

Q&A With Katten's Abby Feinman

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Abby L.T. Feinman is a partner at Katten Muchin Rosenman where she heads the firm's Los Angeles trusts and estates practice and is a member of its board of directors. Feinman counsels high-net-worth individuals and families with bicoastal and global interests. Feinman advises real estate entrepreneurs, business owners, private equity fund managers, art collectors and corporate fiduciaries.

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

A: One of the issues my clients face and that I advise them on is planning around current tax rates for transfer taxes, and state and federal income taxes. This has become increasingly challenging because the laws are constantly changing, even at the state level. As a trusts and estates attorney based in California, I am conscious of how the state income tax rates and rules can impact decisions made with respect to a transaction. We are constantly providing for flexibility in our estate plans — but not too much flexibility — to adjust with future tax law changes.

This type of work is something that requires creativity and balance. I look at each situation individually and examine various laws to figure out what makes the most sense for families with the expectation that some taxes are avoidable and others are preferable. Based on the specific situation, many approaches are assessed including structuring trusts in different jurisdictions and incorporating income tax planning with gift and estate tax planning to ultimately determine the best path to take for the individuals and families we are advising.

For example, for real estate professionals who may have low-basis assets, you want to analyze whether the client is better off paying an estate tax at a 40 percent rate and receiving a mark-to-market adjustment for income tax purposes, or whether the client would prefer to minimize transfer taxes and forgo the basis adjustment. A lot of factors go into such an analysis and those factors vary from client to client.

As a result of the constant flux in laws and rates, I have to continually reassess my clients' circumstances which is challenging but at the same time such a great opportunity to add value in a creative way and to help give them peace of mind.

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

A: Income tax rates and the discrepancy among tax rates in the various states are major concerns for my clients, including the constant flux I referred to earlier. Along with significant federal tax rates, many states have raised rates or have high income tax rates while other states have lower or no income taxes. When dealing with irrevocable trusts of family members we assess if there is an opportunity to minimize state income taxes by transferring property or a trust to another jurisdiction or family member, or by removing any grantor trust powers that cause the grantor to pay the taxes on property they have already given away.

That said, my work focuses on dealing with many other nontax related concerns that are pressing to my clients. For example, clients are often concerned about encouraging their descendants to be productive citizens and want to provide a fund to educate their descendants. A tremendous amount of planning is involved to address other nontax

issues in a tax efficient manner. So while taxes are not always the primary factor driving transactions, they are a significant part of my work and are woven into so many of the matters I deal with day-to-day.

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

A: The biggest challenge in the regulatory arena is simply that the law keeps changing which breeds more and more uncertainty. Even though the law seems to have some level of permanence currently, many of the issues that have been discussed in connection with changes in tax law for more than a decade are still being bantered about with no end in sight.

Ever since the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA") passed in 2001 the stage has been set for a constant adjustment with respect to gift, estate and generation-skipping transfer taxes (which in simple terms is a tax that applies on transfers that skip over a generation). Given the frequency of changes to the rates and laws that have taken place and the fact that certain provisions have been rather unexpected, we are always conscious of the fact that there will be additional changes ahead.

This type of unpredictable landscape also suggests that we have to include a lot more flexibility in planning and transactions to provide a bit of a safety net and ensure that our clients' actions can adjust as appropriate and necessary over time. Depending on the circumstances, we utilize powers of appointment, discretionary distribution and administrative provisions, the power to amend a trust, the ability to decant a trust to another jurisdiction, and disclaimers (among other techniques) to achieve the clients' goals notwithstanding changes in circumstances and state and federal laws.

Q: Outside 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: One attorney that I greatly admire and have worked with a great deal is Leonard Gubar who is of counsel for DLA Piper in New York. Len is an advisor to a client that we both represent and we have worked together for years. Even though we are on opposite ends of the country, we approach matters in a similar way and speak often.

Len invests in his clients and puts their needs first. He is constantly challenging others to be practical and creative and do what is right for the client. He is also extremely creative and conscientious, never missing a detail. As a trusts and estates attorney, one needs to know a lot about a lot of things even though the area of practice is quite specialized. It takes a special kind of lawyer to have both creativity and consciousness and Len has both which is why I enjoy working with him immensely.

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