, PC, Melville, NY*

**Joseph A. Carzo,** *Director, Audit Division, New York State Department of Taxation and Finance, Albany, NY*

**Yvonne R. Cort, Esq.,** *Partner, Capell Barnett Matalon & Schoenfeld, Jericho, NY*

**Noelle T. Geiger, Esq.,** *Attorney, Green & Sklarz, New Haven, CT*

**Mark S. Klein, Esq.,** *Partner, Hodgson Russ, New York, NY*

3:40 p.m.  
REFRESHMENT BREAK

4:00-5:00 p.m.  
BREAKOUT SESSIONS

## TRACK I

### WHY DO I OWE TAX WHEN IT'S NOT MY MONEY? WITHHOLDING ON PAYMENTS TO FOREIGN PERSONS

Taxpayers who make payments of certain US-source income to foreign persons must comply with certain withholding and reporting requirements. The IRS recently announced an LB&I compliance campaign to examine taxpayers who make such payments but do not withhold, pay, and/or report as required. This panel explains who is a withholding agent required to withhold tax on payments to foreign payees, some of the surprising ways in which they can become liable for tax due on money they paid out to others, and how the IRS is pursuing them for payment. Also discussed are the main impact and requirements of the Foreign Account Tax Compliance Act for withholding agents.

**Moderator: Timothy Mulvey, Esq.,** *Director & Tax Counsel, Deutsche Bank AG, New York, NY*

**Michael Mattaliano, Esq.,** *Senior Manager, EY, Hoboken, NJ*

**Kimberly A. Schoenbacher, Esq.,** *Acting Director, Field Operations (Foreign Payments Practice Area), Internal Revenue Service, Schiller Park, IL*

**Christopher L. Shott, Esq.,** *Attorney, Office of Chief Counsel, Large Business & International Division, Internal Revenue Service, New York, NY*

## TRACK II

### BLURRING THE LINES: WHEN IS TAX ADVICE SUBJECT TO THE ATTORNEY CLIENT PRIVILEGE?

Tax lawyers often provide clients with advice on how things should be treated on a tax return. Are these communications legal advice or accounting advice? What is the difference between tax advice and return preparation advice? Are there clear rules that provide guidance in these areas? This panel reviews the way in which courts apply the attorney client privilege to lawyers who give tax advice and explains how you can insure that your communications with your client remain confidential.

**Moderator: Stephen Josey, Esq.,** *Associate, Kostelanetz & Fink, New York, NY*

**Ian M. Comisky, Esq.,** *Partner, Fox Rothschild, Philadelphia, PA*

**Carlos F. Ortiz, Esq.,** *Partner, Norton Rose Fulbright US, New York, NY*

**Amy Walsh, Esq.,** *Partner, Orrick, Herrington & Sutcliffe, New York, NY*

## TRACK III

### TAXING OUT OF STATE TAXPAYERS: HOW NEW YORK STATE WILL USE WAYFAIR TO COLLECT MORE TAX

Last year, in *South Dakota v. Wayfair, 138 S. Ct. 2080 (2018)*, the US Supreme Court reversed its "physical presence" nexus test and held that "economic nexus" arising from "economic and virtual contacts" with a state could trigger an obligation to collect state sales tax. New York recently announced that it intends to require certain out of state vendors to register and collect NYS sales tax. How will these new procedures work and does the new "economic nexus" test also apply for income tax purposes, and when should out of state taxpayers consider the New York voluntary disclosure program? This panel addresses what out of state taxpayers should expect and what ambiguities will arise as New York flexes its newfound muscle.

**Moderator: Valerie Vlasenko, Esq.,** *Associate, Agostino & Associates, PC, Hackensack, NJ*

**Mary Ellen Ladouceur, Esq.,** *Principal Attorney, Transaction Tax Practice Group, Office of Counsel, New York State Department of Taxation and Finance, Albany, NY*

**Jack Trachtenberg, Esq.,** *Principal, Deloitte Tax, New York, NY*

**Thomas E. Wrocklage, Esq.,** *Senior Manager, Crowe, New York, NY*

5:00 p.m.  
CONFERENCE CONCLUDES

# 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

## GENERAL INFORMATION

### CONFERENCE FEE

The **conference fee of \$1,095** includes tuition, continental breakfast, refreshment breaks, lunch on Day One, and one set of course materials on a USB flash drive. Full and partial waivers of the conference fee based upon financial need are available as well. To request a waiver application, please call **212-992-3320** or email your request to [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu).

### SINGLE-DAY REGISTRATION FEE

The **single-day conference fee of \$595** includes tuition for one day of sessions, continental breakfast, refreshment breaks, lunch on Day One (if applicable for the selected day), and one set of course materials on a USB flash drive for the day of attendance.

