

Practice Areas

- Tax
- Tax Controversy & 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, Chambers USA: America's Leading Lawyers for Business (2006, 2007, 2008, 2009, 2010, 2011)
- Listed, The Legal 500 U.S. – Tax Controversy (2007, 2008, 2009, 2010, 2011)
- 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
- District of Columbia

Philip Karter

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Philadelphia

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2010

- Phil Karter and Jonathan Prokup were quoted in the January 19, 2010 edition of BNA's Daily Tax Reports on the topic of the Economic Substance Doctrine. Among the issues discussed was the threat of enhanced discovery where the IRS "is poking around different stages of multistage transactions and seeing if they can't prevail on certain pieces of it." Karter and Prokup noted that "[the] type of enhanced discovery is something taxpayers need to be cognizant of internally as they do their tax planning, urging transactions must be carefully documented at every level and that interoffice and third-party communications should be kept within company policies." Karter added that "Companies should advise their employees that every time you write something, assume that it will be disclosed to a third party that may have interests adverse to your own. If you have a business meeting, you should have business people there."

2009

- In the October 9, 2009 edition of *Tax Notes Today*, Phil Karter was quoted on the implications of a watershed decision in *TIFD III-E Inc. v. U.S.* (the *Castle Harbour* case). Noting the unusual rebuke by a district judge of a circuit court ruling, Karter observed: "It is refreshing to see the district judge stick to his guns in reaching a well-reasoned result on remand in the face of an impossibly overbroad Circuit Court ruling." It is somewhat ironic that "both the Circuit Court and the District Court focused on the 'economic realities' of the transaction," he said. "Obviously, to each, there was a different reality."

2008

- 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
- U.S. Court of International Trade

Philip Karter, *Continued*

- The September 2, 2008 edition of *Tax Notes Today* quoted Phil Karter in an article discussing the high profile case *United States v. Textron*, on the eve of oral argument to the First Circuit. Among his comments about the case, which involves the scope of work product protection against the disclosure of a company's tax accrual workpapers, Karter noted that an aspect of the current financial reporting environment that this case doesn't address is the effect Financial Accounting Standards Board Interpretation No. 48 (FIN 48) may have on the protections afforded corporate taxpayers' tax accrual workpapers. Companies are now required under accounting rules to have a more likely than not level of confidence to support tax return positions underlying tax reserves. Karter added that this new requirement may necessitate a reexamination of the "anticipation of litigation" standard because the analysis required under FIN 48, "Accounting for Uncertainty in Income Taxes," presumes that the IRS has full knowledge of all relevant information and that a risk analysis must still be performed. Regardless of the outcome of the case, "the lesson to be learned is to make sure that counsel is always involved in the workpaper preparation process," he said, "as the involvement of counsel creates a much broader construct for claiming protection from disclosure under the work product doctrine." Regarding the implications of *Textron*, Karter said he presumes the IRS will "press for full disclosure until the courts tell them they aren't entitled to it." If the IRS loses its appeal in *Textron*, it will most likely press the issue in another circuit, he said, and "it will take several defeats before they scale back." Should the government ultimately succeed in whittling down the protections against disclosure of tax accrual workpapers that the work product doctrine currently affords, Karter observed that the result would be to "chill the prospect of candid communication between companies and their public auditors." If the IRS is trying to promote a policy of open reporting to provide investors and the public with more information, he said, "it is going about it the wrong way."

