

Carlton M. Smith, Esq.
255 W. 23rd Street, Apt. 4AW
New York, NY 10011

Employment:

Harvard Law School January – June 2019

Lecturer in Law and Acting Director of Harvard Federal Tax Clinic

Roberts & Holland LLP Counsel Jun.-Oct. 2013
New York, New York Partner 1990 - 1999
Associate 1983 – 1990

Engaged in general civil tax practice, specializing in tax controversies, including resolving audit and internal administrative appeals and litigating in the U.S. Tax Court, the U.S. Courts of Appeals, and the New York State Tax Appeals Tribunal. Disputes involved individuals, corporations, and partnerships; taxes included income, estate, gift, sales, and real property transfer

Benjamin N. Cardozo Law School of Yeshiva University January 2003 – August 2013

Director, Tax Clinic (2003-2013), Clinical Associate Professor (2007-2013), Visiting Assistant Clinical Professor (2006-2007), Adjunct Professor (2003-2005). Taught state and local taxes and federal tax procedure. Clinic represented low-income taxpayers before the IRS, NY State, and in court.

New York University School of Law January 2007 – May 2010

Adjunct Professor. Taught “Civil Tax Controversies and Litigation” in the Graduate Tax Program.

Internal Revenue Service, Washington, D.C. Summer 2000

National Office line attorney reviewing briefs and drafting Field Service Advice in the Office of Chief Counsel: Associate Chief Counsel: Passthroughs and Special Industries

United States Tax Court Law Clerk to Hon. Arthur L. Nims III, 1981-1983

Education:

Harvard Law School, J.D. cum laude 1981
Harvard College, B.A. magna cum laude in History 1978
South High School, Valley Stream, New York, Valedictorian 1974

Born: 1956 Admitted to the New York Bar, 1982

Professional Organizations:

ABA Tax Section: Court Procedure Committee, Member 1986 – 2013
Pro Bono and Tax Clinics Committee, Member 2007 – 2013
TEFRA Entity-Level Procedures Task
Force, Chair 1992 – 1994

Honors

American Bar Association Tax Section Janet Spragens Pro Bono Award 2013

2012 Cardozo School of Law Monrad Paulsen Award for a non-student for devoted service to the continued vitality of the ideals and purposes of legal education

Named one of ten most important 2011 “Persons of the Year in Tax” by Tax Notes and Tax Notes Today for prominent work for poor and innocent spouses. “Year in Review: The 2011 Person of the Year”, Tax Notes Today, Jan. 3, 2012, 2012 TNT 1-5.

Major Publications:

“Tax Court Litigation”, BNA Tax Management Portfolio, Nos. 630 (1992) and 630-2d (1997) (co-author with Richard A. Levine and Theodore Peyser)

Articles:

“Tax Court Orders: The Unpublished Litigation”, 152 Tax Notes 1163 (Aug. 22, 2016)

“IRS Wrongly Ignores The 20% Excessive Refund Penalty”, 138 Tax Notes 973 (Feb. 25, 2013)

“DOJ Argues No Equitable Tolling Ever in Tax”, 137 Tax Notes 897 (Nov. 19, 2012)

“Cracks Appear in the Code’s ‘Jurisdictional’ Time Provisions”, 137 Tax Notes 511 (Oct. 29, 2012)

“Dealing With DOMA: Federal Non-Recognition Complicates State Income Taxation of Same-Sex Relationships”, 24 Columbia Journal of Gender and Law 29 (2012) (co-author with Edward Stein)

“Tax Court Should Reject *Twombly/Iqbal* Plausibility Pleading”, 136 Tax Notes 835 (Aug. 13, 2012)

“Tax Warrants in New York: In the Strange World of Deemed Judgments”, 75 Albany L. Rev. 671 (2011/2012) (co-author with David Carlson)

“The Tax Court Keeps Growing Its Collection Due Process Powers”, 133 Tax Notes 859