### FULL-TIME GOVERNMENT OFFICIAL REGISTRATION FEES

If you are a full-time government official, the fee is \$195 for one day or \$275 for both days. Proof of full-time government employment must be provided with registration. To register online for the full-time government official discount, please call **212-992-3320** or email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) for a special discount code.

You may register online, by mail, or onsite at the Forum. Credit card payments can only be accepted through the online payment portal. Faxed registrations are not accepted, nor are wire transfers as a form of payment. To register by mail, complete the registration form and return it with a check or money order. All registrations sent by mail must be received by 12 noon (EDT) on Tuesday, June 18, 2019.

To register onsite, visit the NYU School of Professional Studies Registration Desk at the Crowne Plaza beginning at 8:00 a.m. on Thursday, June 20, 2019. Walk-ins may pay with a check, a money order, or a credit card. To pay by credit card, all walk-ins will be required to self-register at available kiosks. For faster service, Conference attendees should plan to register in advance online at [sps.nyu.edu/taxcontroversy](https://sps.nyu.edu/taxcontroversy).

### PRESS BADGES

If your media outlet plans to cover the NYU School of Professional Studies 11th Annual Tax Controversy Forum, please email coverage strategy and press credentials to [sps.press@nyu.edu](mailto:sps.press@nyu.edu).

### ELECTRONIC REGISTRATION CONFIRMATION

An automated email confirmation will be sent to the email address provided to the NYU School of Professional Studies at the time of registration. Please use an individual email address for each registrant. If a confirmation is not received within two days of online registration submission (allow one to two weeks for registrations sent by mail), email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) to request a duplicate copy.

### CANCELLATION AND SUBSTITUTION POLICY

A written request for cancellation must be emailed to [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) to the attention of: Conference Administration. Requests received by June 5, 2019, will receive a 100% tuition refund, less a \$150 cancellation fee. Due to financial obligations incurred by the NYU School of Professional Studies, there are no refunds available after June 5, 2019. The School is not able to arrange cancellation exceptions or to accept onsite cancellations. If you cannot attend but would like to send someone in your place, please email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) no later than June 18, 2019.

### CONFERENCE LOCATION AND HOTEL ACCOMMODATIONS

The Forum will be held at the Crowne Plaza Times Square Manhattan, 1605 Broadway and 49th Street. Accommodations are available at the hotel, which is easily accessible to Times Square, Broadway theatres, Radio City Music Hall, Carnegie Hall, Rockefeller Center, Central Park, and Fifth Avenue shopping. To provide a quality conference at the best possible cost, the NYU School of Professional Studies has negotiated special room rates and has committed to a block of rooms at the Crowne Plaza. Please support the NYU School of Professional Studies by reserving your sleeping accommodations within the room block. Your support allows the School to keep conference registration fees reasonable. Single-occupancy rooms are available at the NYU School of Professional Studies group rate of \$329, and double-bedded rooms are available at the group rate of \$349 by calling **888-233-9527** and referring to the NYU School of Professional Studies Tax Forum. These rooms will be held as a block, unless exhausted, until May 20, 2019, at which time they will be released to the general public. Book your reservation in advance, as hotel rooms can sell out prior to the cutoff date.



## DIETARY REQUIREMENTS AND ACCESSIBILITY NEEDS

Participants who have special dietary requirements or accessibility needs are advised to email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) or to call the Department of Finance and Law Programs at **212-992-3320** by **June 12, 2019**, to indicate their particular requirement(s). Special dietary requirements must be indicated by this deadline to receive a special meal for the Thursday luncheon.

## CONFERENCE MATERIALS

Course materials are provided to registrants for each day of the Forum for which they are registered. They will receive a USB flash drive, which is included in the conference fee, at the time of check-in that contains the materials for the day(s) of attendance. In addition, registrants will receive an email from NYU approximately two to three days before the Forum containing a link and special password in order to access and download and/or print the course materials. Free WiFi also will be available for attendees at the Forum. **Bound hard copies of the course materials will be available only upon advance request at an additional fee of \$200.** If you wish to have a printed set of materials available at the NYU School of Professional Studies Registration Desk, please indicate this when registering and submit the additional fee of \$200. Printers will not be available at the Forum. Please note that materials not provided to the NYU School of Professional Studies in advance may be available in hard copy onsite and/or may be emailed to registrants after the Forum upon request. However, last-minute materials will not be on the USB flash drive. If you are unable to attend the Forum but would like to receive a copy of the course materials (on a USB flash drive), please send your request to: NYU School of Professional Studies, Tax Controversy Forum Course Materials Order, 11 West 42nd Street, Suite 422, New York, NY 10036, or call **212-992-3320** or email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) to reserve your copy. See the Conference Registration Form for further details on how to order course materials.

