



Brian C. Bernhardt

Partner

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Brian is a seasoned trial attorney who is skilled at both defending clients in federal tax controversies and arguing precedent-setting appeals in the state courts of North Carolina.

Tax Controversy & Litigation

A former trial attorney with the Internal Revenue Service, Brian has represented clients on tax matters before the IRS, the Department of Justice Tax Division, the U.S. Tax Court, the U.S. Court of Federal Claims and multiple U.S. District Courts. He has deep knowledge of the rules, policies, and procedures necessary to handle federal tax disputes and is well versed in the Internal Revenue Code. This potent combination puts him in an excellent position to successfully resolve a broad range of federal tax disputes for his clients, including matters such as audit examinations, administrative appeals, tax shelter transactions, conservation easement investigations, foreign bank account and asset disclosures, trust fund investigations, and penalty assessments.

Appellate Law

Recognizing the importance of a strong appeal, Brian also has dedicated a considerable portion of his career to assisting clients with a wide variety of complex post-trial matters. He has successfully argued cases before the Supreme Court of North Carolina and the North Carolina Court of Appeals, and has assisted in appeals in a variety of U.S. Courts of Appeals. In 2020, the Supreme Court of North Carolina unanimously agreed with Brian in an opinion written by the Chief Justice that the state can terminate parental rights relating to an abused or neglected child even if the parent has no contacts with North Carolina and the court therefore lacks personal jurisdiction.

Outside General Counsel for Nonprofit Organizations

Beyond the courtroom, Brian often serves in the role of outside general counsel, advising charities and other tax-exempt and nonprofit organizations on a variety of governance and tax matters. He has assisted with entity formation, obtaining and maintaining tax exemptions, reclassifications, private inurement issues, intermediate sanctions, unrelated business income tax, tax reporting and disclosures and self-dealing.

Services

- Tax Controversy & Litigation
- Taxation & Wealth Planning
- Appellate Practice
- Israel
- Nonprofit Organizations

- White Collar Criminal Defense & Government Investigations

Before Fox Rothschild

Prior to joining Fox Rothschild, Brian was a partner in the Charlotte, North Carolina office of a national law firm. He has worked in the tax departments of several firms, including as a Shareholder and Partner, as well as practicing with the IRS Office of Chief Counsel.

Beyond Fox Rothschild

Brian engages in pro bono work serving as an appellate attorney with the North Carolina Judicial Branch Guardian Ad Litem Division, representing abused and neglected children. He is also a frequent author and speaker on a variety of legal and tax matters.

Brian was selected to the 2025-2026 class of Leadership Greensboro, a program of the Greensboro Chamber of Commerce.

He enjoys spending his free time reading, traveling with his wife and watching his children play baseball, soccer and ballet.

Bar Admissions

- North Carolina

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Sixth Circuit
- U.S. District Court, Western District of North Carolina
- U.S. District Court, Eastern District of Virginia
- U.S. District Court, Eastern District of Michigan
- U.S. District Court, Western District of Michigan
- U.S. Tax Court
- U.S. Court of Federal Claims

Education

- University of Michigan Law School (J.D., *cum laude*, 1997)
 - Managing Articles Editor, University of Michigan Journal of Law Reform
- Brown University (A.B., 1994)
 - Concentration in United States History, with a focus on Early American History

Memberships

- American Bar Association
 - Tax Section
 - Litigation Section (Appellate Litigation Committee)
- North Carolina Bar Association
 - Appellate Practice Section
 - Tax Section
 - Litigation Section
- Leadership Greensboro
 - Class of 2026
- Mecklenburg County Bar Association
 - Tax Section, Chair, 2019-2020, Vice-Chair, 2018-2019
- North Carolina Judicial Branch Guardian ad Litem Division
 - Volunteer Appellate Counsel

- Jewish Federations of North America
 - Charitable Giving and Tax Incentives Subcommittee

Board of Directors

- Council for Children's Rights (2023-2024)
- McColl Center for Arts + Innovation (2019-2024; Executive Committee, 2020-2023)
- Thompson Child and Family Focus (2020-2021)
- The Sandra and Leon Levine Jewish Community Center (2015-2019)
- Mecklenburg County Bar Foundation (2016-2017)
- Girl Scouts, Hornet's Nest Council (2015-2017)
- The Charlotte Jewish Preschool (2010-2014; President, 2012-2013)
- Temple Israel (2013-2014)

Honors & Awards

- Named to *Business North Carolina's* Legal Elite list for Appellate (2026), Tax & Estate Planning (2020, 2024, 2025) and Business (2021)
- North Carolina Pro Bono Honor Society (2019-2023)
- Excellence in Writing Award, *ABA Probate and Property* magazine (2009)
- Selected to the "Super Lawyers" list for Tax in North Carolina (2025, 2026)
- Selected to the "Super Lawyers - Rising Stars" list for Tax in Virginia (2007, 2009, 2012)

Representative Matters

Tax Controversy and Litigation

- Represents taxpayers in False Claims Act investigations and *qui tam* False Claim Act lawsuits and related investigations regarding taxpayers' receipt of PPP Loans.
- Represents taxpayers in voluntary disclosures of unreported foreign financial accounts.
- Represented foreign subsidiary of privately held international marketing company in audit regarding deferral of over \$100 million of income relating to variable prepaid forward contracts in matter that led to issuance of IRS Revenue Ruling 2003-7.
- Represents taxpayers in variety of alleged listed tax shelter transactions including syndicated conservation easements, MidCo asset purchase transactions, and Son of Boss transactions.
- Represents taxpayers in penalty abatement matters related to failure to timely and/or properly file international information returns.
- Represented related tax-exempt organizations and related persons in excess benefit transaction in which IRS Examination Division proposed terminating the organizations' tax-exempt status and penalizing the related person. IRS Appeals Office conceded case in its entirety.
- Represents taxpayers in employee retention tax credit matters, including tax controversies with the IRS regarding right to ERC funds, voluntary disclosures of improperly obtained ERC funds, and disputes with professional employer organizations over filing ERC claims and receipt of ERC funds.
- Represents clients before IRS Examination Division and IRS Office of Appeals on classification of workers as independent contractors or employees.
- Represents clients before the IRS Collection Division to obtain offers in compromise and installment agreements.
- Regularly represents clients before the United States Tax Court on a variety of factual and legal issues.

