

# Business & Transactional Tax

## Overview

Our tax attorneys work with businesses and their owners (including publically traded corporations, privately held corporations, limited liability companies, limited partnerships, 'S' corporations, venture capital and private equity funds, family offices and corporate executives) to achieve optimal federal, state and local tax efficiencies in the conduct of business activities and transactions. Our tax attorneys also work closely with attorneys in other sections of the Firm and play an integral part in structuring, negotiating and implementing various tax efficient strategies to facilitate business objectives. The following list illustrates the breadth of our capabilities and experience with respect to business and transactional tax matters.

### CORPORATE TAXATION

- Tax free acquisitive reorganizations
- Tax free dispositive reorganizations
- Structured taxable acquisitions and divestitures, including Section 336(e) and Section 338 transactions
- Tax free spin-offs, split-offs and split-ups
- Corporate formations, joint ventures and liquidations
- Financings and recapitalizations
- Consolidated return issues
- Net operating loss limitations
- S Corporation transactions and planning

### EQUITY/INCENTIVE COMPENSATION PLANNING

- Incentive stock option (ISO) plans
- Non-qualified stock option (NSO) plans
- Restricted stock plans
- Stock appreciation rights (SARs) and phantom equity plans
- Carried interest and other "profit interest" or "promote" structures
- Cash bonus plans
- Section 409A compliance

### PARTNERSHIP/LIMITED LIABILITY COMPANY TAXATION

- Tax free formations, redemptions and

### OTHER BUSINESS TAX PLANNING

- Choice of entity analysis
- Partnership agreements
- Limited liability company (LLC) agreements
- Buy-sell agreements
- Installment sales
- Personal goodwill dispositions
- Private Letter Rulings
- Bankruptcy and workout tax matters
- Inbound and outbound transactions

### REAL ESTATE TAXATION

- Tax free "like kind" exchange; or Section 1031 transactions
- Capital gains planning
- Carried interest or "promote" structures
- Choice of entity planning
- Acquisitions and divestitures
- New Market Tax Credits
- Rehabilitation Tax Credits

### STATE LOCAL TAX

- Income/franchise

liquidations

- Tax-free “roll-over” transactions
- Structured taxable interest and asset acquisitions and divestitures
- Leveraged recapitalizations
- Mergers and divisions
- Disregarded entity transactions and planning
- Negotiating and drafting Partnership and LLC agreements
- Special allocations

- Sales and use

## TAX EXEMPT ORGANIZATIONS

- Formation, qualification and operation of tax-exempt organizations under Section 501(c)
- Prohibited transactions
- State and local tax exemptions

## Experience

### Bank Holding Company Tax Counsel

Provided tax advice to North American Bancshares, Inc. in its partially tax-free stock and cash merger with and into Durant Bancorp, Inc. Consideration for the transaction was a combination of stock and cash valued at \$450 MM. Our engagement included the negotiation of all documents associated with the transaction, including the merger agreements as well as employee issues and business and tax provisions to the Shareholders Agreement.

### Auto Retailer Tax Counsel

Represented the selling members in the sale of 100% of the membership interests of nation's largest online used auto retailer to a strategic buyer. The purchase price included a closing date cash payment in excess of \$100 MM and earn out payments based on post-closing EBITDA payable in cash and buyer stock. The transaction won the 2016 Midsize Deal of the Year Award (\$25 MM to \$149 MM) at the 2016 Mergers & Acquisitions Awards ceremony hosted by *D CEO* and the Association for Corporate Growth. In addition to advising on tax issues related to transaction structure and terms, engagement included pre-sale reorganization of ownership to facilitate owner asset preservation and estate planning goals.

### Real Estate Fund Tax Counsel

Served as Tax counsel to a Houston-based company in connection with the creation of a pooled investment fund to acquire interests in hospitality, multi-family, office and retail properties across North America. The proposed \$100 MM fund is directed to foreign nationals seeking to invest in U.S. and Canadian real estate opportunities, which creates significant U.S. federal tax structuring and off shore tax structuring challenges. Our engagement included structure of the fund from U.S. federal income and state tax perspectives.

## Energy Manufacturing Tax Counsel

Represented an energy management and technologies company in adoption and implementation of a “profits interest” equity incentive arrangement for key employees, including preliminary tax free Section 368(a)(1)(F) reorganization to facilitate plan adoption.

## Private Royalty Fund Tax Counsel

Provided tax advice to a Dallas-based family office in restructuring and capitalization its limited partnership formed to acquire royalty and mineral interests. The engagement involved advising existing members regarding the tax aspects of their continued ownership and additional capital contributions and the tax effects to exiting members of the repurchase of their limited partnership interests.

## Technology Tax Counsel

Represented a technology and network consulting company serving multi-national customers on adoption and implementation of a “phantom stock” equity incentive arrangement for key employees.

## Wine Distributor Tax Counsel

Represented the selling shareholders of a wine distribution business classified as a ‘C’ corporation for federal income tax purposes. The buyer wanted to purchase assets, and the sellers wanted to sell stock and recognize capital gain without incurring corporate level tax. The transaction was structured as an asset sale coupled with a sale of shareholder personal goodwill in order to achieve buyer and seller tax objectives.

## Like Kind Exchange Tax Counsel

Represented real estate development and investment company in reorganizing their Texas asset portfolio through tax deferred like-kind exchanges of their properties into replacement properties through forward and reverse exchanges, joint ventures and entity restructuring.

## Real Estate Investment Tax Counsel

Assist U.S. private equity firm in making tax efficient real estate investments in Canada through use of Canadian entities taxed as corporations in the U.S. and partnerships in Canada (reverse hybrid entities).

## Practice Leaders



## Christopher Speer

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### Related People

George Casanova  
Taylor Nall  
Susan Sample  
Christopher Speer  
Courtney Tawresey

### Related Practices

Tax  
Tax Controversy

### Related Industries

Financial Services  
Construction  
Energy  
Health Care  
Hospitality  
Insurance  
Manufacturing  
Real Estate  
Retail  
Technology & Telecommunications  
Transportation