## CONFERENCE CHECK-IN AND MATERIALS PICK-UP

The NYU School of Professional Studies Tax Controversy Forum Registration Desk will open, and materials will be available beginning at 8:00 a.m. on Thursday and Friday. Proper photo identification is required for badge retrieval. One set of conference materials per paid registrant is provided at the time of badging. Badges must be displayed in all public spaces throughout the Forum.

## CONTINUING EDUCATION CREDIT

The NYU School of Professional Studies (NYUSPS) is a recognized leader in professional continuing education. The NYUSPS Department of Finance and Law Programs has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York. This conference meets the educational requirements of many organizations and agencies with mandatory CLE/CPE filing requirements. It is highly recommended to contact the Department at **212-992-3320** or [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) at least **30 days prior** to the Forum start date to ensure the availability of credit for a specific MCLE state, as NYUSPS cannot guarantee that credit will be applied for in all cases.

## ESTIMATED CONTINUING EDUCATION CREDITS

12.5 based upon a 60-minute hour, including 1.0 ethics credit

15.0 based upon a 50-minute hour, including 1.0 ethics credit

Except where indicated, CLE credits are non-transitional in the categories of professional practice/practice management. CLE boards define a credit hour as either 60 minutes or 50 minutes.

Recommended CPE credits are in the following NYS subject area: Taxation. NASBA Fields of Study: Taxes; Regulatory Ethics. In accordance with the Standards of the National Registry of CPE Sponsors, CPE credits are based upon a 50-minute hour. Please note that not all state boards accept half credits.

## NASBA



The NYU School of Professional Studies Department of Finance and Law Programs is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: [nasbaregistry.org](http://nasbaregistry.org). Program Level: Overview. Delivery Method: Group live. Fields of Study: Taxes; Regulatory Ethics. Prerequisites: No prerequisite. Advanced Preparation: No advanced preparation required.

New York and Texas require sponsors to register individually with their states as continuing professional education sponsors; the NYU School of Professional Studies is a registered sponsor in the State of New York (Sponsor ID# 000493) and the State of Texas (Sponsor ID# 000439).

(continued on next page)

# 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

## GENERAL INFORMATION (CONTINUED)

### IRS CONTINUING PROFESSIONAL EDUCATION CREDITS



APPROVED  
CONTINUING EDUCATION  
PROVIDER

The NYU School of Professional Studies is a qualified sponsor (Sponsor #673) of continuing professional education required for individuals enrolled to practice before the Internal Revenue Service (enrolled agents).

A certificate of attendance is given to each registrant and validated upon completion of the program. For questions concerning credit hours or approvals, please call **212-992-3320** or email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu).

### SPONSORSHIP AND EXHIBIT OPPORTUNITIES

For information on becoming a Forum Sponsor or exhibiting at the Conference, please contact Kathleen Costello at **212-992-3320** or [kathleen.costello@nyu.edu](mailto:kathleen.costello@nyu.edu).

### RECORDING DEVICES

The use of tape or digital recorders in meeting rooms is prohibited. Please switch off mobile phones, email devices, etc., upon entering the meeting rooms.

## REGISTRATION INSTRUCTIONS

### ONLINE REGISTRATION

- Visit [sps.nyu.edu/taxcontroversy](https://sps.nyu.edu/taxcontroversy)
- Highly recommended for fastest response
- Automated email confirmation will be sent to the email address provided to the NYU School of Professional Studies at the time of registration
- Please use an individual email address for each registrant
- Major credit cards accepted: American Express®, Discover®, MasterCard®, and VISA®

### OTHER REGISTRATION OPTIONS

**Mail:** To register by mail, complete the registration form, and return it with a check or money order payable to New York University, and mail to the address below. Payment must accompany the registration form. An email confirmation of registration will be sent to the email address provided to the NYU School of Professional Studies. Fill out a separate form for each registration. All registrations sent by mail must be received by 12 noon (EDT) on Tuesday, June 18, 2019. Send to: NYU School of Professional Studies Budget Office, New York University, 7 East 12th Street, 12th Floor, New York, NY 10003, Attention: 11th Annual Tax Controversy Forum.

**Onsite:** To register onsite, visit the NYU School of Professional Studies Registration Desk at the Crowne Plaza Times Square Manhattan beginning at 8 a.m. on Thursday, June 20, 2019. You may pay by check, money order, or credit card, and if paying by credit card, you will be required to self-register at one of the available kiosks. For faster service, Forum attendees should register in advance online at [sps.nyu.edu/taxcontroversy](https://sps.nyu.edu/taxcontroversy).

**Note:** Each person attending the 11th Annual Tax Controversy Forum must register individually by using a separate form, or in a separate online registration session. Sharing registrations is NOT permitted. Only registered attendees are eligible to receive continuing education credits.

To register online for the **Full-Time Government Official Discount**, please call **212-992-3320** or email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) for a special discount code. To qualify, proof of full-time government employment will be required. Credit card payments can only be accepted through the online payment portal. Faxed registrations are not accepted, nor are wire transfers as a form of payment.

