

Partner, Washington, D.C.

Tax



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## Education

J.D., Harvard Law School, 2005  
(Supreme Court Chair of the *Harvard Law Review*)

A.B., Harvard University, Harvard College, 2000

## Bar Admissions

District of Columbia  
Massachusetts

## Experience

Law Clerk, Hon. Anthony M. Kennedy,  
U.S. Supreme Court (2006-2007)

Law Clerk, Hon. Alex Kozinski, U.S.  
Court of Appeals for the Ninth Circuit  
(2005-2006)

## Selected Publications

"The Business End of Supreme Court's Current Term," *Law360*, March 27, 2013

"Supreme Court's *Mayo* Foundation Opinion Grants Chevron Deference to Treasury Regulations," *The Tax Executive*, Spring 2011

David Foster represents clients in federal tax litigation and administrative controversies before the IRS.

Mr. Foster represents a broad range of clients, including large corporations, private equity firms and hedge funds, estates, exempt organizations and individuals, many of whom are subject to the IRS' global high wealth initiative. Mr. Foster's practice covers a diverse range of tax issues, including international tax, taxation of financial products, estate and gift taxes, proposed exempt status revocations, voluntary disclosures and criminal tax.

Mr. Foster's representations have included:

- *Ingersoll Rand Co. v. Commissioner*, Tax Court Docket No. 25769-13. Resolution by settlement of IRS treaty-shopping claims regarding withholding tax issues arising out of intercompany debt structure;
- *Massachusetts Mutual Life Insurance Co. v. United States*, 782 F.3d 1354 (Fed. Cir. 2015). Appellate victory affirming timing of insurance company's deduction of nearly \$250 million in policyholder dividend payments;
- numerous prominent estates in some of the largest Tax Court gift and estate tax cases in history. Cases include favorable resolutions of asserted deficiencies in excess of \$2.8 billion and \$500 million;
- Hewlett Packard Co. and other large corporations in trial and administrative proceedings involving billions of dollars of claimed foreign tax credits;
- *Allen Davis v. Commissioner*, 716 F.3d 560 (11th Cir. 2013). Appellate victory affirming S corporation's deduction of option exercise compensation;
- individuals in connection with criminal tax issues, including a jury acquittal of a motorsports attorney on tax evasion charges;
- five former IRS commissioners in a D.C. Circuit *amicus* brief in *Loving v. IRS* in support of licensing standards for tax return preparers; and
- the American College of Tax Counsel in support of rehearing in *Bobrow v. Commissioner*, T.C. Memo. 2014-21, involving rollover of individual retirement accounts. Following the submission of an *amicus* brief, the IRS settled the case and said in Announcement 2014-15 that it would not enforce the Tax Court's holding for the current year or any prior year.

Many of Mr. Foster's most significant representations involve administrative proceedings before the IRS, where the taxpayer's privacy is closely guarded, including:

- hedge funds and private equity firms, and their individual owners, in IRS examinations, before IRS Appeals and in Tax Court trial testimony. Areas of dispute include taxation of financial products, taxation of distressed debt, taxation of retirement accounts, valuation issues, existence of a U.S. trade or business, information and FBAR reporting, and withholding taxation on cross-border payments;
- prominent individuals in global high wealth examinations and before IRS Appeals with more than a billion dollars of proposed deficiencies;

# David W. Foster

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- individuals in connection with voluntary disclosures of offshore tax issues; and
  - exempt organizations in exam and IRS Appeals proceedings in successful defense of proposed revocations of exempt status.

Mr. Foster assists clients in these administrative proceedings in seeking to achieve favorable negotiated resolutions, while also positioning their controversies for success if litigation is necessary.

A former Supreme Court clerk, Mr. Foster has argued before the Seventh Circuit for FirstEnergy Corp. on behalf of PJM Interconnection, LLC in *Illinois Commerce Commission v. FERC* (2013) and before the D.C. Circuit in *Keohane v. United States*, 669 F.3d 325 (2012). He has briefed other cases in the Second, Ninth, Tenth, Eleventh, D.C. and Federal Circuits. He helped draft the Supreme Court briefs for a state prisoner's double jeopardy challenge to a state prosecution in *Blueford v. Arkansas*, 132 S. Ct. 2044 (2012). He also has experience in the *certiorari* process, both successfully petitioning for and opposing *certiorari*.

Mr. Foster is chair of the Tax Audits and Litigation Committee of the D.C. Bar. He lectures regularly to in-house tax departments and professional associations on topics related to tax controversies and litigation. Mr. Foster has been named to *The Legal 500 U.S.* and was recognized in 2016 as one of D.C.'s Top 40 Lawyers Under 40 in Legal Bisnow's Trending 40. He also was included in *Washingtonian's* 2018 Top Lawyers list.