



James R. Malone Jr.

Principal
Tax Controversy

Philadelphia, PA
Phone: 215-587-1051
Fax: 215-320-4700
jmalone@postschell.com

Represents clients in disputes with federal, state, and local tax authorities in both administrative proceedings and in court. His clients include businesses, non-profits, individual taxpayers, accountants, and tax preparers.

Bio

James R. Malone, Jr. is a Principal in the firm's Tax Controversy Practice Group, representing clients in disputes with federal, state, and local tax authorities in both administrative proceedings and in court. His clients include businesses, non-profits, individual taxpayers, accountants, and tax preparers.

In federal tax matters, Mr. Malone represents clients before the Internal Revenue Service (IRS) and in the U.S. Tax Court, the U.S. Court of Federal Claims, or U.S. District Courts. For state and local tax matters, Mr. Malone represents clients before the Department of Revenue, before local administrative agencies, and in the Pennsylvania courts. Mr. Malone focuses on securing the best possible outcome for clients, either through settlement or litigation. He combines litigation experience with extensive knowledge of federal, state, and local tax laws and procedures that allow him to represent clients through the full lifecycle of a tax controversy, including the following types of engagements:

- Audit defense
- Administrative appeals
- Deficiency and refund actions
- Collection cases
- Cases involving compliance deficiencies, such as unfiled or delinquent returns and voluntary disclosure matters

In addition to providing representation in active tax controversy matters, Mr. Malone provides compliance advice on federal, state, and local tax issues to clients across a broad array of industries, including health care, hospitality, retail, financial services, commercial construction, manufacturing, and professional services. Mr. Malone's work in this area includes providing support to the firm's Corporate and Health Care Practice Groups in assessing tax issues associated with particular transactions and assisting with due diligence on tax issues.

In 2023, Mr. Malone joined the faculty of Temple University as an Adjunct Professor in the University's Beasley School of Law in the LL.M. Taxation Program.

Practices

- Tax Controversy
- Commercial Litigation
- Appellate
- Health Care
- Health Care Transaction Services
- Hospitality and Retail
- Higher Education
- Bankruptcy and Creditors' Rights
- Real Estate
- Class Action Defense

Industries

- Professional Services
- Pharmaceutical
- Manufacturing
- Insurance
- Hospitality
- Higher Education
- Health Care
- Banking and Financial Services
- Construction
- Real Estate

Education

- LL.M. in Taxation, *with Distinction*, Temple University James E. Beasley School of Law
- J.D., *Cum Laude*, Villanova University School of Law
- B.A. in English, Lafayette College

Bar Memberships

- Pennsylvania

Court Admissions

- Supreme Court of Pennsylvania
- U.S. Supreme Court
- U.S. Court of Appeals, First Circuit

Active in professional organizations, Mr. Malone is the former Chair of the Tax Section of the Philadelphia Bar Association, having previously served as Vice-Chair, Secretary/Treasurer, and Chair of the CLE Committee. As Chair, he worked in conjunction with Tax Council (the section's governing body) to fulfill the Tax Section's purposes, including studying and making recommendations to appropriate authorities concerning tax laws, regulations, and rulings; promoting continuing education to membership; providing liaison to tax authorities; and promoting the objectives of the Association within the field of taxation. Mr. Malone continues to serve on Tax Council.

Mr. Malone is also a member of the Tax Section's State and Local Tax Committee and served two years as a member of the Board of Governors of the Philadelphia Bar Association. He is also active in the Tax Section of the American Bar Association (ABA), where he has contributed to policy comment projects as a member of the Administrative Practice Committee, including the ABA Tax Section's comments on various aspects of the new partnership audit regime. Mr. Malone provides regular commentary on federal, state, and local tax matters on his blog, *Tax Controversy Posts*.

Mr. Malone also represents clients in Commercial Litigation matters and has extensive experience at both the trial and appellate levels in a variety of substantive areas including antitrust actions, breach of fiduciary duty actions, actions under federal securities laws, and Civil RICO actions.

The Best Lawyers in America®, a peer-reviewed publication, selected Mr. Malone for inclusion in its 2021, 2022, 2023, and 2024 editions in the categories of Litigation and Controversy - Tax and Commercial Litigation and selected him as a "Lawyer of the Year" in 2022 in the same category. From 2005 - 2018 and in 2021, 2022, and 2023, Mr. Malone was named a Pennsylvania Super Lawyer in the Tax category. In 2019, he was honored as a member of the *Irish Legal 100*. Mr. Malone is also a Life Fellow of the American Bar Foundation. For information about this selection and an overview of common third-party publications, rankings, and list methodologies, [click here](#).

Before joining Post & Schell, Mr. Malone was the principal and founder of an independent law firm focused on tax controversies and related litigation.

- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. Courts of Appeals, Fifth Circuit
- U.S. Court of Appeals, Sixth Circuit
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals for the District of Columbia
- U.S. Court of Appeals for the Federal Circuit
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the Northern District of California
- U.S. District Court for the Eastern District of Michigan
- U.S. Tax Court
- U.S. Court of Federal Claims



Representative Matters

Representative Federal Tax Matters

- Successful representation of employer in connection with reporting of medical insurance coverage resulted in the complete abatement of the penalty for improper filing.
- Successfully concluded an audit reconsideration representation for a taxpayer who owed the IRS over \$2.4 million for five tax years. The IRS agreed to audit adjustments that reduced that amount to zero. The client may actually receive a refund after being subjected to enforced collection for several years.
- Represented a taxpayer with multiple years of unfiled returns; the client was the subject of a \$400,000 federal tax lien and on-going collection activity in the form of levies. Result: The taxpayer's liability was reduced to zero.
- Represented a business owner in audit and before the Tax Court. Result: The case settled with a 30% reduction in tax due for one year and the

elimination of accuracy-related penalties for all years at issue.

