



ADAM FAYNE

PARTNER

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SERVICES

Tax
Tax Controversies
Corporate
Opportunity Zones and
Qualified Opportunity Funds

INDUSTRIES

Private Equity and Venture
Capital
Real Estate
Cannabis Law
Gambling

Adam Fayne assists companies and individuals, nationally and internationally, on corporate and tax issues. As a corporate attorney, Adam routinely advises management or in-house general counsel on various legal matters affecting their day-to-day corporate activities. His experience includes handling matters involving mergers and acquisitions, employment, compliance, litigation, personal injury, vendor contract review and negotiations, employment benefits, financing, real estate and many other issues. Adam is also a tax attorney who helps businesses and individuals with tax controversies before the Internal Revenue Service (IRS) and tax planning both domestically and internationally. He also handles a variety of white collar criminal matters, both federal and state, particularly involving civil and criminal tax fraud, including tax evasion, money laundering and offshore tax compliance. Adam's knowledge of tax law is informed by his former role as a Special Assistant U.S. Attorney with the Department of Treasury's IRS.

EXPERIENCE

Audits, Offers in Compromise, Payment Arrangements, Penalty Abatement & Tax Litigation

Adam counsels individuals and entities under audit with the IRS and state taxing authorities. Adam also works with clients in obtaining favorable payment arrangements through offers in compromise and installment agreements. Adam has a substantial amount of experience before the audit/exam divisions of taxing authorities, the administrative appellate divisions of various taxing authorities, and the United States Tax Court and other federal and administrative tribunals. Adam has successfully litigated and obtained state sales tax exemptions for several not-for-profit organizations. In addition to obtaining 501(c)(3) status with the Internal Revenue Service for exempt organizations, he has substantial experience in obtaining sales tax exemptions for such organizations.

- Successfully litigated several cases in the United States Tax Court. Some of the issues litigated and settled involved valuation matters, substantiation issues, employee vs. independent contractor matters, tax shelter enforcement, and collection cases through the Collection Due Process Hearing procedures.

- Successfully represented several clients in litigation and appeal penalties related to non-compliance with foreign assets holdings, including FBARs.
- On behalf of a large corporate client, Adam successfully litigated a proposed multimillion-dollar IRS adjustment in the United States Tax Court. During the IRS examination stage, the IRS asserted that the client's treatment of transactional costs incurred in a private equity sale was inappropriate - that certain transactional costs should be capitalized and not expensed at the time. Adam filed a Tax Court petition on behalf of this client and successfully resolved this case with the IRS.
- Successfully litigated *Beard v. Commissioner*, 132 S.Ct. 2099 (U.S. Apr. 30, 2012), a multimillion-dollar proposed tax deficiency. The Internal Revenue Service asserted that the six-year extended statute of limitations period applied to the taxpayer's alleged overstatement of basis in his partnership interest. Adam filed a Motion for Summary Judgment arguing that the extended statute of limitations period did not apply based on an earlier Supreme Court case. The Internal Revenue Service alleged that an inflated basis of stock was the same as an omission of gross income. The Tax Court agreed with Adam that an overstatement of basis in partnership stock is not the same as an omission of gross income and issued summary judgment in favor of his client and against the IRS. The Seventh Circuit Court of Appeals reversed the Tax Court holding, but Adam appealed this case to the United States Supreme Court where it was reversed in favor of the taxpayer.
- Successfully litigated *Bohannon v. Commissioner*, T.C. Memo. 2013-122 (2013), a fraud case before the United States Tax Court. The IRS alleged that the taxpayers committed fraud and should be assessed fraud penalties and liabilities for very old tax years. The IRS would have been precluded from assessing any additional tax in these older tax years but for its assertion that the taxpayers committed fraud. After a lengthy trial, the United States Tax Court held that there was no evidence of fraud and therefore the IRS was time barred from assessing any tax or penalties.
- Successfully litigated a \$61 million IRS adjustment which led to a full concession by the IRS. The dispute centered around the client's residency status during certain tax years, where the client claimed residency in the Commonwealth of Northern Mariana Islands (CNMI), but the IRS failed to recognize the legitimacy of that residency. Adam litigated the client's position through the United States Tax Court and under provisions for United States Competent Authority. After litigating, and working in conjunction with the CNMI government, the client's ultimate result was that no taxes were due to the United States, and the IRS conceded its tax court case in full, which led to a \$61 million reduction that was originally alleged to be due from the client.

