



Meyers, Roman, Friedberg & Lewis

A Legal Professional Association

Meyers, Roman, Friedberg & Lewis
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AREA OF PRACTICE

Tax

Tax Planning, Business and Transactions

Our Tax Group Practice provides services to businesses and their owners in tax planning for day-to-day operations, significant transactions and business acquisitions and sales. Clients include family-owned businesses, entrepreneurs, privately owned companies, manufacturers and service firms. Our attorneys regularly advise on corporate, partnership and subchapter S corporation taxation, equity incentive programs for key employees, real estate acquisition and development, LLC and corporation formations, business entity structures, debt and equity capital financings of companies, and acquisition, sale and mergers of companies. With the New 2018 Tax Act now in effect, the tax structure a company chooses can dramatically affect its tax obligations. At Meyers Roman, our attorneys use their broad knowledge base and experience to quickly understand the nature of each situation in order to reduce each client's tax burden for both operations and transactions.

In addition to advising on the proper tax structure for a business, we advise on wide variety of tax issues. Limited liability companies have grown in popularity due to the flow-through taxation while allowing for different classes of equity interests to permitted tiers, or waterfalls, of cash flow distributions to different classes of equity owners, including preferred returns to capital investors and carried interests to promoters. S corporations are widely used for small and mid-sized businesses but transactions, including stock grants, sales and financings, must comply with the single-class of stock rules. Use of multiple-entity tax structures where appropriate can reduce tax burdens. Business succession transactions can provide cash flow to the owner up to the value of the business, while transferring the business and future growth to the next generation. We provide tax efficient structures for these and many other types of transactions.

At Meyers Roman, our attorneys provide creative and effective tax solutions by combining the legal, business and tax knowledge of our attorneys across related practice areas. Many of our attorneys hold specialized and advanced degrees. Our group also includes a former IRS Chief Counsel and in-house tax attorney for a Fortune 500 company.

Representative Matters

- A manufacturing company is considering an offer to purchase its business from a strategic buyer and would like advice on the likely tax consequences of the sale. Meyers Roman analyzes the proposed purchase of the business, makes recommendations regarding the structure of the sale to reduce taxes to the company and its owners and negotiates a letter of intent for the sale of the business to the buyer. Meyers Roman then assists the company in responding to due diligence requests relating to tax, employee benefits and other matters, and negotiates the tax sections of the purchase agreement, including purchase price allocation, and tax representations, warranties and indemnification.
- The owners of an S corporation are selling all of their stock to a third party and the buyer has requested that a Section 338(h)(10) election be made to treat the stock sale as an asset sale for tax purposes. Meyers Roman analyzes the proposed sale of the company and the resulting tax consequences to both the S corporation and its shareholders who receive the sale proceeds. Meyers Roman makes recommendations on tax issues relating to the treatment of taxable gain to the shareholders (ordinary income vs. long term capital gain) and deferred tax liability associated with the escrowed portion of the purchase price.

Attorneys

- **Mario J. Fazio, Chair**
- **David V. Croft**
- **Michelle Gearity**
- **Christopher T. Cheh**

Representative Matters (continued)

