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Tax Group Of The Year: Mayer Brown

By **David Hansen**

Law360 (January 23, 2023, 2:02 PM EST) -- Mayer Brown LLP's successful appeal for Fidelity Investments in a closely watched $26 million tax credit dispute was one of several high-profile wins over the past year that earned the firm a spot among Law360's 2022 Tax Groups of the Year.

In the dispute, Fidelity belonged to a partnership created to establish a coal-refining facility that burned a cleaner form of coal. The partners in the case divided $25.8 million in credits, along with $22.7 million in losses, according to court documents. But the Internal Revenue Service refused to recognize the partnership, arguing that it had been formed to cash in on the credits.

However, the case established that the partnership was a legitimate enterprise entitled to claim energy tax credits and share them among its members, even if the credits were the reason the partnership was formed. Thanks to Mayer Brown's representation, the D.C. Circuit in August unanimously affirmed a decision by the U.S. Tax Court that Fidelity was a bona fide partner, even though it relied on the credits to make money.

The increased use of tax credits to encourage alternative energy production means the case will serve as a powerful legal precedent in the energy sector, Mayer Brown partner Jason Bazar told Law360. The opinion's significance is that the courts rejected the IRS' attempt to take away a tax credit created by Congress to incentivize behavior, Mayer Brown noted in its nomination documents.

Mayer Brown's goal is to grow into a full-service tax firm, Bazar said. It already employs over 125 tax attorneys, more than 5% of the firm's total number of lawyers, he said. It also has the resources to specialize in large controversies involving federal tax law. "Not many firms have a Ph.D. on staff just for handling transfer pricing and related work," he said.

Mayer Brown won a big transfer pricing case for Eaton Corp. last August when the Sixth Circuit ruled that the IRS could not cancel the advance pricing agreements, or APAs, it made with the power management company. Eaton became the first taxpayer to challenge the IRS' cancelation of an APA, according to the firm.

The IRS claimed Eaton made a material error calculating transfer prices on its 2005-2008 tax returns. The prices were more than $165 million higher than the amounts the company had reported in its 2005-

2008 APA annual reports. But these errors were not deliberate and did not warrant cancelation, the Sixth Circuit said.

The Sixth Circuit also ruled that the government has the burden to show why an APA should not be enforced, breaking ranks with the U.S. Tax Court, which had ruled it was Eaton's burden of proof.

The Eaton matter is a case of first impression with significant ramifications, Mayer Brown said. It established that an APA is like a contract and that the IRS must have very good reasons for walking away from one, Mayer Brown partner Thomas Kittle-Kamp told Law360. Large corporations rely on the APAs they negotiated, and a loss for Eaton would have led to uncertainty in transfer pricing law, he said.

"It's bitter for the government to lose a case, but on the other hand, they want people to come in and agree on prices in advance," Kittle-Kamp said.

Mayer Brown notched another win in July, this time in state law, when a New York administrative law judge ruled that Nordstrom could take $119 million in deductions for bad debt expenses. The New York State Department of Taxation and Finance claimed that the deductions should have been taken by either of two Nordstrom affiliates, a savings and loan bank or a credit company.

The court disagreed. Nordstrom's deductions had already received approval from an IRS audit, Administrative Law Judge Barbara J. Russo ruled. The IRS decision was determinative, she said, adding that the ruling rendered moot the penalty assessed by New York on Nordstrom for making the deduction. The case is significant because it established the role of federal audits in New York state judicial matters, Mayer Brown said.

The firm's tax practice spans jurisdictions and industries, Mayer Brown said. The firm served as lead international tax counsel for global investment group CDPQ in its $3 billion investment in Blackstone. The deal was one of the largest renewable energy transactions in 2021, Mayer Brown said.

It also advised sink and faucet maker Elkay in its merger with Zurn Water Solutions Corp. in a transaction valued at $1.6 billion. Mayer Brown has also represented French telecommunications company Altice France for over 15 years, most recently in October 2021 on the €5.2 billion ($5.6 billion) sale of its 50.01% stake in Hivory SAS, a large French telecommunications tower operator, to Cellnex Telecom SA.

"We are always seeing steady growth," Bazar said.

--Additional reporting by Theresa Schliep, Natalie Olivo and Maria Koklanaris. Editing by Daniel King.