- (Nov. 14, 2011)
- “The Service Abandons Two-Year Limit to File for Equitable Innocent Spouse Relief”, Vol. 31, No. 1 ABA Section of Taxation News Quarterly 1 (Fall 2011)
- “Innocent Spouse: Let’s Bury that ‘Inequitable’ Revenue Procedure”, 131 Tax Notes 1165 (Jun. 13, 2011)
- “Friedland: Did the Tax Court Blow Its Whistleblower Jurisdiction?”, 131 Tax Notes 843 (May 23, 2011)
- “Tax Court Collection Due Process Cases Take Too Long”, 130 Tax Notes 403 (Jan. 24, 2011) (co-author with T. Keith Fogg)
- “Equitably Tolling Innocent Spouse and Collection Due Process Periods”, 126 Tax Notes 1106 (Mar. 1, 2010)
- “Does Collections Due Process Violate the Appointments Clause?”, 126 Tax Notes 777 (Feb. 8, 2010)
- “Collection Due Process Hearings Should Be Expedited”, 126 Tax Notes 919 (Nov. 23, 2009) (co-author with T. Keith Fogg)
- “Let the Poor Sue for a Refund Without Full Payment”, 125 Tax Notes 131 (Oct. 5, 2009)
- “How Can One Argue ‘It’s Not My Joint Return’ in Tax Court?”, 124 Tax Notes 1266 (Sept. 21, 2009)
- “Recent Innocent Spouse Rulings Under Code Sec. 6015(f) Have Made Code Sec. 6015(b) and (c) Virtually Superfluous”, Vol. 11, No. 4 J. Tax Practice & Procedure 37 (Aug.-Sept. 2009) (co-author with Eric L. Green)
- “Does the Tax Court’s Use of Its *Golsen* Rule in Unappealable Small Tax Cases Hurt the Poor?”, Vol. 11, No. 1 J. Tax Practice & Procedure 35 (Feb.-Mar. 2009)
- “Settlement Officers Shouldn’t Hold Collection Due Process Hearings”, 121 Tax Notes 609 (Nov. 3, 2008)
- “Does The Failure to Appoint Collection Due Process Hearing Officers Violate the Constitution’s Appointments Clause?”, Vol. 10, No. 5 J. Tax Practice & Procedure 35 (Oct.-Nov. 2008)
- “IRS Collection Financial Standards Changes Bring Relief to the Poor”, 117 Tax Notes 879 (Nov. 26, 2007)

- “Nonresident Bond Trader May Not Allocate His Salary”, Vol. 10, No. 7 Inside N.Y. Taxes 1 (May 1998)
- “Housing Co-ops Not Subject to Internal Revenue Code Sec. 277”, Vol. 10, No. 6 Inside N.Y. Taxes 6 (Apr. 1998)
- “‘Equitable Recoupment’ Denied in Silver Straddle Transactions”, Vol. 10, No. 5 Inside N.Y. Taxes 5 (Mar. 1998)
- “Tax Litigation & Procedure Provisions of the Taxpayer Relief Act of 1997”, 28 State Bar of Texas Sec. of Tax. Newsletter 15 (Feb. 1998) (co-author with Richard A. Levine)
- “Correction for Change in Other State’s Tax Liability Time-Barred”, Vol. 10, No. 3 Inside N.Y. Taxes 6 (Jan. 1998)
- “Practical Advice in Handling Federal Tax Audits, Appeals, and Litigation”, NYU 55th Institute on Federal Taxation, Chapter 22 (1997)
- “Supplying Equipment *and* Employees: Lease or Sale of Services?”, Vol. 9, No. 10 Inside N.Y. Taxes 6 (Aug. 1997)
- “U.S. Subsidiary Suffers Severely When Foreign Parent Refuses to Appoint It As Agent In Audit”, 45 Canadian Tax J. 847 (Jul.-Aug. 1997)
- “Tax on Information Services Reaches Business League’s Fees”, Vol. 9, No. 9 Inside N.Y. Taxes 4 (Jul. 1997)
- “Gains Tax Upheld as Applied to Nonresident’s Sale of Stock”, Vol. 9, No. 7 Inside N.Y. Taxes 4 (May 1997)
- “ALJ Addresses Equitable Recoupment in Silver Straddle Case”, Vol. 9, No. 3 Inside N.Y. Taxes 6 (Jan. 1997) (co-author with Diann L. Smith)
- “Interest Abatement Actions – An Important New Avenue For Taxpayer Relief”, 86 J. Tax. 5 (Jan. 1997) (co-author with Richard A. Levine)
- “Incorrect Caption Did Not Invalidate Exception”, Vol. 9, No. 2 Inside N.Y. Taxes 7 (Dec. 1996)
- “Timely Mailing Rule to Be Consolidated and Strictly Applied”, Vol. 9, No. 1 Inside N.Y. Taxes 7 (Nov. 1996) (co-author with Glenn Newman)
- “Notice of Federal Change Did Not Concede Adjustment”, Vol. 8, No. 12 Inside N.Y. Taxes 3 (Oct. 1996)