For further information regarding administrative policies, such as complaints and refunds, or for help registering, please contact Conference administrators at **212-992-3320** or [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu).

## REGISTRATION FORM

**Online:** [sps.nyu.edu/taxcontroversy](http://sps.nyu.edu/taxcontroversy)

**Mail To:** NYU School of Professional Studies Budget Office  
New York University  
7 East 12th Street, 12th Floor  
New York, NY 10003  
Attention: 11th Annual Tax Controversy Forum

## CHECK ONE FOR REGISTRATION AND PAYMENT:

Individual Conference Registration:

- ☐ 11th Annual Tax Controversy Forum for \$1,095
- ☐ Day One, Thursday, June 20, 2019 ONLY for \$595
- ☐ Day Two, Friday, June 21, 2019 ONLY for \$595

Full-Time Government Official Registration:

**To qualify, please enclose identification.**

- ☐ Full-Time Government Official Registration for \$275
- ☐ Day One, Thursday, June 20, 2019 ONLY for \$195
- ☐ Day Two, Friday, June 21, 2019 ONLY for \$195

### PRINTED COURSE MATERIALS—Extra Option for an Additional Fee

NYUSPS is going green; to help defray costs, printed materials are available for an additional \$200. Check here if you want a bound copy of the materials for the day(s) of your attendance and include the \$200 fee.

☐ **Printed Materials for \$200**

*Included in the conference fee, **registrants will be provided access to download and/or print the course materials prior to the Forum and also will receive a USB flash drive at the time of check-in containing the materials for the day(s) of attendance.***

I am a/n ☐ CPA ☐ Attorney ☐ EA ☐ Other

I require ☐ CLE Credit ☐ CPE Credit ☐ CE Credit

FOR CLE ONLY: For which state(s) is CLE credit being requested? State: \_\_\_\_\_

*Print or type clearly. Please DO NOT abbreviate. This information will appear on the attendee list and on your badge. (Email addresses will not be publicized.)*

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Business Phone: \_\_\_\_\_

Email\*: \_\_\_\_\_

*(\*Email is required—registration confirmations are sent via email.)*

## CAN'T ATTEND

If you are unable to attend the Forum but would like to receive a copy of the course materials (on a USB flash drive), please send your request to NYU School of Professional Studies, Tax Controversy Forum Course Materials Orders, 11 West 42nd Street, Suite 422, New York, NY 10036; call **212-992-3320**; or email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) to reserve your copy by June 14, 2019, after which fulfillment cannot be guaranteed. The price for each set of materials is \$200. There is no additional charge for shipping and handling in the continental US; please add an additional \$20 when shipping orders outside the continental US. Please make check or money order payable to New York University, or email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu) to learn how to pay by credit card.

**Materials are mailed at the conclusion of the Tax Controversy Forum.**

☐ Please send me the 11th Annual Tax Controversy Forum Course Materials

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Email: \_\_\_\_\_ Business Phone: \_\_\_\_\_

# 11<sup>TH</sup> ANNUAL TAX CONTROVERSY FORUM

**JUNE 20-21, 2019**  
**CROWNE PLAZA**  
**TIMES SQUARE MANHATTAN**  
NEW YORK, NY

## **UPDATES FROM:**

**Michael J. Desmond, Esq.**, *Chief Counsel, Internal Revenue Service*  
**The Honorable Maurice B. Foley**, *Chief Judge, United States Tax Court*

**Don Fort, CPA**, *Chief, Criminal Investigation Division, Internal Revenue Service*

**Paul J. Mamo**, *Director, Collection, Internal Revenue Service*  
**Lee D. Martin, PMP**, *Director, Whistleblower Office, Internal Revenue Service*

**Mary Beth Murphy**, *Commissioner, Small Business/Self-Employed Division, Internal Revenue Service*

**Douglas W. O'Donnell, CPA**, *Commissioner, Large Business & International Division, Internal Revenue Service*

**Richard E. Zuckerman, Esq.**, *Principal Deputy Assistant Attorney General, Tax Division, US Department of Justice*

## **KEYNOTE ADDRESSES:**

**Charles P. Rettig, Esq.**, *Commissioner, Internal Revenue Service, Washington, DC*

**Michael R. Schmidt**, *Commissioner Nominee, New York State Department of Taxation and Finance, Albany, NY*

**Nina E. Olson, Esq.**, *National Taxpayer Advocate, Internal Revenue Service, Washington, DC*

For more information, call **212-992-3320**  
visit [sps.nyu.edu/taxcontroversy](https://sps.nyu.edu/taxcontroversy)  
email [sps.tax@nyu.edu](mailto:sps.tax@nyu.edu)

PB19-0155 04/19



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