2007



Philip Karter, *Continued*

- In the August 31, 2007 issue of *Tax Notes Today*, Phil Karter was quoted in an article about the taxpayer's successful defense against a summons enforcement action in *United States v. Textron Inc.* on the ground that the summonsed documents were protected from disclosure as attorney work product. "The decision makes "eminent sense" and is "consistent with recent decisions in other circuits confirming the robust nature of the work product doctrine. Coming on the heels of recent IRS pronouncements that have further eroded confidence that it will maintain its historical policy of restraint in seeking tax accrual workpapers, the decision hopefully will slow the growing number of summons enforcement actions threatened or brought whenever a taxpayer raises a legitimate privilege defense to disclosure," said Karter.
- *Tax Notes Today*, March 5, 2007: Interview regarding Court of Federal Claims decision granting the taxpayer's motion to dismiss without prejudice a contingent liability case, in which Phil Karter represented the taxpayer. In its decision, the court rejected the government's argument that the taxpayer was "forum shopping" to avoid the effect of *Coltec v. United States*, and that the court should exercise its discretion to waive a lack of subject matter jurisdiction. "People can think what they want about the taxpayer's motives in bringing the motion, but if the shoe were on the other foot," Karter said, "You can be pretty certain that it would have been the government arguing that the defect in the claims prevented the taxpayer from seeking a refund, and if the statute of limitations had run, the taxpayer would then be barred forever from seeking relief." As to where the case may go next, Karter said, "we'll consider all our options, just as any taxpayer filing anew would in selecting an appropriate litigating forum."
- The 2007 Edition of the *Legal 500*, a national print and online publication rating leading lawyers in the U.S., cited the addition of Phil Karter and colleagues Herbert Odell and Kevin Johnson to Chamberlain Hrdlicka's tax controversy group.
- *Texas Lawyer*, January 25, 2007: Reported the move of Herbert Odell, Phil Karter, Kevin Johnson and Jonathan Prokup to Chamberlain Hrdlicka.

2006

- The October 10, 2006 edition of *Tax Notes Today* quoted Phil Karter in an article discussing IRS procedures directing chief counsel employees to work with disclosure personnel to determine whether releasing records responsive to the request would hurt the litigation or examination. "Trying to extract records from the government through the FOIA process is an exercise in futility," said Karter. Having waited months and even years for responses to FOIA requests, Karter said he favors "anything that gets a government response out sooner than the existing protocol does. Although introducing another level of review to the process doesn't intuitively sound like it would speed matters up, it is possible, he said, that the notice could create a greater sense of urgency for IRS disclosure personnel, leading them to process the requests and locate responsive information more quickly than at their normal glacial pace." Litigators often pick up information from FOIA requests made while a case is in litigation that they wouldn't otherwise get in discovery, Karter said. Whenever a request is made of different sources following different protocols, you are likely to get different information, he said. While one might believe that the IRS has a coordinated uniform policy when it comes to disclosure, "experience demonstrates that it isn't necessarily so," he said. The question now becomes whether the new level of review by counsel will end up limiting the disclosure of information sought through FOIA and traditional discovery to only the overlapping pieces of the complete Venn diagram of responsive information as opposed to a full circle's worth of information from each request, Karter concluded.
- Phil Karter was quoted in the August 7, 2006 edition of *Tax Notes Today* about the Second Circuit's decision reversing the lower court's decision a partnership shelter case. "A reasonable view of the opinion is that it merely reaffirms the common-sense proposition that economic substance requires real economic risk as well as the possibility of meaningful economic reward. "These are, quite obviously, fact-specific inquiries where one size does not fit all," Karter stated. **2004**