Appellate Law

- *In re F.S.T.Y.*, 374 N.C. 532, 843 S.E.2d 160 (2020). In a case of first impression, the North Carolina Supreme Court created a "status" exception to the requirements of personal jurisdiction in termination of parental rights cases. In an opinion written by the Chief Justice, the court unanimously found that due process did not require a nonresident father to have minimum contacts with North Carolina in order to terminate his parental rights.
- *In re J.E.B.*, 376 N.C. 629, 853 S.E.2d 424 (2021). North Carolina Supreme Court held that a statute requiring that a parent's counsel may not be appointed as the guardian ad litem and that the guardian ad litem shall not act as the

parent's attorney only requires that the parent's counsel and the parent's guardian ad litem not be the same person. It does not prevent a guardian ad litem from conducting cross-examinations or presenting an argument directly to the trial court.

- *United States v. George Hadden*, 2023 WL 2770945 (4th Cir. 2023). Addressing application of predicate convictions for purposes of determining whether defendant was armed career criminal and/or career offender under United States Sentencing Guidelines.

Nonprofit Organizations

- Regularly represents tax-exempt organizations in Federal tax controversies and litigation and has obtained multiple “no-change” letters in audit examinations of tax-exempt organizations related to governance issues, whether activity of organization was engaged in for charitable purpose, and alleged excess benefit transactions.
- Serves as outside general counsel in North Carolina for national church and associated North Carolina based churches and organizations.
- Provides governance advice regarding articles of organization, bylaws, policies and procedures, and internal board disputes and resolutions.
- Provides tax advice regarding requests for reclassifications, private inurement issues, intermediate sanctions, unrelated business income tax, tax reporting and disclosures and self-dealing.

Publications

April 28, 2026

The Presumption of Innocence Podcast Series

February 27, 2026

Court Ruling Creates Refund Opportunity for Pandemic-Era IRS Interest and Penalties

January 5, 2026

Potential Tax Relief for Cannabis Businesses

December 10, 2025

The Judicial Dispute Over Section 6038(b) Assessment Authority

Tax Notes

October 30, 2025

A New Challenge to Section 280E: What’s at Stake for State-Legal Medical Cannabis?

October 27, 2025

Recovering Costs and Attorney Fees From the IRS: The Qualified Offer Rules

North Carolina Bar Blog

August 4, 2025

The One Big Beautiful Bill Act Changes Employee Retention Tax Credit Program

July 14, 2025

The IRS-ICE Tax Data Sharing Agreement: Practical Considerations

May 28, 2025

House and Senate Overtime and Tip Tax Proposals: What Employers Need to Know

May 12, 2025

Trump’s Threat to Harvard’s Tax Status Reaches All Nonprofits

Bloomberg Tax

February 24, 2025

IRS Rooting out Offshore Tax Evasion with 'John Doe' Subpoenas

Bloomberg Tax

January 29, 2025

Employee Retention Credit Claim Resolution Has No End in Sight

Bloomberg Tax

November 13, 2024

IRS Grants Relief for Impact of Hamas Attacks

Globes

October 23, 2024

Want to Sue the IRS for Unpaid ERC Claims? Consider These Factors

Bloomberg Law

October 11, 2024

IRS Provides Additional Extensions for Taxpayers Affected by Terrorist Attacks in Israel

August 19, 2024

IRS Reopens Employee Retention Tax Credit Voluntary Disclosure Program

August 12, 2024

IRS Begins Processing Some Employee Retention Tax Credit Claims Filed During the Moratorium

August 7, 2024

IRS Increases Pressure on Businesses That Claimed Employee Retention Tax Credits

June 5, 2024

Why Some Taxpayers With Unprocessed ERC Claims Should Consider Filing a Refund Lawsuit

March 19, 2024

ERC Voluntary Disclosure Deadline Rapidly Approaching on March 22

March 4, 2024

IRS to Focus on High-Income Earners Who Have Not Filed Tax Returns

February 21, 2024

IRS Identifies Seven ERC Red Flags (and Other ERC Updates)

January 23, 2024

Bill Proposes January 31 as Last Day to File Employee Retention Credit Claims

January 16, 2024

Employee Retention Tax Credit: Updates From Congress and the IRS

January 2, 2024

New IRS Program Lets Businesses Repay Questionable Employee Retention Credits at a Discount

December 11, 2023

IRS Rejects 20,000 Employee Retention Credit Claims, Plans to Offer New Voluntary Disclosure Program

October 25, 2023

IRS Offers Employers a Chance to Withdraw Inaccurate Employee Retention Credit Claims

February 6, 2023

Comments to Syndicated Conservation Easement Transactions as Listed Transactions

December 5, 2022

Red Flags for Residency Audits of High Net Worth Individuals

June 27, 2022

Beware of the Exempt Organization Examination: IRS Audits of Charities are Becoming More Common