- “Payments for Data Entry Service Not Subject to Sales Tax”, Vol. 8, No. 12 Inside N.Y. Taxes 5 (Oct. 1996)
- “Allow Review of Notices Due to Math Errors and Federal Changes”, Vol. 8, No. 2 Inside N.Y. Taxes 6 (Dec. 1995)
- “Gains Tax Upheld As Applied to Nonresident’s Sale of Stock”, Vol. 8, No. 1 Inside N.Y. Taxes 6 (Nov. 1995)
- “Lack of Refund Claim Bars Gains Tax Refund”, Vol. 8, No. 1 Inside N.Y. Taxes 8 (Nov. 1995)
- “Consequences of Failing To File N.Y. Tax Returns”, N.Y.L.J. p. 1 (Feb. 28, 1995)
(co-author with Glenn Newman)
- “‘Five-Day’ Rule Applied in Finding City Tax Petition Timely”, Vol. 7, No. 3 Inside N.Y. Taxes 7 (Jan. 1995)
- “Officers Liable for Corporate Interest/Penalties on Withheld Taxes”, Vol. 6, No. 12 Inside N.Y. Taxes 1 (Oct. 1994)
- “New U.S. Transfer-Pricing Regulations Require Contemporaneous Documentation of Pricing Decisions”, 42 Canadian Tax J. 1136 (Jul.-Aug. 1994)
- “Officer Liability for Sales Tax Has Separate Limitation Period”, Vol. 6, No. 9 Inside N.Y. Taxes 5 (Jul. 1994)
- “Documentation Needed to Avoid Penalties Specified by Transfer Pricing Temp. Regs.”, 80 J. Tax. 304 (May 1994)
- “Dating Service Ruled Taxable As an Information Service”, Vol. 6, No. 6 Inside N.Y. Taxes 5 (Apr. 1994)
- “Division of Taxation Barred from Increasing Gains Tax Deficiency”, Vol. 6, No. 6 Inside N.Y. Taxes 7 (Apr. 1994)
- “No Appeal of ALJ’s Discovery Order Until All Issues Are Decided”, Vol. 6, No. 5 Inside N.Y. Taxes 7 (Mar. 1994)
- “Third-Party Debtor’s Tax Returns Not Disclosable”, Vol. 6, No. 3 Inside N.Y. Taxes 8 (Jan. 1994)
- “Arbitrary Notice of Deficiency Does Not Extend Statute of Limitations”, Vol. 5, No. 10 Inside N.Y. Taxes 3 (Aug. 1993)
- “Innovative Settlement Techniques Can Reduce Litigation Costs”, 78 J. Tax. 76 (Feb.

1993)

- “U.S. Tax Court Sick of Misused SIC Codes in Intercompany Pricing Cases”, 40 Canadian Tax J. 1418 (Nov.-Dec. 1992) (co-author with Seth B. Goldstein)
- “Division Fails to Prove Date of Mailing of Notice of Determination”, Vol. 4, No. 10 Inside N.Y. Taxes 7 (Aug. 1992)
- “United States Adopts Procedures For Reaching Advance Agreement Concerning Appropriate Intercompany Transfer Prices”, 39 Canadian Tax J. 1622 (Nov.-Dec. 1991)
- “Use of Advanced Pricing Agreements Enhanced by New Revenue Procedure”, 74 J. Tax. 374 (Jun. 1991)
- “Using Nonrecourse Financing to Purchase ‘Artistic’ Properties Can Have Substance, Says CA-2”, 74 J. Tax. 212 (Apr. 1991) (co-author with Richard A. Levine)
- “1990 Act Compliance Provisions May Affect Corporate Litigation Strategies”, 43 Tax Executive 102 (Mar.-Apr. 1991) (co-author with Peter A. Glicklich)
- “Cross-Border Criminal Tax Investigations: The U.S. Perspective”, 39 Canadian Tax J. 437 (Mar.-Apr. 1991)
- “New Procedures Adopted For Reporting The Claiming of Treaty Benefits – Amended Statements To Be Required Shortly”, 37 Canadian Tax J. 1595 (Nov.-Dec. 1989)
- “Not All Notices and Demands Are Entitled to Prepayment Review”, Vol. 2, No. 1 Inside N.Y. Taxes 5 (Nov. 1989)
- “Notice of Federal Change Not Always Required”, Vol. 1, No. 12 Inside N.Y. Taxes 3 (Oct. 1989)
- “Short-Period Franchise Tax Reports”, Vol. 1, No. 12 Inside N.Y. Taxes 4 (Oct. 1989)
- “Flying Tigers Oil Co. v. Commissioner: Failure To Produce Foreign-Based Documentation On Audit Prohibits Its Later Introduction Into Evidence In Court”, 37 Canadian Tax J. 1099 (Jul.-Aug. 1989)
- “Court Proceedings Do Not Always Bind Tax Department”, Vol. 1, No. 8 Inside N.Y. Taxes 5 (Jun. 1989)
- “Should You Always Agree to Extend the Statute of Limitations?”, Vol. 1, No. 8 Inside N.Y. Taxes 6 (Jun. 1989)