Cannabis Law Services

Adam assists national cannabis companies with corporate legal matters involving formation, investment, mergers and acquisitions, and financing necessary to launch or operate their businesses as well as regulatory compliance from their inception through their daily operation. He also advises these clients on employment matters and represents them in commercial disputes and litigation that arises due to the complex regulatory hurdles in the cannabis industry. Adam, who serves as co-chair of the Firm's Cannabis Law Practice, also follows existing and prospective cannabis regulations throughout the country, as well as federal policy developments affecting the cannabis industry, in order to keep his clients informed about the latest trends. Select representations include:

- Advising several national cannabis companies on employment matters, ongoing litigation, fund raising and regulatory compliance.

- Assisted in a state and federal law survey regarding businesses that provide ancillary services and products to the cannabis industry.
 - Represented medical marijuana dispensary owners in their agreement with national cannabis companies.
 - Assisted in the preparation of corporate organizational materials for cannabis license applicants.
 - Advised a joint venture applying for medical cannabis grower, processor, and dispensary licenses on application requirements, content and strategies.
 - Represented a national cannabis company in the acquisition of a cultivation and dispensary facility, navigating complex regulatory hurdles and working with the client from inception through the closing of the deal.
 - Assist several cannabis companies in fund raising efforts ? private placement memorandum, advice regarding public markets in the United States and Canada, and other related corporate matters.
 - Assist multi-state cannabis operators in obtaining and negotiating credit facilities with third-party lenders.
 - Assisted several United States cannabis companies in going public in Canada on the Canadian Securities Exchange.
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Foreign Tax and Compliance Matters

Adam advises U.S. and foreign companies and individuals with respect to foreign tax and compliance matters; including the Foreign Account Tax Compliance Act (FATCA), controlled foreign corporations, and passive foreign investment companies. Adam's advisory services focus on compliance with United States tax laws as well as advising clients on in-bound and out-bound individual and entity structuring to maximize tax efficiencies and compliance requirements.

Select representations include:

- Worked with several international clients in their estate planning and tax compliance needs. This included asset protection planning, immigration planning, corporate restructuring both internationally and domestically to maximize tax efficiencies, and working with teams of international service providers to best integrate these clients' international holdings and domestic holdings.
 - Currently advising clients from across the nation, and internationally, regarding the IRS Voluntary Disclosure Initiative. Adam has a broad range of experience that allows him to successfully advise clients who have a beneficial ownership interest in off-shore bank accounts, including participation in the IRS Voluntary Disclosure Initiative and "Opt-Outs."
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Corporate and Real Estate Advisory Services

Adam is an advisor to many individuals and companies, both nationally and internationally. In this capacity he advises clients regarding acquisitions, dispositions, mergers, employment matters, real estate matters, litigation, vendor contract review and negotiation, and other matters related to the day-to-day activities of the corporate client.

- Successfully represented the buyer in the acquisition of a healthcare consulting company, negotiating the multi-party purchase agreement, several employment agreements, and counseling the client in risk management.

- Helped clients create private placement memorandums and corresponding offering documents in an effort to raise money for start-up businesses and ancillary businesses located throughout the United States.
 - Assists several gaming clients, nationally, with vendor contract review and negotiations, employment matters, and employee benefit plans.
 - On behalf of a national private equity company, provided advice and guidance to his client in acquiring a large manufacturing and distribution company. This transaction was the private equity company's first transaction of this kind in such a highly regulated environment and relied on Adam's prior experience in navigating the complexities of the transaction itself and the intricacies of the state regulators.
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HONORS

Named to the "Rising Stars List" by Law360, 2016

Named an "Emerging Lawyer" by the Leading Lawyers List, 2015

Named to the "Rising Stars List,
IL Super Lawyers, 2011 and 2012

MEMBERSHIPS AND AFFILIATIONS

Chicago Bar Association

American Bar Association

Jewish Federations of North America National Young Leadership Cabinet

EDUCATION

J.D., Chicago-Kent College of Law, 2003, *with honors*

B.A., University of Arizona, 1999

BAR ADMISSION

Florida

Illinois

United States Tax Court

FIRM INVOLVEMENT

Business and Finance, Vice Chair

Cannabis Law, Co-Chair