- An entrepreneur wants to start a company and has attracted an angel investor who desires to invest in the entrepreneur's start-up business. Meyers Roman assists the entrepreneur in developing a term sheet and structure for the new company that is negotiated with the angel investor. Meyers Roman then prepares the company and transaction documents to close the seed-money investment.
- A painting contractor company regularly engages sub-contractor painters to perform painting services to its customers. Meyers Roman analyzes the IRS 20-factor test for determining whether a worker is an independent contractor rather than an employee as applied to the painting company's business and operations. Meyers Roman then provides advice to the company to implement specific practices to bolster its position that the sub-contractors are independent contractors and prepares a model Independent Contractor Agreement for the company to enter into with each painting sub-contractor.
- A retail company that is a C corporation desires to make distributions to owners in a tax efficient manner, rather than paying the double tax that applies to C corporation earnings that are paid as dividends. Meyers Roman analyzed the corporate structure and prior year tax returns and develops a tax structure that permits most of the future cash flow of the business to be distributed to the owners under a flow-through tax structure thereby avoiding the C corporation income tax and net investment income tax on dividends.
- A business owner desires to sell the business to his children so that he receives the value of the business over a term of several years for retirement. Meyers Roman structures the transaction as a sale to a "grantor trust" of which the children are the beneficiaries and avoids capital gain on the transaction. The trust uses the business' future cash flow to pay the purchase price over the term of years to the owner.
- A technology company desires to implement an equity incentive program for key employees. The company is a limited liability company. Meyers Roman develops a "profits interest" incentive plan for key employees under which the company's board in its discretion can make annual equity awards to key employees based on individual performance. The equity awards avoid current taxation to the key employees and are designed to align key employees with the company's ownership.
- A promoter desires to raise capital to roll-up a large number of properties. Meyers Roman prepares the Private Placement Memorandum and LLC Operating Agreement disclosing tax consequences and risks to investors and the principal terms of the Operating Agreement. Meyers Roman prepares the Operating Agreement providing for priority returns and preferred return of capital for investors and structures the tax portion of the Operating Agreement for the allocation of tax profits and losses among the investors and the promoter.
- An executive is offered employment as President of a company. Meyers Roman represents the executive in negotiation of the Executive Employment Agreement, including deferred compensation and stock option awards. Meyers Roman analyzes the terms of the agreement for tax compliance with the deferred compensation rules under Section 409A of the Internal Revenue Code so that the executive avoids the risk of additional tax and penalties that may be imposed by the IRS for noncompliant deferred compensation arrangements.

Tax Audits, Appeals, Collection Defense and Litigation

Mario J. Fazio's experience as a former IRS attorney provides Meyers Roman with deep experience in all client matters in front of the Internal Revenue Service, including audits, appeals, collection defense and litigation. Dealing with the IRS is an integral part of the tax practice of Meyers Roman. We understand that an IRS audit or collection proceeding can be disruptive and in some cases overwhelming. Our experience in representing clients in front of the IRS and the Ohio Department of Taxation over the years allows us to provide you with a clear understanding of the inner workings of the government and a practical approach to resolving the matter. We routinely negotiate with IRS agents and revenue officers for resolution of matters. If a resolution cannot be reached, we frequently appeal unresolved matters to the IRS Appeals Office and negotiate with the Appeals Officer. We also represent clients in tax disputes in the United States Tax Court and the Ohio Board of Tax Appeals.

Representative Matters

- Represented client in the US Tax Court in dispute with IRS over whether telemarketing workers were employees or independent contractors and application of Section 530 relief to resolve the dispute.
- Represented clients in front of the IRS and in the US Tax Court for innocent relief claims.
- Represented general partner of multi-tiered leveraged real estate partnership structure in IRS tax audit of the tax consequences of the partnership's bankruptcy and liquidation.
- Represented client in application to US Treasury Department and award of Tax Credit Grant under Section 1630 for renewable energy project.
- Represented professional practice in IRS audit of 401(k) plan, purported prohibited transactions and qualified retirement plan correction.



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Representative Matters (continued)

- Represented manufacturer in IRS income tax audit and defense against purported unreported income and civil fraud penalty.
- Represented numerous businesses and individuals in civil penalty abatement, refund claims, unfiled tax returns, installment agreements, tax liens, levies and foreclosures in front of the IRS Collection Division and the IRS Appeals Office.
- Represent operating businesses with payroll taxes in arrears in front of the IRS Collection Division and advised businesses and owners regarding "responsible person" liability for "trust fund" taxes under Section 6672 of the Internal Revenue Code. Negotiated resolutions with both IRS Collection and the IRS Appeals Office.
- Successfully completed IRS Offers in Compromise for individuals with substantial back taxes, including payroll taxes, trust fund penalties, income taxes, interest and civil penalties.
- Represented clients with offshore accounts in making voluntary disclosure to the IRS, including the Offshore Voluntary Disclosure Initiative, to resolve income taxes, FBAR penalties, interest and other civil penalties.
- Represented numerous businesses in front of the Ohio Department of Taxation and the Ohio Board of Tax Review on sales and use tax audits.