“New Reporting Requirements For Claiming Treaty Benefits”, 37 Canadian Tax J. 535 (Mar.-Apr. 1989)

“Federal Mail Fraud and RICO Statutes Used to Punish State Tax Violators”, Vol. 1, No. 5 Inside N.Y. Taxes 6 (Mar. 1989)

“Tax Court’s Revised and Expanded Partnership Rules Leave Questions Open”, 69 J. Tax. 164 (Sept. 1988) (co-author with Richard A. Levine)

“Casanova, With Questionable Form, Takes Advantage Again”, 36 Canadian Tax J. 1049 (Jul.-Aug. 1988)

“United States Assists Revenue Canada In Obtaining Client’s Name”, 36 Canadian Tax J. 469 (Mar.-Apr. 1988)

“Preventing the Recharacterization of ‘Effectively Connected’ Income Through Deferral”, 35 Canadian Tax J. 1038 (Jul.-Aug. 1987)

“Furstenberg v. Commissioner: Emigrating and Immigrating Trust Beneficiaries Revisited”, 33 Canadian Tax J. 624 (May-Jun. 1985)

“Estate of Petschek v. Commissioner: Emigrating and Immigrating Trust Beneficiaries”, 32 Canadian Tax J. 622 (May-Jun. 1984)

Blogs

Frequent guest blogger www.ProcedurallyTaxing.com (2013-present)

Litigation Experience

Courts Admitted to:

New York

United States Tax Court

United States District Courts for the Southern and Eastern Districts of New York

United States Courts of Appeal for the Second, Third, Fourth, Ninth, District of Columbia, and Federal Circuits; prior admission to Fifth Circuit not renewed

United States Supreme Court

Counsel of record in 309 U.S. Tax Court dockets to date

Cases in Courts and Administrative Bodies that Generated or Will Generate Published Opinions:

McLane v. Commissioner, T.C. (2019) (amicus co-counsel)

Organic Cannabis Foundation v. Commissioner, F.3d (9th Cir. 2019) (amicus co-counsel)

Northern California Small Business Assistants, Inc. v. Commissioner, F.3d (9th Cir. 2019) (amicus co-counsel)

Myers v. Commissioner, F.3d (D.C. Cir. 2019) (amicus co-counsel)

BASR Partnership v. United States, F.3d (Fed. Cir. 2018) (amicus, but brief was drafted by others)

Naufflett v. Commissioner, F.3d (4th Cir. 2018) (co-counsel)

Pfizer v. United States, F.3d (2d Cir. 2018) (amicus co-counsel)

Berkun v. Commissioner, 2018 U.S. App. LEXIS 13910 (11th Cir. 2018) (uncredited contributor to appellant's brief on legislative history argument; court felt the issue was not raised timely, but, in another case, "the issues that Mr. Berkun attempts to raise on appeal may deserve attention from the bench and bar")

Larson v. United States, 2018 U.S. App. LEXIS 10418 (2d Cir. 2018) (uncredited contributor to amicus brief)

Cunningham v. Commissioner, 716 Fed. Appx. 182 (4th Cir. 2018) (co-counsel)

Duggan v. Commissioner, 879 F.3d 1029 (9th Cir. 2018) (amicus co-counsel)

Matuszak v. Commissioner, 862 F.3d 192 (2d Cir. 2017) (co-counsel)

