

## Tax Group Of The Year: Latham

By **Theresa Schliep**

*Law360 (January 20, 2023, 2:02 PM EST)* -- Latham & Watkins LLP's tax practice guided medical records giant Cerner in its \$28.3 billion acquisition by Oracle and helped secure a U.S. Supreme Court win in a law firm's day-late challenge to an Internal Revenue Service levy, exemplifying its strengths in both transactional tax and tax controversy, and earning it a spot on Law360's 2022 Tax Groups of the Year.

Oracle Corp.'s \$28.3 billion acquisition of Cerner Corp. — which provides digital information systems used by hospitals and health systems — was one of the biggest mergers and acquisitions transactions to take place in 2021. Oracle, a computer software company, said in June that Cerner shareholders tendered 69.2% of the company's outstanding shares in response to its tender offer.

Joseph Kronsoble, global chair of Latham's transactional tax practice, said the deal was notable for its size and for how "extraordinarily fast-paced" the transaction was, coming together in less than two weeks in December 2021.

"It must have been really quite an undertaking to do that kind of transaction in that period of time," Kronsoble said, noting the Latham team who worked the deal included tax partner Grace Lee. "It was a real flurry of activity and a heavily negotiated merger agreement that really required people having to devote a lot of time to in very few days."

Also notable was Latham's advising of long-term client New York-based Authentic Brands Group's \$2.5 billion acquisition of Reebok from Adidas, which is based in Germany. The deal closed in March 2022 and capped off months of speculation about possible bidders for the brand.

That transaction helps highlight the firm's relationship with its clients as well as its global presence, with its nearly 110 transactional tax attorneys in the U.S. and Europe, including Hamburg, Munich and Frankfurt, Kronsoble said.

"It was really imperative for us to have German colleagues involved, and I think it's illustrative of a very tight relationship with the law firm and with its clients that grows over time," Kronsoble said.

But the firm's strengths in the tax space aren't limited to its transactional group. The firm secured significant wins for clients on the controversy side of things, including a cross-practice Latham team



leading Boechler PC in its successful Supreme Court challenge involving an IRS levy.

In *Boechler PC v. Commissioner of Internal Revenue*, the justices **found that** the firm's suit challenging the agency's collection action wasn't barred by a tax code deadline. The court had specifically found that the 30-day deadline under Internal Revenue Code Section 6330(d)(1) for challenges to IRS collection actions — known as collection due process cases — wasn't jurisdictional.

It also said that equitable tolling was available and remanded the case for further proceedings to determine if equitable tolling should apply to Boechler's case. The high court's analysis focused on whether Congress clearly stated that the 30-day deadline under the statute was jurisdictional. Directors of tax clinics have celebrated the win as having eased the path toward litigation for unrepresented, lower-income taxpayers.

Boechler's win is notable, not only because it's the rare tax case to be taken up by the Supreme Court, but also because of the court's application of this clear statement rule, according to Melissa Arbus Sherry, a partner with Latham's Supreme Court and appellate team and who argued the case in front of the justices. The Boechler decision is the latest in a line of case law clarifying the application of the rule, which dictates that Congress must clearly indicate a particular deadline is jurisdictional in order for it to be interpreted as such, according to Sherry.

"The court had over and over again said there's a clear statement rule, but it hadn't really had to apply it to specific language in a statute that actually included the word 'jurisdiction,'" she said.

The case originally came to Latham through Amy Feinberg, an associate in the tax controversy practice who was contacted about the case by a professor at the Harvard Tax Clinic, which she was involved in as a law student. She had argued a similar case in the Fourth Circuit and ultimately argued the Boechler case in the Eighth Circuit.

Feinberg ended up being on the all-women Latham team that worked the Boechler case, and Sherry said that the tax controversy group in particular — led by Miriam L. Fisher — has made significant progress on gender and racial diversity.

"It's so nice to be part of a case where we can head in the right direction," Sherry said.

Other successful transaction and litigation wins for Latham's tax team include guiding Rivian Automotive's \$11.9 billion initial public offering in November 2021 — the largest IPO that year — and defending Netflix against a host of suits in federal and state court over franchise fees that some municipalities alleged should be paid on streaming revenue. It's unusual to have a firm excel at both tax controversy and transactional tax the way Latham does, Kronsoble said.

"There are not that many firms that really are leaders in both practice areas," Kronsoble said. "We really pride ourselves on that dual market leading position."

--Additional reporting by Emma Whitford, Matthew Perlman and Nadia Dreid. Editing by Dave Trumbore.