

Tax Group Of The Year: Latham & Watkins

By **David van den Berg**

Law360 (January 20, 2022, 12:02 PM EST) -- For work by its transactional tax and tax controversy practice groups — including advising online optician Warby Parker on tax aspects of its direct listing — Latham & Watkins LLP has been named as one of Law360's 2021 Tax Groups of the Year.

Notable tax work by the two practice groups also included getting tossed proposed class actions against streaming giant Netflix Inc. centered on arguments that the company should pay franchise fees. The firm also advised messaging app maker Slack on its nearly \$28 billion acquisition by Salesforce.

Those transactions illustrate the collaboration between the two tax practices and other practice groups across the firm, lawyers in both told Law360.

Warby Parker's shares debuted on the New York Stock Exchange in September after the company filed direct listing plans with regulators in August. Warby Parker's shares topped a reference price by about 35% when they first came on the market.

The eyeglass retailer said it was the first public benefit corporation to undertake a direct listing, which is an alternative to an initial public offering.

Jocelyn Noll, a partner in Latham's transactional tax practice group who was part of the team advising Warby Parker, said the direct listing "was just a good example of how our tax department really works hand in hand with our corporate department and guides our clients through these transformational corporate events."

The Warby Parker direct listing is just one example of collaboration between tax lawyers and attorneys in other practices at the firm.

Jean Pawlow, a partner in Latham's tax controversy practice group, said her team worked with other practice groups, including complex commercial litigation, on the Netflix cases.

In September, federal judges tossed suits brought by Ashdown, Arkansas, and by New Boston, Texas, that sought to collect franchise fees from Netflix and Hulu.



Also in September, a Los Angeles Superior Court ruled the streaming companies don't have to pay video service provider fees under California law to the city of Lancaster, which brought a proposed class action. A Nevada federal judge that same month tossed a proposed class action brought by the city of Reno over the failure of Netflix and Hulu to pay franchise fees.

Governments at all levels are wrestling with how to handle the taxation of digital transactions, including streaming, she said.

"It's an example of how our practice group works on cutting-edge issues," she said. "We are currently litigating other cases for Netflix around the country on this same issue."

Grace Lee, a partner in the firm's transactional tax practice, who provided tax advice on Latham's team advising Slack, said that, like the Warby Parker and Netflix work, it was also a multidisciplinary effort.

Law360 named Lee a tax MVP in September, in part for her work on that deal, which was announced in 2020. She told Law360 the transaction is notable both for its impact as a standalone deal and from a tax perspective because it was structured as a tax-free reorganization, so the tax treatment was critical to Slack stockholders, she said.

"There was a significant amount of tax structuring work that needed to be done," she said.

Latham said its transactional tax practice has nearly 100 lawyers worldwide — including partners, counsel and associates — and that the tax controversy practice has 15 lawyers, including partners, counsel and associates in the U.S. Lawyers in its European offices also do tax controversy work, the firm said.

Joseph Kronsoble, global chair of the firm's transactional tax group, said the breadth of its work is one of its strengths and distinguishing characteristics. He said there hasn't been any shortage of work to do recently.

"We found ourselves really extraordinarily busy in 2021," he said. "We found ourselves in 2021 materially busier than we were in '20. And in '20, we were materially busier than we were in '19."

In 2021, the tax controversy practice group added to its ranks Andrew Strelka, who served as President Joe Biden's tax counsel, and Joshua Wu, who served as deputy assistant attorney general for appellate and review in the U.S. Department of Justice's Tax Division, according to firm statements.

Pawlow said she expects the practice group will continue growing.

"We expect that we will continue to grow strategically because we are involved in a lot of very significant tax controversy matters at the moment," she said. "Our practice is, I think, somewhat unique in that we handle administrative matters. But we also handle tax litigation and have a number of very major docketed matters."

Tax is a key part of Latham's history as a firm. Founding partner Dana Latham was a former IRS commissioner, according to the firm's website. He served in that position from November 1958 to January 1961.

"Tax has always been a pretty key part of the firm, and its roots go back to the founding of the firm," Pawlow said.

--Additional reporting by Emma Whitford, Tom Zanki, Maria Koklanaris, Nadia Dreid, Dylan Moroses and Benjamin Horney. Editing by Andrew Cohen.

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