

Counsel, Washington, D.C.

Tax Controversy and Litigation



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Education

J.D., Georgetown University Law Center, 2005 (*cum laude*; Executive Articles Editor, *Georgetown International Law Journal*)

B.A., Stanford University, 1999

Bar Admissions

District of Columbia
U.S. Tax Court
U.S. Court of Federal Claims

Experience

Law Clerk, Hon. Francis M. Allegra,
U.S. Court of Federal Claims
(2005–2006)

Kevin Stults concentrates his practice on federal tax controversy and litigation. He represents large financial institutions, multinational corporations and individuals at various stages of federal income tax controversies, including audits, administrative appeals and judicial proceedings. Mr. Stults' substantive experience encompasses a variety of complex tax issues, including foreign tax credits, economic substance/business purpose, corporate restructurings, life insurance, various partnership issues, IRS promoter examinations, prefiling agreements, and the TEFRA and BBA partnership audit and litigation procedures. In recognition of his work, Mr. Stults has been repeatedly named one of *Best Lawyers' Ones To Watch* in America.

Mr. Stults is past chair of the American Bar Association Section of Taxation's Committee on Administrative Practice, and past chair of the Tax Audits and Litigation Committee of the D.C. Bar Taxation Section. Prior to law school, Mr. Stults held various positions at Capital One Financial Corporation.

Mr. Stults' ongoing representative cases include:

- *Amgen Inc. & Subsidiaries v. Commissioner* (U.S. Tax Court): Ongoing transfer pricing case concerning the licensing of complex biopharmaceutical products.
- *Eaton Corp. & Subsidiaries v. Commissioner; Eaton Worldwide LLC, Eaton Holding II S.A. R.L., A Partner Other Than the Tax Matters Partner v. Commissioner; Eaton Corp. & Subsidiaries, as successors by mergers v. Commissioner; Eaton Worldwide LLC, Eaton Holding II S.A. R.L., Tax Matters Partner v. Commissioner* (U.S. Tax Court): Multiple ongoing cases involving significant issues relating to the transfer pricing of various transactions and the taxation and treatment of a partnership for purposes of applying the subpart F provisions of the Internal Revenue Code.
- *Aventis, Inc. and Subsidiaries v. Commissioner* (U.S. Tax Court): Ongoing case of first impression challenging the IRS' determination that a Financial Asset Securitization Investment Trust was invalid.
- *BankUnited, Inc. v. United States* (U.S. District Court for the Southern District of Florida): A tax refund case of first impression concerning the application of the Treasury Regulations under Section 597 to the acquisition of a failed bank.

Mr. Stults' recent representative cases include:

- *Eaton Corporation v. Commissioner* (U.S. Tax Court; U.S. Court of Appeals for the Sixth Circuit): 2022 victory in the Sixth Circuit in the first case involving a court's review of an IRS decision to retroactively cancel an advance pricing agreement. The Sixth Circuit ruled for Eaton "on all issues," unanimously affirming a 2017 Tax Court decision.
- *Athene USA Corp. v. United States* (U.S. District Court for the Southern District of Iowa): A 2018 global settlement with the IRS and DOJ of key issues in a refund case involving the IRS' disallowance of a change in method of accounting.

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- *Hess Oil Virgin Islands Corp. & Subsidiaries v. The Government of the United States Virgin Islands and The Virgin Islands Bureau of Internal Revenue* (U.S. Court of Appeals for the Second Circuit; U.S. District Court, S.D.N.Y.; U.S. District Court, Virgin Islands). Multiyear income tax refund and deficiency actions relating to the operations of the Hess refinery on St. Croix, involving nearly \$3 billion. The case involved tax accounting issues and questions about the available jurisdiction(s) in which refund litigation could be brought.
 - *Lehman Brothers Holdings Inc. v. United States* (U.S. District Court for the Southern District of New York; U.S. Court of Appeals for the Second Circuit): A 2015 trial court decision in the U.S. government's favor in a case involving an interpretation of the U.S.-U.K. Tax Treaty. The case was settled in 2016 while pending appeal to the Second Circuit.