



## Brian M. Katusian

Shareholder



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Mr. Katusian is a shareholder with Seltzer Caplan McMahon Vitek. His practice emphasizes tax law, tax exempt organizations, business law, and ERISA/Employee Benefits. He is certified by the State Bar of California as a Specialist in Taxation Law.

### Practice Groups

- Business Law
- Finance/Corporate & Securities
- International Finance, Investment & Tax
- Employee Benefits & ERISA Compliance
- Transactional Tax Planning & Tax Controversy
- Cross-Border

### Employment Background

Prior to joining Seltzer Caplan McMahon Vitek, Mr. Katusian was an associate at Branton & Wilson.

### Education

Mr. Katusian received his Bachelor of Science degree in Management Science, with honors, from the University of California at San Diego, in 2004, and his Juris Doctor from the University of San Diego School of Law, in 2007. While attending the University of California at San Diego, Mr. Katusian also studied abroad at the University of Chile in Santiago, Chile, and received a minor in Spanish Literature. He is fluent in Spanish. While in law school, Mr. Katusian was a member of the law school's Irving R. Kaufman Securities Law Moot Court Team, and served as a research assistant for Professor Fred Zacharias, USD Herzog Research Professor of Law. He also received his LL.M. in Taxation at the University of San Diego School of Law, in 2007, where he was a Graduate Law Merit Scholar and a student attorney at the University of San Diego School of Law's Tax Clinic.

### Representative Matters

#### Tax

- Advise clients regarding the local, state, federal and international tax consequences of a wide range of business and estate planning transactions
- Form for-profit and non-profit business organizations, including limited liability companies, partnerships, and corporations
- Represent entities and individuals, including lenders, borrowers, guarantors, developers, contractors, owners, investors, trustees, and fiduciaries in a wide variety of tax matters before governmental entities including the Internal Revenue Service, California State Board of Equalization, and California Franchise Tax Board
- Represent homeowners organizations with respect to a wide variety of tax issues
- Represent companies in structuring tax-free reorganizations
- Represented a non-exempt membership organization under Section 277 of the Internal Revenue Code in its \$20.5 million sale; tax involvement included advice on the federal income tax treatment of the sale, and preparation of a Private Letter Ruling for filing with the Internal Revenue Service

- Represented various subsidiary LLCs of a large Southern California Real Estate Developer in their acquisition of a multi-million dollar Jet Aircraft; tax involvement included obtaining an exemption from Sales & Use Taxes from the California State Board of Equalization
- Obtained Aircraft Registration from the Federal Aviation Administration (“FAA”), and prepared and recorded an Aircraft Security Agreement with the FAA; prepared various related agreements such as FAA-Compliant “Dry Lease” Agreement, Management Agreement, etc.
- Represented a company in connection with the proposed division of the company pursuant to a marital dissolution; tax involvement included advice and structuring of an Internal Revenue Code section 355 “split-off”
- Represented a public charity in connection with its grants to Guatemalan Organizations in order to assist earthquake victims; tax involvement included advising and structuring the program to avoid jeopardizing its tax exemption
- Formed and obtained federal and state Income Tax Exemptions for numerous Private Foundations (Operating and Non-Operating) formed for such purposes as providing resources and assistance to cancer victims and their families, and similar charitable purposes)

### **ERISA/Employee Benefits**

- Correct plan operational defects through the use of IRS and DOL compliance programs such as the IRS Employee Plans Compliance Resolution System and the DOL Voluntary Fiduciary Correction Program
- Amended and restated defined contribution plans (e.g. 401(k), profit-sharing, and money purchase pension plans) for compliance with the Economic Growth Tax Relief Reconciliation Act of 2001 (“EGTRRA”) and the Pension Protection Act of 2006 (“PPA”)
- Prepare Qualified Domestic Relations Orders (“QDROs”) for divisions of both ERISA and Non-ERISA plan benefits in connection with marital dissolutions
- Advise employers and employees in connection with QDRO preparation and processing issues
- Represent employers and Third-Party Administrators in determining whether the Internal Revenue Code “Controlled Group” Rules apply such that all qualified plans within the group are aggregated for various purposes
- Advise employers and Third-Party Administrators with regard to effects of application of the “Controlled Group” Rules
- Amended and Restated Cafeteria Plans for compliance with Code section 125 and the applicable Treasury Regulations
- Advise Third-Party Administrators in connection with operational issues involving their employer-client plans
- Advise employers and Third-Party Administrators in connection with Employee Stock Option Plan (“ESOP”) operational issues
- Draft and advise employers and employees regarding Code Section 409A-Compliant Deferred Compensation Agreements for Key Executives
- Represent employers in connection with termination of qualified plans, including the subsequent transfer of non-publicly traded assets (e.g. promissory notes and limited partnership interests) to a “self-directed” IRA custodian
- Represent Plan Administrators and Participants in connection with ERISA Benefit Claims and Appeals

