

## MVP: Mayer Brown's Brian W. Kittle

By Amy Lee Rosen

*Law360 (November 12, 2019, 3:02 PM EST)* -- Brian W. Kittle of Mayer Brown LLP helped Bank of America achieve a jurisdictional win in a tax refund dispute, and he separately assisted Cross Refined Coal in snagging a victory in Tax Court, earning him a spot among Law360's 2019 Tax MVPs.

### ***HIS BIGGEST ACCOMPLISHMENTS THIS YEAR:***

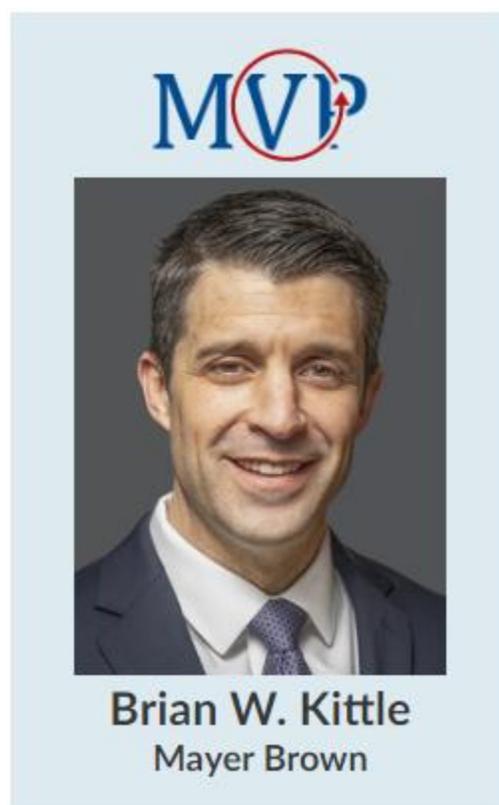
Kittle represented Bank of America as it fought the government's bid to transfer the bank's \$163 million tax interest refund lawsuit to the U.S. Court of Federal Claims. The North Carolina federal court found it had authority to preside over the dispute.

The U.S. objected to the North Carolina federal court's recommendation and order, but the court denied the government's request to change venue in July.

The complaint, filed by Bank of America in 2017, says the Internal Revenue Service owed the bank interest that it overpaid on tax liabilities because it was entitled to a net rate of zero for overlapping periods of tax underpayments and overpayments.

"The dispute in BofA involved a technical issue of statutory interpretation regarding overpayment interest," Kittle told Law360. "The principal focus was on statutory construction principles, including the meaning of certain terms and the legislative history of that statute, as well as the reasons why certain courts have agreed — and disagreed — with our interpretation."

In addition to the Bank of America case, Kittle told Law360 that one of his biggest accomplishments was his work for Cross Refined Coal LLC and its partner Fidelity in their partnership tax dispute before the U.S. Tax Court.



In the Tax Court case, the IRS challenged the partnership by denying it refined coal product credits under Section 45(e)(8) of the Internal Revenue Code.

When Kittle litigated the case as the tax matters partner, which is the legal term for the partnership's representative, U.S. Tax Court Judge David Gustafson ruled in a rare bench opinion that the partnership was legitimate and entitled to claim the refined coal tax credits.

"My biggest accomplishment was being part of two successful litigations, Cross and BofA, which required the development and implementation of bespoke strategies and approaches," Kittle said.

The issue in Cross was different from the Bank of America case because it centered on whether the partners of the business should be treated as partners for tax purposes, he said. Because the inquiry was quite factual, Kittle said, a strong understanding of the refined coal production tax credit was necessary to integrate facts and legal requirements into a trial strategy.

"While the Cross and BofA [cases] both gained widespread attention given the issues in dispute, resolving large, complex matters without litigation and working on issues presented by tax reform have been equally satisfying," Kittle said.

#### ***WHAT MOTIVATES HIM:***

The reason why Kittle is a tax attorney is intimately tied to what motivates him, he said. His quest is to use various skills in questioning witnesses, reviewing documents and organizing past events so that a trier of fact, his clients and the opposing side can readily understand a story that's not just about tax law minutiae.

Tax laws were recently overhauled, and they're complex and must be applied to sophisticated transactions. Those challenges mean tax attorneys must develop positions to resolve tax disputes, which is a bit like learning and playing three-dimensional chess, Kittle said.

"While learning the law and the facts is challenging, it is even more challenging to organize that learning into effective arguments and a strategy for resolving these disputes," he said. "These challenges are what motivates me."

The trick to litigating is to organize facts so that someone who has not spent thousands of hours sorting through the information can easily understand a compelling summary of the legal argument and what's going on, Kittle said.

"It's the drawing of simple analogies," he said. "Everybody has life experience, and so you're trying to relate the typical life experience of the trier of fact."

#### ***HIS ADVICE FOR YOUNGER ATTORNEYS:***

Kittle's key pieces of advice for younger attorneys are to find an area of law you're passionate about and to never be afraid to share your ideas.

"Passion has been the vehicle that has provided many opportunities in my career," he said. "Early on, it was my passion to understand the underlying business involved in a dispute that proved to be the key to being able to create a compelling presentation to the court."

Kittle still relies on that passion today to learn new tax laws and analyze facts to create innovative themes and legal arguments. And when associates are passionate about a project, they can play an integral role in developing litigation strategies too.

"It's really perseverance," he said. "If you don't have that passion, success is difficult."

— *As told to Amy Lee Rosen*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2019 MVP winners after reviewing nearly 900 submissions.*