Philip Karter, *Continued*

- In the November 15, 2004 edition of *Tax Notes Today*, Phil Karter was quoted commenting about the effect of three high-profile court decisions favorable to taxpayers. "The government has tried to paint all of these transactions with the same broad brush without regard to, or acknowledgement of, the specific factual nuances that separate one case from another. Thankfully, the courts have recognized that the government is pushing an overly expansive viewpoint of the statutory scheme that cannot be applied across the board" said Karter. Herbert Odell, also with Miller & Chevalier and co-counsel on *Black & Decker*, noted that the recent decisions repudiated the government's argument that tax advantages must not be the predominant motive for these types of transactions to be respected. "The nontax effect a transaction has on the parties, or even third parties, is objective evidence of its economic substance even where tax avoidance is a significant reason for entering into the transaction," said Odell.
- *Tax Notes Today's* October 22, 2004 edition reported that a summary judgment decision in favor of *Black & Decker* in a case by Herbert Odell and Phil Karter, was "nothing short of a stunning taxpayer victory." The decision was the first involving the high-profile contingent liability shelter transaction.
- In The September 7, 2004 issue of *Tax Notes Today*, an article analyzing whether the IRS had applied a landmark 2001 tax shelter penalty waiver initiative to taxpayers in a discriminatory manner in a case handled by Phil Karter and Herbert Odell, Karter commented that his client sought and received the results of an IRS survey that "unequivocally confirms that the IRS impermissibly applied one standard to [the taxpayer] in denying Announcement 2002-2 penalty relief and another standard in granting relief to other similarly situated taxpayers." Karter said it was apparent from the depositions that LMSB and OTSA not only couldn't agree about the proper standards for granting or denying penalty relief but also that they had little, if any, ability to monitor whether penalty relief under the initiative was being applied consistently in the field. *Black & Decker's* suspicions that the company had been subjected to disparate treatment had also been triggered by anecdotal information it had obtained about other unidentified taxpayers that had been granted penalty relief, he said. The information was probably more of a revelation to the government than it was to *Black & Decker*, according to Karter. The results proved that a sizable number of other taxpayers were granted penalty relief under the exact same circumstances that the government has relied upon to deny that relief, *Black & Decker* argues in its motion for summary judgment on the penalty issue.
- In the May 3, 2004 issue of *Tax Notes Today*, Phil Karter commented about the implications of a Freedom of Information Act suit by Tax Analysts seeking IRS release of all redacted legal analysis in the case development/hazards section in all reviewed chief counsel advice issued to the field. The article noted that, "[u]ntil *Black & Decker* [a case handled by Karter], the tax professional community had no reason to suspect that the IRS was not performing its redaction duties for purposes of public inspection in good faith." In response to an inquiry from Tax Analysts, Karter stated "The *Black & Decker* decision made clear that the IRS's historical practice of redacting legal advice from its published pronouncements is inconsistent with the legal requirements of disclosure. After that ruling, it remains to be seen whether the Service will undertake the commitment to fulfill its disclosure obligations in the absence of repeated judicial mandates to do so, he said. The irony, should the IRS fail in that regard, would be palpable. A tax system predicated on voluntary compliance should, after all, demand that the government hold itself up to the same standards it sets for taxpayers."

Philip Karter, *Continued*

- Phil Karter was quoted in the March 15, 2004 issue of *Tax Notes Today* in an article scrutinizing the IRS public disclosure practices and a court decision in a case handled by Karter that the IRS had disguised legal analysis in the redacted "case development and hazards" section of a Field Service Advice to avoid disclosure. "Although the newest chief counsel notice clearly indicates that the decision to provide written legal advice should be made independent of public disclosure considerations, cases such as *Tax Analysts* and *Black & Decker* demonstrate the IRS's continued unwillingness to practice what it preaches by its selective classification of what constitutes legal advice," said Karter. "If, as the notice indicates, the decision to produce written legal advice depends in part on whether it is "more effective" than providing an oral response, that still raises the question whether effectiveness is measured by ensuring a uniform application of the tax laws or merely ensuring a litigating advantage in specific cases by withholding from the public domain legal advice that section 6110(i) and the cases make clear must be disclosed if set forth in writing" Karter added.
- In an article appearing in the February 6, 2004 edition of *The Business Journal of the Greater Triad Area* reporting that VF Corp, one of the Nation's leading apparel manufacturers had prevailed in a two-year Tax Court dispute with the IRS in which the taxpayer claimed that the IRS wrongfully denied it \$60 million in deductions for supplying display counters to retailers, "I think a 100 percent concession by the government is pretty good," said Phil Karter.

