

Q&A With Baker Botts' Richard Hussein

Law360, New York (February 03, 2014, 6:15 PM ET) -- Richard Hussein is the chairman of Baker Botts' tax department where he maintains a unique tax practice combining federal tax controversy and litigation with sophisticated federal tax planning.

Hussein represents large companies and high net-worth individuals before the Internal Revenue Service Exam, IRS Appeals, the U.S. Tax Court, U.S. Court of Federal Claims, U.S. district courts, U.S. courts of appeals, the Texas Public Utility Commission, and mediators and arbitrators. He has specific experience in representing taxpayers in IRS examinations, IRS fast track mediation and post-appeals mediation and tax court and refund actions. His controversy experience extends to all areas of federal income taxation, with an emphasis in subchapter C; financial products; oil and gas tax issues; international tax; foreign tax credit and treaty issues; research and development credits, tax shelter defense; renewable energy, section 1033 issues; tax sharing agreements; casualty loss issues; normalization issues; receivership tax issues and federal constitutional challenges to state tax statutes.

Hussein also has extensive knowledge of the intricacies of the tax shelter regulations, as well as privilege and ethical issues, affecting tax practice. He has extensive experience in advising clients on FIN 48, Schedule UTP and Circular 230. Following graduation from law school, Hussein served as a law clerk to Richard Posner of the United States Court of Appeals for the Seventh Circuit.

Q: What is the most interesting or challenging tax problem you've worked on to date?

A: As a tax controversy lawyer, you are at times called into a new matter shortly before a critical deadline or meeting. These can be the most challenging assignments, but frequently are the most exciting matters. In one instant, I was called in to handle a case that was at a deadlock at appeals. The issue was a novel application of a code section that had existed for many years. I convinced the Appeals Team Case Leader ("ATCL") to pursue post-appeals mediation and a settlement was reached.

It took a good deal of hard work and perseverance by both the ATCL and the Baker Botts team, but at the end of the day, a settlement was reached because all parties were searching for the correct resolution to the tax problem. These situations are ones in which both parties have to be willing to be recognize the pros and cons of the other's positions and think outside the box to try to find analogies to convince the other party of the soundness of your position.

Q: Currently, what is a pressing tax concern for your clients, and how are you addressing it?

A: The changes in the audit process by the IRS' large business and international ("LB&I") division are of tremendous interest to my clients. Recent changes to new issue practice groups ("IPGs") and

international practice networks ("IPNs"), as well as recently announced changes to the information document requests ("IDR") process are of particular concern.

The IDR changes will be particularly profound. These changes will affect not only which issues are audited but what taxpayers are audited. The collaboration that will be required between the IRS Exam and taxpayers will increase, and the turnaround time to provide responses will also be profoundly different. It is critical that outside counsel stay on top of these developments and be proactive in working with the IRS to advance the common interests of the taxpayer and the IRS to achieving the correct answer.

Q: What do you anticipate being the biggest regulatory challenge in your practice in the coming year and why?

A: My biggest challenge parallels my client's most pressing concern. As outside counsel, it is our obligation to help our clients be as proactive and prepared as possible in order to respond to these new IRS initiatives and programs. All must remember that these new programs will be constantly evolving. Yet at the same time, a dedicated partnership between outside counsel and the taxpayer should be able to produce an outcome that is in the best interest of the taxpayers and the IRS.

Changes in approach will be required by all involved and all parties must be willing to think outside the box to develop new solutions to old problems. A good example is working with your exam team in an issue that is squarely within the ambit of an IPG. The process is new to everyone and outside counsel can really provide value by making sure the taxpayer's input and information is properly brought to the attention of the members of the IPG and adequate opportunities exist for appropriate dialogue between the taxpayer and the members of the IPG.

Q: Outside of your own firm, who is an attorney in your practice area whom you admire, and what is the story of how s/he impressed you?

A: For me, the sign of a great lawyer is not only someone who excels at their craft, but someone who is also a fine human being. There is perhaps no greater example than Jerry Cohen.

Jerry has had an illustrious career in the tax law. He was arguably one of the country's finest IRS chief counsel, and his career in tax law is nothing short of amazing. There are a countless number of lawyers and judges that Jerry helped train and mentor. He possesses the charisma and warmth that all lawyers should emulate. I have had the good fortune of working with Jerry as co-counsel, and I can personally attest to his quick wit, mastery of the tax law, and being a true gentleman. We need more lawyers like Jerry Cohen.

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