### **Professional Affiliations & Admissions**

- Certified Specialist-Taxation Law, State Bar of California, Board of Legal Specialization
- California Lawyers Association Taxation Section (formerly the Taxation Section of the State Bar of California)
- United States District Court for the Central District of California
- United States District Court for the Southern District of California
- United States Tax Court
- California Department of Real Estate, Licensed Real Estate Broker

- San Diego County Bar Association
- Chair of the Income and Other Taxes Committee of the Taxation Section of the California Lawyers Association (formerly the Taxation Section of the State Bar of California)

## Community Affiliations

- Former Director, Board of Directors of the San Diego Chapter of the National Institute of Pension Administrators
- Former Member of Governing Board of Directors of Western Pension and Benefits Council, San Diego Chapter
- Former Director, Aria Homeowners' Association

## Publications & Speaking Engagements

- Co-Author, "Comments on Proposed Regulations on Qualified Business Income Deduction under section 199A) (REG-107892-18; 08/16/18)," California Lawyers Association Taxation Section Comment Letter to Internal Revenue Service and Treasury Department
- Co-Author, "Comments on Proposed Regulations on Tax Return Preparer Due Diligence Penalty under Section 6695(g) (REG-103474-18; 7/18/18)," California Lawyers Association Taxation Section Comment Letter to Internal Revenue Service
- Co-Author, "Offshore Voluntary Disclosure Program to End on September 28, 2018," California Tax Lawyer (Volume 27, Number 2 – August 2018)
- Co-Author, "Tax Code Changes and Charitable Giving," California Tax Lawyer (Volume 27, Number 2 – August 2018)
- Speaker/Presenter, "Ethics: Ethical Issues in Tax Practice and Procedure," for State Bar of California 2015 Annual Income Tax Seminar, University of San Diego School of Law, June 25, 2015
- Speaker/Presenter, "Does your Employee Benefit Plan benefit more Employees than you thought it did? Application of the Controlled and Affiliated Service Group Rules," for Western Pension & Benefits Council, San Diego Chapter, April 21, 2015
- Co-Author, Chapter 15 (Tax and Accounting Elections) to "Financing and Protecting California Businesses," California Continuing Education of the Bar ["CEB"] (2017-2020 updates)
- Co-Author, Chapter 16 (Tax Compliance) to "Financing and Protecting California Businesses," California Continuing Education of the Bar ["CEB"] (2012-2020 updates)
- Author, Chapter 15 (Tax and Accounting Elections) to "Financing and Protecting California Businesses," California Continuing Education of the Bar ["CEB"] (2021-2023 updates)
- Author, Chapter 16 (Tax Compliance) to "Financing and Protecting California Businesses," California Continuing Education of the Bar ["CEB"] (2021-2023 updates)
- Contributing Author, Chapter 20 (Retirement Accounts) to "Probate Attorneys of San Diego Handbook for Probate Executors, Administrators or Personal Representatives," Probate Attorneys of San Diego (PASD) (2020-2021)
- Author, "Additional Thoughts on Audit Reconsiderations," California Journal of Tax Litigation (Q3 2015 Edition)
- Author, "IRS Issues Guidance on Non-Deductible Employer-Provided Parking Expenses Under I.R.C. § 274 (and Increase in Unrelated Business Taxable Income Under I.R.C. § 512 for Tax-Exempt Employers)," California Tax Lawyer (Volume 28, Number 1 – May 2019)
- Author, "IRS Issues Final Regulations on Due Diligence Preparer Penalty Under I.R.C. § 6695(g)," California Tax Lawyer (Volume 28, Number 1 – May 2019)
- Author, "IRS Issues Guidance on Federal Tax Effects of United States Supreme Court decision United States v. Windsor, 1111 AFTR 2d 2013-2385 (133 S.Ct. 2675), 06/26/2013," California Tax Lawyer (Volume 22, Number 4 - Winter 2014)
- Annual Guest Speaker, University of San Diego School of Law's Low Income Taxpayer Clinic
- Volunteer Judge, 2010 University of California San Diego Mock Trial Tournament
- Honorary Judge, 2010 University of San Diego School of Law's McLennon Honors Moot Court Competition

## Professional Awards & Honors

- Named by *SD Metro* as one of San Diego's Best Attorneys (31st Anniversary Edition, No. 3 Vol. XXXI [2016])
- Named by *SD Metro* as one of San Diego's Best Attorneys (No. 2 Vol. XXXVI [2021])
- Recognized in *San Diego Super Lawyers* for Tax, Employee Benefits (2023, 2024)
- Named by *SD Metro* as one of San Diego's 2023 Men of Influence