

### Practice Areas

- Tax
- Tax Controversy & Litigation
- Captive Insurance Companies
- Commercial Litigation

### Education

- Emory University, B.A. 1979
- University of Wisconsin School of Law, J.D., 1982
- New York University School of Law, LL.M. (Taxation), 1984

### Honors

- Listed, The Best Lawyers in America® (2018-2024; Lawyer of the Year for Litigation and Controversy - Tax for Philadelphia - 2019, 2023)
- Listed, Chambers USA: America's Leading Lawyers for Business (2006-2023)
- Listed, The Legal 500 U.S. – Tax Controversy (2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023)

## Philip Karter

Shareholder  
Philadelphia

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Philip Karter specializes in tax controversy and tax litigation matters. In his 40-year career, Mr. Karter has litigated Federal tax cases in the United States District Courts, the United States Tax Court and the United States Court of Federal Claims, and argued in the United States Court of Appeals in multiple circuits. His range of trial experience, which includes dozens of jury and non-jury cases tried to judgment, encompasses a wide variety of complex and high-profile tax matters, a number of which have involved issues of first impression. Mr. Karter's deep experience in the tax controversy and litigation process, working both for and against the government, also provides him with valuable insights on how to structure and document transactions to avoid future tax disputes or, if such disputes are inevitable, to position such transactions in the best possible light to successfully withstand IRS scrutiny and challenge.

Representative examples of tax controversy and litigation matters/issues handled by Mr. Karter include:

- Hostile takeover expenses
- Basis shifting and other tax reduction transactions
- Transfer pricing adjustments
- Worthless stock losses
- Captive insurance arrangements
- Income, estate and gift tax valuation issues
- Tax and tax penalty issues involving cryptocurrency (Bitcoin, Ethereum, etc.)
- Tax audits under Puerto Rico's Act 20 and 22, and now Act 60.
- Disguised sales and other partner/partnership recharacterizations
- Debt-equity swaps and other financial product issues
- Greenmail / hostile takeover defense payments
- Foreign tax credits

- Lifetime Achievement Lawyer Excellence Award - American Lawyer Media's The Legal Intelligencer, 2020
- International Tax Review - U.S. Tax Controversy Leaders (2017)
- Outstanding Attorney Award – U.S. Department of Justice, Tax Division (1990)
- Member, J. Edgar Murdock American Inns of Court (U.S. Tax Court) (1994-1996)

#### Bar Admissions

- Pennsylvania
- New York

#### Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals for the Fourth, Seventh, Eighth and Federal Circuits
- U.S. Tax Court
- U.S. Court of Federal Claims
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the District of Columbia
- U.S. District Court for the District of Connecticut

## Philip Karter, *Continued*

- Rehabilitation tax credits, low-income housing tax credits, and economic development credits
- Transition rule tax credits
- § 162(m) qualified performance-based compensation
- Unpaid trust fund taxes under § 6672 (Trust Fund Recovery Penalty ("TFRP"))
- Treatment as employee or independent contractor
- § 7805(b) retroactivity of regulations and disparate treatment
- §183 hobby losses
- Timber depletion
- Coal excise taxes
- Mitigation of limitations (§§ 1311 - 1314)
- Res judicata and collateral estoppel
- Interest recomputations and netting
- IDR responses and document productions
- IRS summons enforcement proceedings
- Tax penalty issues

Mr. Karter has handled countless other tax controversy matters for clients ranging from Fortune 500 companies to small businesses, joint ventures and individuals that were resolved with the IRS at the examination level, administrative appeals or through alternative dispute resolution (ADR). In addition to representing taxpayers in all phases of tax audits, appeals and litigation, he represents individual taxpayers in the following areas:

- Requests for Audit Reconsideration
- Offers in Compromise
- Installment payment agreements
- Tax lien and levy releases
- Tax lien subordination
- Collection Due Process (CDP) proceedings, appeals and Tax Court litigation
- Wrongful levy claims
- Failure to honor levy actions
- Erroneous refund actions
- Innocent spouse relief and equitable relief under § 6015(f)

- U.S. Court of International Trade

## Philip Karter, *Continued*

- Foreign financial account reporting requirements, including OVDP submissions
- Domestic voluntary disclosures
- Eggshell audits
- Taxpayer Advocate Service (TAS) submissions

Prior to joining Chamberlain Hrdlicka in 2007, Mr. Karter was a partner at Miller & Chevalier and formerly served as a trial attorney with the U.S. Department of Justice Tax Division, where he was honored with the Department's Outstanding Attorney Award.

