

PEOPLE IN TAX

Interview with Jonathan Black

By **Deanne Morton**, Administrative Practice Committee Liaison to Publications Committee, Andersen Tax LLC, San Francisco, CA



Jonathan R. Black

ATT Editor's Note: Jonathan R. Black is an Associate with Caplin & Drysdale in the Tax Disputes & Tax Litigation and Complex Litigation practice groups. Prior to private practice, Mr. Black served for over five years as an attorney with the Office of Chief Counsel for the Internal Revenue Service, where he defended the IRS in Tax Court, drafted regulations and other published guidance, and advised the IRS and the Department of Justice on a myriad of legal issues. He also provided IRS attorneys training on administrative law and legal ethics. In addition to his near decade of experience in tax law and litigation, Mr. Black has prior careers in property development, procurement, and analytics.

Jonathan was interviewed by *ABA Tax Times'* Interview Editor and Administrative Practice Committee Publication Liaison Deanne Morton, Managing Director with Andersen Tax LLC who specializes in Tax Controversy.

DM: Hi Jonathan! We met briefly at the Administrative Practice Committee dinner during the ABA Tax Section's Midyear Meeting in San Diego in February. We did not have much time to chat then so I am pleased to be able to interview you and learn more about your background and tax litigation practice. If you would not mind, can you first share where you grew up and some details about your childhood?

JB: Sure! My early childhood was mainly spent in a rural suburb of Boston. We had so much space, we could not see our neighbor's house from our house. I have two siblings who were basically the only people I spent time with during those initial years. We swam in the lakes, skied in the backyard, and ran around and caught critters like insects and salamanders. My father worked in academia and during my adolescent years, he accepted a position in Oregon, which meant my family moved across the country to the West Coast. I then attended the University of Oregon for my undergraduate degree.

DM: What was your major in college and did you go directly to work after completing your undergraduate program? Tell us more about your path toward law school.

JB: At the University of Oregon, I majored in Business, with a minor in Chinese (Mandarin). I completed my undergraduate degree in three and a half years, then spent about a year working as an analyst at a semiconductor company in the U.S. I learned a lot about spreadsheets and Excel in this position, but not very much about semiconductors. However, I knew I wanted to go to China so during this time I applied to a Chinese University for post-baccalaureate studies. I then spent about four years in China, between completing my studies and work, and it was during this time that I decided I wanted to go to law school. While in China, I worked as an agent for China Southern Rail, among other things, and I assisted them in bidding on a U.S. heavy rail contract to sell their trains into the U.S. While this attempted deal may not have ultimately resulted in a completed transaction, the work required me to study various applicable statutes, which I found interesting and ultimately inspired me to come back to the U.S. for law school.

DM: What did you think you would do with a law degree? And when did the interest in tax emerge?

JB: Initially, I thought I would do international business transactions and after my 1L year I went back to China and worked in a Chinese law firm. However, I quickly realized that there were very limited opportunities in international business transactions and that the type of work I would be able to do in China did not measure up to my expectations. At some point in my 2L year, I took a tax class, and something just really clicked for me. After my 2L year, I clerked in the bankruptcy court but I had a strong interest in tax at this point and I applied for the externship with the IRS Chief Counsel Honors Program. I was accepted into that program as a 3L law student and from there I convinced them to hire me after law school.

DM: Tell us about your experience while working at IRS Chief Counsel. Is there anyone that you would like to recognize for helping to make that experience particularly positive?

JB: Chief Counsel was a great experience and I worked in the IRS National Office in Washington, D.C., in the area of Procedure and Administration. During my time there, I got to work with a ton of smart people who know their subject matter well and are committed to getting to the right answer. It was an excellent place to learn without the private practice pressure of trying to minimize time spent because it is not economical for a private client to pay for the work that needs to be done. There are so many good people in Chief Counsel that it is impossible to recognize them all, but I can give special commendation to Drita Tonuzi, who was the Associate Chief Counsel (Procedure & Administration) when I started there and later became Deputy Chief Counsel of Operations. Drita is well-known for legal guidance and support in the area of Procedure and Administration.

DM: What was unique about working in Procedure and Administration and when did you decide to explore other options and transition into private practice?

