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Tax Maven

The Contemporary Tax Journal's Interview with Mr. Robert J. Kovacev

By: Liubov (Luba) Shilkova, MST Student

Robert J. Kovacev is a tax controversy partner in Norton Rose Fulbright's Washington, DC and San Francisco offices. His experience includes tax and transfer pricing controversies, tax incentives (such as the research tax credit and alternative energy tax credits), as well as the economic substance and other judicial doctrines. Prior to entering private practice, Mr. Kovacev was a senior litigation counsel with the U.S. Department of Justice, Tax Division, where he was responsible for litigating some of the largest and most complex civil tax cases in the nation. In that position, he worked closely with the Internal Revenue Service's (IRS) Large Business & International (LB&I) Division and top management of the Justice Department's Tax Division to shape litigation strategy on high-priority tax enforcement issues. The amounts at issue in each of these cases ranged from \$10 million to more than \$1 billion in claimed tax benefits. Mr. Kovacev was also lead counsel in several important summons enforcement matters, including the Wells Fargo tax accrual workpapers case.

Mr. Kovacev is Co-Chair of the Legislative and Administrative Developments Subcommittee, American Bar Association Tax Section's Civil and Criminal Penalties Committee. He is also Vice-Chair, of the Section's Tax Policy & Simplification Committee. He is a member of the SJSU Tax Advisory Board where he assists in planning for the TEI-SJSU High Tech Tax Institute and providing advice to the MST program.

Mr. Kovacev graduated *Magna Cum Laude* with a Bachelor of Arts (B.A.) degree from Harvard College in 1994. He then earned a Juris Doctor (J.D.) degree from Columbia Law School in 1997.

Mr. Kovacev is a 2009 recipient of the John Marshall Award, the highest award for trial of litigation given by the Department of Justice. He also received the Mitchell Rogovin Award for providing outstanding support to the Office of Chief Counsel by the IRS in 2009. He was recognized as the Outstanding Attorney by the Department of Justice, Tax Division in 2008, 2009, 2010. His Twitter account is recognized by Forbes as one of the top tax-related accounts.

Mr. Kovacev is a leader in the emerging field of taxation of robotics and artificial intelligence, and he frequently writes and speaks at conferences on these topics. He has authored a number of articles including "A Taxing Dilemma: Robot Taxes and the Challenges of Effective Taxation of AI, Automation and Robotics in the Fourth Industrial Revolution," *The Ohio State Technology Law Journal*, 2020; "Refund Claims: Don't Leave Money On The Table," *Tax Executive Magazine*, March 12, 2018; "International Tax Cooperation or Global Tax Chaos: Views from the Pacific Rim Tax Conference," *MNE Tax*, March 12, 2018; "Don't tax the robots," *San Francisco Chronicle*, January 21, 2018, "The Challenges of Administering a Robot Tax," *Law360*, September 25, 2017; "Expert Contributor, Topic 138, Corporate Tax Shelters: Reportable Transactions, Checkpoint Catalyst, October 1, 2015.

Mr. Kovacev has also co-authored articles such as "INSIGHT: Promise and perils of tentative refunds—tax controversy aspects of NOL carrybacks under the CARES Act," *Bloomberg Law*, April 2020; "Changes to IRS Appeals May Create Problems for Taxpayers," *Law360*, October 26, 2016; and "New Tax Litigation Troubles For Liquidating Trustees," *Law360*, May 5, 2016. Some of his speaking engagements include "Life Cycle of IRS Controversy from Cradle to Grave," TEI Houston, Houston, Texas, February 27, 2020; "Federal Tax Controversy – Campaigns and Data Analytics," 35th Annual Tax Executives Institute-San Jose University High Tech Tax Institute, Palo Alto, California, November 5, 2019; and "The Challenges of Social Media for Tax Practitioners," American Bar Association Tax Sections May Meeting, Washington, DC, May 11, 2019.

I had the pleasure to interview Mr. Kovacev online on May 8 via Zoom. Our encounter was a short, yet inspiring and memorable one. Following are Mr. Kovacev's answers to our journal's questions.

1. How did you get involved in the tax field? Was that your plan when you were in college?

No, it really was not my plan when I graduated from law school. I started out as a general civil litigator, and I was in private practice doing regular litigation cases with no particular focus on tax. In 2006, I received the opportunity to join the Tax Division at the Department of Justice. It was my first introduction to the tax side of litigation and I really enjoyed the challenge of explaining complex tax concepts to judges and jurors who were not tax experts.

2. What stands out as one or two of your most significant accomplishments in your career?

I would count my robot tax article "A Taxing Dilemma: Robot Taxes and the Challenges of Effective Taxation of AI, Automation and Robotics in the Fourth Industrial Revolution," published in *The Ohio State Technology Law Journal*, 2020 as one of my most significant achievements because it addresses a cutting edge area of law. Making a meaningful contribution to scholarship and policy in an emerging field does not come around every day, so this was a unique opportunity for me to have an impact on the future of tax. I was thrilled I had a chance to do that.