Mr. Karter also is one of a select number of attorneys recognized as a national authority in tax controversy and litigation by [Chambers USA](#) and the [US Legal 500](#) Litigation and Tax Guides and is the only federal tax controversy attorney based in Pennsylvania to receive national recognition from the prestigious Chambers ranking publication.

Chambers also has ranked Chamberlain Hrdlicka as one of the top tax controversy law firms in the United States for the 15th consecutive year, which coincides with Mr. Karter's joining the firm. He is also perennially named in the Best Lawyers in America®, one of the legal profession's oldest and most respected peer-review publications, and recognized as "Lawyer of the Year" in Tax Litigation and Controversy for Philadelphia in the 2019 and 2023 editions.

Mr. Karter has spoken on a variety of tax issues before the American Bar Association's Section of Taxation, the Tax Executives Institute, the Federal Bar Association, the New York University School of Law, the Georgetown University Law Center, The Southern Federal Tax Institute, the Palm Beach Tax Institute, and various state bar and professional associations.

In addition to his long career in tax controversy and litigation, Mr. Karter has worked for many years on numerous tax planning matters, with a particular emphasis on real estate investment partnerships. He presently works with real estate developers and investors in Qualified Opportunity Zone (QOZ) projects authorized by Internal Revenue Code §1400Z. Mr. Karter also maintains an active practice assisting companies establish both § 831(a) and § 831(b) captive insurance arrangements.

## Philip Karter, *Continued*

### Significant Cases

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- [June 2022] Achieved highly favorable settlement of first-impression issue for Fortune 250 consumer products client involving eligibility for historic tax credits based on placed-in-service requirement for historic structure that had never been occupied prior to rehabilitation.
- [April 2017] Obtained “no adjustment” letters (full IRS concessions) for a major low-income housing project developer/tax credit syndicator after the IRS conceded proposed aggregate audit adjustments of \$5 million for alleged disguised sales by partnerships to their partners of state low income housing tax credits. Also obtained a full concession of IRS \$1 million adjustment against syndicator claiming that sales of partnership interests were ordinary income rather than capital gain.
- [Oct. 2014] Represented major Fortune 250 manufacturer in nine-figure transfer pricing dispute involving valuation of intangible assets. Matter resolved/settled for approximately one percent of proposed adjustment.
- *HealthMark Group Ltd. et al. v. Commissioner*, No. 008269-14 (U.S. Tax Court, filed Apr. 14, 2014). Obtained full IRS concession in Tax Court case involving the purported application of Rev. Rul. 2005-40 to disregarded entities claiming insurance deductions paid to captive insurer. Successfully argued that Revenue Ruling was incompatible with §7701 check-the-box regulations and that disregarded entities with common ownership can achieve adequate risk distribution.
- *Carfagno Auto Sales Inc. v. Commissioner*, No. 12269-14 (U.S. Tax Court, filed May 28, 2014). Filed suit in Tax Court after adverse CDP appeal hearing on alleged deficiency in employment taxes. Obtained full IRS concession of deficiency as well as refunds of all overpayments for other tax periods that had been erroneously applied against that deficiency.
- *Gateway Hotel Partners, LLC et al. v. Commissioner*, T.C. Memo 2014-5 (Jan. 9, 2014). Lead trial counsel for participating partner challenging \$22 million proposed adjustment to partnership income arising from alleged sale by partnership of state historic tax credits distributed to other partner. Tax Court ruled in participating partner's favor with respect to 89% of the proposed tax deficiency.
- *Frontier Oil Corporation v. Commissioner*, Docket No. 21151-10 (U.S. Tax Court, filed Sep. 23, 2010). Lead trial counsel for taxpayer claiming § 162(m)(4)(C) exception to limitation on deductibility of qualified performance-based compensation and challenging interpretation of treasury regulation, which was subsequently amended as a result of case. (*Case settled*)
- *WFC Holdings Corp. v. United States*, 728 F.3d 736 (8th Cir. 2013). Lead trial counsel and co-appellate counsel for taxpayer claiming \$423 million capital loss from the sale of stock in a contingent liability lease management subsidiary. (*Decision for Gov't.; certiorari denied, June 9, 2014*)
- *Browning Ferris Industries, Inc. & Subsidiaries v. United States*, 75 Fed.Cl. 591 (2007) - Court granted motion to dismiss without prejudice in case of first impression involving question of whether tax refund claim filed by company that had previously liquidated for tax purposes was jurisdictionally defective. (*Case settled on remand from Fed. Cir.*)
- *Black & Decker Corp. v. United States*, 340 F. Supp. 2d 621 (D. Md. 2004), *aff'd in part, rev'd in part and remanded*, 436 F.3d 431 (4th Cir. 2006) - Trial counsel for taxpayer claiming \$560 million capital loss from the sale of stock in a contingent liability health care subsidiary. (*Case settled on remand from 4th Cir.*)
- *Kohler Co. v. United States*, 468 F.3d 1032 (7th Cir. 2006), *aff'g*, 387 F. Supp. 2d 921 (E.D. Wis. 2005) - Represented taxpayer at trial and appellate level. Obtained Seventh Circuit decision affirming summary judgment in favor of taxpayer's claim that participation in Mexican debt-equity swap did not produce short-term capital gain.