Rubel v. Commissioner, 856 F.3d 301 (3d Cir. 2017) (co-counsel)

Taft v. Commissioner, T.C. Memo. 2017-66 (amicus co-counsel)

Guralnik v. Commissioner, 146 T.C. 230 (2016) (amicus co-counsel)

Volpicelli v. Commissioner, 777 F.3d 1042 (9th Cir. 2015) (amicus argument prevailed)

Kuretski v. Commissioner, 755 F.3d 929 (D.C. Cir. 2014), cert. denied 135 S. Ct. 2309 (2015) (co-counsel)

Byers v. Commissioner, 740 F.3d 668 (D.C. Cir. 2014) (amicus co-counsel argument prevailed)

Rand v. Commissioner, 141 T.C. 376 (2013) (amicus argument prevailed)

Morales v. Commissioner, T.C. Memo. 2013-192, aff'd 633 Fed. Appx. 884 (9th Cir. 2015) (co-counsel)

Sebelius v. Auburn Regional Medical Center, 568 U.S. 145 (2013) (amicus)

Sarmiento v. United States, 812 F. Supp. 2d 137 (EDNY 2011), aff'd in part and rev'd in part 678 F.3d 147 (2d Cir. 2012)

Bush v. United States, 655 F.3d 1323 (Fed. Cir. 2011) (en banc) (amicus)

Mannella v. Commissioner, 631 F.3d 115 (3d Cir. 2011) (amicus brief on equitable tolling called effective and caused remand)

Mayo Foundation v. United States, 562 U.S. 44 (2011) (amicus brief cited)

Cornwell v. Commissioner, cert. denied 559 U.S. 905 (2010) (amicus)

Terrell v. Commissioner, 625 F.3d 254 (5th Cir. 2010) (amicus)

Maniolos v. United States, 741 F. Supp. 2d 555 (SDNY 2010), aff'd per order 469 Fed. Appx. 56 (2d Cir. 2012)

Tucker v. Commissioner, 135 T.C. 114 (2010), and T.C. Memo. 2011-67, aff'd 676 F.3d 1129 (D.C. Cir. 2012), cert. denied 568 U.S. 1026 (2012)

Iljazi v. Commissioner, T.C. Summary Op. 2010-59

Gormeley v. Commissioner, T.C. Memo. 2009-252, appeal conceded by government (3d. Cir. 2010)

Matter of Cafcor Trust Reg. Vaduz, 1995 N.Y. Tax LEXIS 520 (N.Y.S. Division of Tax Appeals), aff'd 1997 N.Y. Tax LEXIS 204 (N.Y.S. Tax Appeals Tribunal) (co-counsel)

Matter of Phillips, 1994 N.Y. Tax LEXIS 496 (N.Y.S. Division of Tax Appeals), rev'd 1995 N.Y. Tax LEXIS 238 (N.Y.S. Tax Appeals Tribunal)

LeFrak v. Commissioner, T.C. Memo. 1993-526 (co-counsel)

Matter of Langfan, 1993 N.Y. Tax LEXIS 105 (N.Y.S. Division of Tax Appeals) (uncredited co-counsel)

Matter of Bee Associates, 1991 N.Y. Tax LEXIS 125 (N.Y.S. Division of Tax Appeals) (co-counsel)

Bailey v. Commissioner, 90 T.C. 558 (1988), aff'd in part and vacated and remanded in part 912 F.2d 44 (2d Cir. 1990), on remand T.C. Memo. 1992-72, aff'd on other reasoning 993 F.2d 288 (2d Cir. 1993) (co-counsel)

Estate of Yaeger v. Commissioner, 801 F.2d 96 (2d Cir. 1986) (uncredited co-counsel), later proceedings at T.C. Memo. 1988-264, aff'd 889 F.2d 29 (2d Cir. 1989), cert. denied 495 U.S. 946 (1990) (co-counsel on cert. petition only in later proceedings)

Allstate Ins. Co. v. Tax Comm. of the State of N.Y., 127 Misc. 2d 300 (Sup. Ct., Albany Cnty. 1985), rev'd 115 A.D.2d 831 (3d Dept. 1985), aff'd 67 N.Y.2d 999 (1986) (uncredited co-counsel)

Matter of Automatic Data Processing, Inc., 1985 N.Y. Tax LEXIS 170 (N.Y.S. Tax Comm.) (uncredited co-counsel)