- Represented a client with long-standing payroll tax liabilities and unfiled personal returns. Result: The IRS agreed to compromise a substantial portion of the client's payroll tax liability.

Representative State & Local Tax Matters

- Representation of former resident of Pennsylvania in a domicile dispute, which was the client's second attempt to have the Department of Revenue recognize her Florida domicile. We prevailed on administrative appeal, and the Commonwealth did not elect to seek judicial review.
- Represented the U.S. affiliate of a major multi-national corporation that was the subject of a local mercantile tax assessment of \$250,000 with additional exposure for the current and future tax years. Prosecuted a challenge to the assessment under relevant state law and the dormant commerce clause. Result: Settled for \$5,000.
- Represented the owner and manager of restaurant that had been sold. When the local tax authority sought collection from our clients, we named the purchasers as additional defendants and mounted a vigorous defense against the merits of the relevant tax assessment. Result: The municipality agreed to significantly reduce its overall tax claim, and we reached an agreement with the purchasers that limited our client's overall responsibility to contribute to the settlement significantly.
- Represented a manufacturing company in an administrative appeal of a penalty assessment for failure to file a timely return. Result: Complete abatement of the penalty.
- Represented a local non-profit that was denied a sales and use tax exemption. Result: Overturned on administrative appeal.
- Represented a business that had failed to register with the local tax authority or pay business privilege taxes for a decade. Result: The municipality agreed to waive the tax claims for half of the period and to abate all of the interest and penalties.

Media

- Quoted in, "State of *Wayfair*: Philly Uses Case to Grab Business Income," *Bloomberg Law* (January 31, 2019)
Reproduced with permission. Published January 31, 2019. Copyright 2019 by The Bureau of National Affairs, Inc. (800-372-1033)
- Quoted in, "Court to Facebook: No enforceable right to access IRS Appeals," *MLEX US Tax Watch* (June 8, 2018)
- Quoted in, "Wells Fargo Penalty Makes Waves for Tax Professionals," *Bloomberg BNA's Daily Tax Report* (May 30, 2017)
- Quoted in, "After Judge OKs Philly Sugary Drink Tax, Appeal May Bring Thorny Legal Battle," *WHYY/Newsworks* (December 20, 2016)
- Quoted in, "Can Foreign Tax Credits Be Excepted From Economic Substance?," *Bloomberg BNA Daily Tax Report* (December 14, 2016)
- Quoted in, "Wells Fargo Lacked Business Purpose in Tax Credit Deal: Jury," *Bloomberg BNA Daily Tax Report* (November 18, 2016)
- Quoted in, "Commonwealth Court Grants Tax Exemption to Monroe Co. Theater," *The Pennsylvania Record* (May 13, 2016)
- Quoted in, "What to Look for in Enforcement," *Tax Notes* (Feb. 1, 2016)
- Quoted in, "\$3.9M Refund to Sprint Subsidiary Signals Potential Relief for Corporate Taxpayers," *Bloomberg BNA Daily Tax Report* (Dec. 7, 2015)

Publications

- "How Employment Tax Rules Are Changing During Pandemic," *Law360* (April 22, 2020)
- "The Families First Coronavirus Response Act: What Employers Need to Know," *The Legal Intelligencer* (March 30, 2020)
- "Rubbing SALT in a Wound? A Look at the Potential State and Local Tax Implications of Telemedicine," *American Health Lawyers Association (AHLA) Connections* (August 2018) (© Copyright 2018, American Health Lawyers Association, Washington, DC. Reprint permission granted.)
- "9th Circ. Slone Ruling Considers Basis Of Transferee Liability," *Law360* (August 1, 2018)
- "What Does the New Tax Law Mean for Physicians and Medical Practices?," Medical Mutual's *MedNotes* Blog (February 15, 2018)
- "Tax-Exempt Organizations Face A New Excise Tax," *Law360* (February 7, 2018)
- "Changes in Partnership Audit Procedures Call for Changes in Partnership Agreements," *The Legal Intelligencer* (December 18, 2017)
- "All Partners Are Small Partners: The Due Process Implications of the New Partnership Audit Regime," 19 *Journal of Tax Practice and Procedure*, 17 (April 21, 2017).
- "Employment Taxes: A Look at Changing Enforcement Patterns," HospitalityLawyer's CONVERGE Blog (March 23, 2017)
- "Taxation of Long-term Contracts: Little Pigs, the IRS, and the Completed-Contract Method," *Temple 10-Q* (October 21, 2016)
- "IRS Third-Party Collection Tough on Targets," *Pennsylvania CPA Journal* (Summer 2014)
- "New Standards for Equitable Relief in Innocent Spouse Cases," *The Legal Intelligencer* (March 20, 2012)
- "Divorce and Taxes: An Overview of Innocent Spouse Relief under the Internal Revenue Code," *The Legal Intelligencer* (2011)

Affiliations

- American Bar Association, Tax and Litigation Sections
- Fellows of the American Bar Foundation
- American Health Lawyers Association (AHLA)
- Adjunct Professor, Temple University's Beasley School of Law, LL.M. Taxation Program
- Philadelphia Bar Association
 - Former Chair, Tax Section
- Third Circuit Bar Association
- Member, 2019 *Irish Legal 100*