## Philip Karter, *Continued*

- *Black & Decker Corp. v. United States*, 219 F.R.D. 87, 92 A.F.T.R.2d 2003-6426, 2003-2 USTC 50,659 (D. Md., September 15, 2003) - Obtained ruling upholding taxpayer's claim of work product protection over documents prepared by accountant after taxpayer indicated its intention at IRS audit to rely on specific advice offered by accountant in an opinion letter previously disclosed to IRS.
- *Black & Decker Corp. v. United States*, 93 A.F.T.R.2d 2004-989, 2004-1 USTC 50,175, (D. Md., February 19, 2004) - Obtained court ruling affirming taxpayer's right to retain normally redacted information in Field Service advice that was inadvertently disclosed by government. The ruling rejected government's defense that information was protected by disclosure exceptions to Freedom of Information Act.
- *VF Corp. v. Commissioner*, No. 7584-02 (U.S. Tax Court, filed Apr. 19, 2002) - Obtained full IRS concession in Tax Court case involving the question of whether \$59 million cost of providing retail display to retail customers is currently deductible or must be capitalized.
- *Kimberly-Clark Corp. v. United States*, No. 02-0985 (E.D. Wis., filed Oct. 4, 2002) - Filed suit for taxpayer seeking credits against its United States federal corporate income tax liability for foreign taxes deemed paid by certain foreign subsidiaries. (*Case settled*)
- *Kimberly-Clark Tissue Co. v. United States*, 38 F. Supp. 2d 1028 (E.D. Wis. 1999) - Won summary judgment on issue involving taxpayer's entitlement to an investment tax credit under the "world headquarters" transitional rule of the 1986 Tax Reform Act.
- *Emhart Corp. v. United States*, No. 98-1823 (D. Md., filed June 9, 1998) - Obtained favorable settlement for taxpayer seeking to deduct the costs associated with the defense against a hostile takeover attempt.
- *Emhart Corp. v. Commissioner*, 75 T.C.M. 2231 (1998) - Won taxpayer's claim to a worthless stock deduction for losses attributed to the disposition of a foreign subsidiary.
- *Kimberly-Clark Tissue Co. v. United States*, No. 97-0134 (E.D. Wis., filed Feb. 12, 1997) - Obtained favorable settlement before trial for taxpayer seeking to amortize a \$100 million greenmail payment over the term of the standstill agreement provided by a hostile shareholder in exchange for the greenmail payment.
- *VF Corp. v. Commissioner*, No. 23340-95 (U.S. Tax Court, filed Nov. 9, 1995) - Obtained full IRS concession in Tax Court case involving the question of whether taxpayer could accrue and deduct costs for cooperative advertising with its retailers before claims were submitted and payments were made.

## Professional Affiliations

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- American Bar Association
  - Pennsylvania Bar Association
  - Philadelphia Bar Association
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