JB: In Procedure and Administration, we wrote regulations and assisted with litigation, but in a limited fashion, and typically we only worked on the portions of briefs that had novel issues that needed our office's particular attention. Toward the end of my five-year tenure with Chief Counsel, I started investigating other opportunities and looking at private practice. Overall, I wanted to become a broader tax practitioner and expand my technical expertise beyond just Procedure and Administration. Through a headhunter, I was connected to my current firm Caplin & Drysdale and I have now been with the firm for four years. Much as I anticipated, my work now is much broader and more open-ended than when I worked in Procedure and Administration. While at Chief Counsel, I would have focused on discrete assignments whereas now it is my job to manage the whole case. Since the procedural elements are significant in almost all areas of tax law, it was a pretty smooth transition for me into private practice. There is always going to be the need to balance between

business development and hands-on work in private practice, but for the most part, my work still comes to me.

DM: As far as your tax litigation practice now, what is your primary focus?

JB: I would not say it changes day to day, but it definitely changes month to month. The dynamic aspect of my work keeps things fresh and interesting. Lately, we have been doing some conservation easement work, a good deal of captive insurance work, as well as international information reporting and penalties. Much of my time is spent in examinations, appeals, and litigation on a variety of different cases. Right now I am working on a big BBA partnership examination and it is a lot of fun. We are navigating a whole new set of rules (the BBA Centralized Partnership Audit regime) and the IRS is also very much learning how to apply the new rules as well. We are figuring things out together and ultimately the important thing is that we are getting to the right answer together.

DM: What do you think is the most powerful tool in a tax practitioner's toolbox today?

JB: I think the fact that we can assist taxpayers in taking their disputes to Tax Court is the great equalizer because that is what requires the IRS to put forth serious analysis and look carefully at an issue. There is a lot that can be worked out in an exam and in Appeals, but the fact that taxpayers have the right to go to a court that understands the issues and will look at them from an independent perspective is a powerful tool. Having a specialized tax tribunal like the Tax Court, that hears and adjudicates tax-related disputes and issues, often offers taxpayers the best course of action to resolve their tax controversies.

DM: What is the greatest challenge for those of us working in the area of administrative practice?

JB: I would have to say the uncertainty from certain administrative and procedural law decisions like *Mann Construction, Inc. v. U.S.* (Sixth Circuit decision regarding the IRS's failure to comply with the Administrative Procedure Act (APA) in identifying listed transactions) and *Farhy v. Commissioner* (Tax Court decision finding IRS lacks statutory authority to assess international information return penalties) present a great challenge and will take time to work through.

The IRS is neither litigating nor conceding the legal weight of its IRB notices in the reportable transaction context, which also leaves uncertainty around various elections and filing requirements for which rules are issued only by IRB Notice. The IRS's response to this would likely be that taxpayers should simply do what it says and follow the rules in the Notices. But those rules are thought up, sometimes in haste, at the National Office, and no matter how well informed or well intended they might be, they might also not be as fair and reasoned as those that come from real discourse with the public following the requirements of the APA. Taxpayers who just take the safe harbor position of following what the IRS says to do may find themselves at an unfair disadvantage.

Now a lot of this has just stalled in Appeals while waiting for advice on how to move forward. Until there is a clear direction, taxpayers who want resolutions seem to have no option other than to litigate. Obviously, that is not an option for everyone and it can be an expensive option where it is available.

DM: In terms of your work for clients, what is something of which you are particularly proud?

JB: I am proud of a lot of my work and I do not know if I have just been lucky, but I have been getting really good results although usually not at the first pass, but when we really push hard for our clients. We have been successful in obtaining complete abatements on penalties but often we do not know which of our arguments convinces the IRS. However, when the client is right, and Appeals or the lawyer on the other side is reasonable, we have been able to defeat penalties and in many cases obtain full concessions.

DM: What are you most proud of in terms of personal achievement or triumph?

JB: Well, I got married just over a year ago and my wife and I are now raising a baby Rottweiler. His name is Bento and he is 14 months old. He is terrible but he is also extremely cute. He is very smart and clearly understands most things we tell him and has no interest in doing them unless he wants to do them. Bento is a big puppy at 115 pounds and can barely fit on my lap. Other than dwarf hamsters I had when I was a kid, this is my first real pet. My wife has had more experience with dogs and cats but Bento is perhaps more baby shark than dog at this point. ■