Note: *The Contemporary Tax Journal* is pleased to be able to reprint Mr. Kovacev's article in this summer 2020 issue of our journal.

3. How do you keep up to date with changes in tax law and new types of business transactions of the digital era?

I use Twitter. There is a very active tax Twitter family with people who are tax professionals: professors, CPAs, tax lawyers. This is a very insightful, very intelligent and

engaged group on Twitter dealing with tax issues. They contribute actively to public discourse about tax by discussing current events and tax policy issues, as well as everyday tax issues that they are seeing in practice. Twitter is often my first stop when I am trying to keep up with today's fast-paced environment where tax policy is changing on a daily basis.

4. What do you think is one key area of our federal or state tax system that could/should be improved and why?

I think one area is tax incentives particularly for innovation, like the research tax credit. We have a research tax credit in this country, but it is very limited, complicated, and there are all sorts of administrative and compliance burdens associated with it. So, a lot of companies just do not bother even though they are entitled to it because they are actually doing research. In comparison, other countries, for example, Ireland, China, or other economic rivals, have incentive systems for developing intellectual property, developing research and supporting innovation in industries like technology and pharmaceuticals that are more advanced than ours. So, if I were to suggest one area that we should change in terms of improving the tax system in this country, it would be coming up with an innovation tax incentive system that works.

5. What do you think is the biggest challenge facing tax professionals today?

The biggest challenge today is the speed at which everything is changing. And we are seeing this now [during the pandemic] more than ever when you find out a new tax law is being proposed, and then the next day it is passed with all sorts of new amendments. And the next day the IRS has issued some FAQs, and then the day after that the IRS changes the FAQs because events are unfolding so quickly. The biggest challenge for all tax professionals, experienced or just starting out, is keeping track of all these changes as they are happening in real time. The advice you give to your clients really depends on what the law is now, not what it was five years ago or even five days ago. So, I think this is the biggest challenge facing people: just keeping up with how quickly tax law and tax policy are changing these days.

6. What advice do you have for students preparing for a career in tax?

The practice of taxation is becoming more and more about technology, and that is dealing with robotic process automation, artificial intelligence, and data analytics. As a result, technological advances mean that you need to be aware of and proficient in these different technologies and the software. It does not mean that you need to learn how to code, but it does mean that you need to be flexible and adaptable and willing to adopt these technologies as they come forward. The pace of change technologically in the profession now is much greater than it has ever been. And if you are just starting out, you actually have an advantage because you do not have 20 to 30 years of experience looking at books, now you have to figure out how to deal with all this

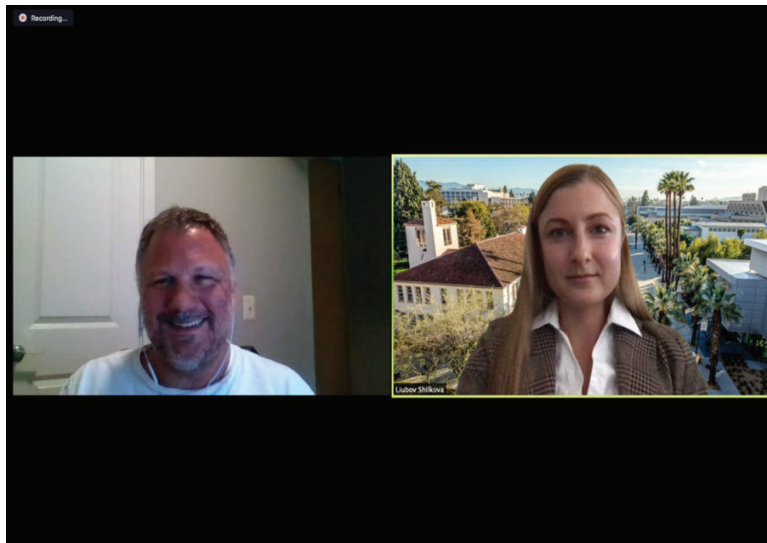
software. You are starting out right now used to this change, the challenge is you need to keep up with the change as it gets faster and faster.

7. If you could have dinner with anyone, who would it be?

I would say the physicist Richard Feynman because I remember when I was young, I read his autobiography about when he was starting out as a young professor. He was brilliant, and he received the Nobel prize in physics, but he was not one dimensional. He performed on the drums in a samba band during Carnival in Rio, he had an art exhibition of his sketches and paintings, and he was able to develop all these different talents to express himself. He was an unorthodox person, and he was able to be successful in his field and not give up all those other aspects of his personality. I really admire that. Plus, I just think he would be a fun guy to sit down and have a meal with.

8. What is the most unusual item in your office or something in it that has special meaning to you?

I spoke at the AI tax conference at The Ohio State last year, and one of the items given to the speakers as an appreciation gift was called a “tin can robot.” Basically, it is a machine that can be assembled around a soda can and this contraption can walk, crawl, and act like a mini-robot. It is fascinating to watch. So, that is the most interesting thing that I have in my office.



Robert Kovacev and Liubov (Luba) Shilkova, May 8, 2020 (during the COVID-19 sheltering-in-place time period).