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## Curtis J. Osterloh

PARTNER

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### Overview

Curtis is an experienced tax litigator who primarily represents clients appealing various types of tax assessments by state, local, and federal agencies. He also litigates tax assessments in Texas district courts and federal tax court and advises clients concerning the state and federal tax implications of transactions. Prior to joining Scott Douglass & McConnico, Curtis worked for the Internal Revenue Service as a revenue agent.

Curtis has obtained over a hundred tax letter rulings from the Texas Comptroller's Office regarding various tax related issues. He has also successfully settled hundreds of cases against the Texas Comptroller of Public Accounts and Internal Revenue Service.

Curtis also has a wide practice representing mixed beverage taxpayers before the Texas Comptroller's office. He has successfully resolved and litigated hundreds of mixed beverage assessments through both the audit and the redetermination process in Texas. Curtis has also litigated similar cases in Tennessee for purposes of the liquor-by-the drink tax.

Curtis has successfully litigated and resolved dozens of assessments by the Texas Comptroller's office against aircraft. Curtis was lead counsel for Scott Douglass & McConnico in a key decision issues by an administrative hearing judge affirming a structured purchase of a corporate aircraft that resulted in no sales or use tax. The matter was later resolved successfully on behalf of the client and other similarly situated clients.

# Experience

Obtained a declaratory judgment against the Texas Comptroller that an oil well inspection company's services were not taxable as the sale of tangible personal property. *EVO, Inc. v. Susan Combs, et al.*, Case No. D-1-GN-12-002969.

Successfully resolved a \$2 million refund claim for Texas motor fuel tax with the Texas Attorney General's office. The litigation included a successful defense against the State's plea to the jurisdiction in an oral hearing. *Emirates, Inc. v. Susan Combs, et al.*, Case No. D-1-GN-11-002349.

Advised California partnership on the taxability of \$110 million lawsuit recovery. Upon IRS audit, successfully defended the partnership's contention that the recovery constituted capital gain as opposed to ordinary income.

Eliminated through settlement a \$2 million assessment for mixed beverage tax by the Texas Comptroller associated with the taxability of cover charges against a taxpayer with multiple locations across the state. The settlement later resulted in a change in policy at the Comptroller's office regarding cover charges.

Represented an Austin based mixed beverage taxpayer in over twenty audits for mixed beverage tax and successfully resolved all audits including a successful administrative hearing rejecting a proposed assessment.

Represented a Canadian company in the preparation and filing of voluntary disclosure agreements on a nation-wide basis. Obtained substantial reductions in potential liabilities for unpaid state taxes.

Obtained a complete waiver of more than \$1 million in penalties for failure to file and failure to pay taxes in IRS appeals.

Successfully defended a California construction company against allegations of fraud in the payment of Texas sales and use tax. Obtained a favorable ruling after administrative hearing.

Completely reversed an IRS audit adjustment of \$5 million for disallowance of excess compensation in IRS appeals.

Successfully negotiated the deletion of a \$4 million assessment for sales and use taxes by the Texas Comptroller for services related to the modification of software.

Litigated in U.S. Tax Court and successfully resolved with IRS counsel an assessment of \$10 million associated with a liquidated C corporation on behalf of a transferee of the corporation's assets.

Successfully eliminated a \$3 million assessment disallowing LIFO Deductions and IRC 263A with IRS appeals.

Successfully managed a \$5 million refund for taxes improperly paid on items shipped out-of-state. The refund was audited and approved in full.

Successfully appealed a negative administrative decision that services constituted taxable repair and remodeling for

purposes of Texas sales and use tax. Obtained favorable ruling in district court reversing administrative finding and client received a 100% refund. Turnkey Construction, Inc. v. John Sharp, et al., Case No. 98-12767.

Previously assisted a Fortune 500 Company with over 30 administrative appeals before the Texas Comptroller for various franchise tax assessments.

## Awards

- Texas Rising Star, a Thomson Reuters business, 2005

## Articles & Presentations

- Speaker, "Indirect Tax Update - Litigation", COST Spring Meeting, April 2024
- Speaker, "Texas Mixed Beverage Audits...Pitfalls to Avoid" at the Annual Texas Bar & Nightclub Convention, 2015, 2017, 2018, 2019, 2021

## News & Insights

- Curtis Osterloh Featured Speaker at Annual Texas Bar and Nightclub Alliance Convention
- Curtis Osterloh Presents on Texas Liquor Tax Audits
- Curtis Osterloh Speaks at Annual COST Meeting
- Curtis Osterloh and Steve Britt Talk Tax Audits at the Texas Bar and Nightclub Convention

## Practice Areas

- State & Local Tax
- Administrative Appeals of Audits & Refund Claims
- Mixed Beverage Audits
- Tax Litigation in District Court & Court of Appeals

## Education

- Boise State University, B.S., Political Science and Economics, 1991
- Certified Public Accountant, 1993
- University of Texas School of Law, 1997 with honors

## Admissions

- State Bar of Texas
- U.S. District Court for the Western District of Texas
- U.S. Court of Appeals
- Fifth Circuit
- United States Supreme Court
- U.S. Tax Court

## Activities

- Fellow of the Texas Bar Foundation