



# MARK L. ASTLING

## Shareholder

Salt Lake City

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### PRACTICE AREAS

- Tax
- Mergers & Acquisitions
- Entity Reorganization
- Corporate Governance
- Start-up & Early Stage Companies

### ADMITTED TO PRACTICE

- All State and Federal Courts in Utah
- United States Tax Court
- Utah



ATTORNEYS AT LAW

Mr. Astling advises a variety of corporate and pass-through entities and individuals on federal and state tax issues, including business formations, equity compensation, mergers and acquisitions, debt and equity offerings, tax accounting, tax exempt organizations, and other tax planning matters. He also represents taxpayers in IRS and state audits and administrative appeals, as well as deficiency litigation in the U.S. Tax Court.

### AWARDS

- Best Lawyers (2016 – 2019)
- Super Lawyers (2014 - 2018)
- Mountain States Rising Stars (2012 - 2013)

### REPRESENTATIVE CASES/DEALS

M&A, Finance and Business Combinations

- Represented software company in formation and initial \$2.5 million capital raising, \$2.8 million bridge financing, \$1.5 million preferred equity financing and \$25 million sale to public company.
- Represented Coldwell Banker Commercial Advisors in its acquisition of brokerages located in California, Dallas Forth Worth, Miami, New York City, and Denver for an undisclosed amount.
- Represented manufacturing company in connection with the sale of a controlling interest to private equity group and the rollover and partial cash out of management equity.
- Represented management group in leveraged buyout of controlling interest in commercial real estate brokerage.
- Represented online retailer in connection with the sale of substantially all

assets to a privately held company.

- Represented ZAGG, Inc. (Nasdaq: Zagg) in strategic acquisition of iFrogz, and related financing.
- Represented investor in connection with an investment in a mixed real estate project of low income and market rate apartments and commercial retail space.
- Represented a group of private investors in their acquisition of the Salt Lake City office of Coldwell Banker Commercial from New Jersey-based real estate company, NRT.
- Represented brownfield remediation company in recapitalization and joint offering.
- Represented internet-based education company in 30 percent minority sale to private equity fund for \$15 million.
- Represented medical device company in \$2 million Series A round and following \$5 million series B round.
- Represented commercial bank in connection with secured loans to borrower in the trucking industry.
- Represented owner of private company in connection with buy-out of minority interest holder and subsequent restructuring.

#### Tax Consulting

- Represented privately-held company in pre-transaction structuring in connection with sale of majority-interest with an enterprise value of \$40.9 million.
- Represented privately-held company in structuring sale transaction to avoid application of IRC Section 280G “golden parachute” payment rules.
- Represented the founders and senior executive team of service company in connection with the sale of a controlling interest equity to private equity group.
- Represented publicly traded company in connection with structuring tax-free intercompany reorganization.
- Represented private company and its wholly-owned subsidiaries in connection with pre-transaction structuring and the sale of the equity interests to a private equity group.
- Represented private insurance company with pre-transaction spin-off of divisional assets, tax minimization restructuring, and tax-free combination of remaining company assets with acquiror’s special-purpose entity.
- Designed and implemented incentive stock option plan for private company in manufacturing business.
- Represented a publicly traded precious metals exploration and mining company in connection with tax issues relating to SEC reporting.
- Represented private equity sponsor in acquisition of health and fitness club business and in preparation of management equity incentive plan.

#### Tax Controversy

- Successfully appealed Internal Revenue Service examination denial of \$1.39 million net operating loss carry-forward.
- Successfully appealed Internal Revenue Service examination denial of \$1.67 million charitable contribution.
- Successfully petitioned Tax Court and settled proposed assessment of tax, penalties and interest in excess of \$500,000 relating to

compensation payments made to disabled firefighters.

- Successfully represented an oil and gas pipeline construction company in obtaining the abatement of Internal Revenue Service penalties of \$1.05M relating to the client's failure to pay employment taxes.
- Successfully resolved IRS audit on behalf of privately held investment fund regarding mischaracterization of extraordinary dividend and presale dividend with a potential tax liability of \$5.6 million
- Successfully appealed proposed assessment of approximately \$1 million in tax, penalty and interest by IRS on behalf of a general contractor relating to audit of method of accounting, unreported income and loan characterization
- Obtained abatement of IRS penalties relating to \$1.2 million gambling loss disallowance and annuity income reporting issues for individual
- Drafted lead argument for protest letter regarding the characterization of \$15 million contract termination payment as capital rather than ordinary income
- Prepared petition for redetermination, negotiated written stipulation of facts and was second chair for oral argument in connection with administrative appeal of \$400,000 Utah sales and use tax imposed on oil and gas cement servicing company's delivery and installation services
- As student attorney, briefed and argued appeal to Eighth Circuit Court of Appeals on whether a value-added payment received from a cooperative was self-employment income to a retired farmer

#### Miscellaneous

- Represented private company in connection with implementation of Foreign Corrupt Practices Act compliance program

## PUBLICATIONS & PRESENTATIONS

- "What CPAs need to know about the new LLC Law," The Journal Entry (October 2013)
- "Utah Adopts New LLC Law," D|J|P Legal Brief, April (2013)
- "Profits Interest," Utah Business Magazine (December 2012)
- "Important Section 409A Relief Expires at Year-End," D|J|P Legal Brief, (2012)
- "A Primer on Equity Compensation," Business Connect Magazine (February 2008)
- Co-author, "Notes and Trends: Tax Law," Bench & Bar Minnesota (May 2003)
- "A Primer on Equity Compensation," Business Connect Magazine (February 2008)
- "Centralized Partnership Audit Regime" (November 2017)
- "Advising Clients on Buy-Sell Agreements" (November 2017)
- "Avoiding M&A Pitfalls" (February 2016)
- "Overview of TEFRA Repeal and the New Tax Rules" (February 2016)
- "Tax Provisions of Operating Agreements" (July 2015)
- "New LLC Act – a Panel Discussion," (November 2014)

- “Utah’s New LLC Statute,” (May 2014)
- “Executive and Equity Compensation Planning – A Tax Primer,” (November 2013)
- “Utah’s Revised LLC Act – a Panel Discussion,” (October 2013)
- “Series LLCs – A Trap for the Unaware,” (April 2013)
- “Using LLCs in Corporate Merger, Acquisition and Other Transactions,” (October 2012)
- “LLC and Partnership Interests as Security: Article 8 and Opting-In,” (January 2011)
- “Rethinking Your Utah LLC,” (November 2010)
- “Tax Aspects of Partnership Equity Compensation,” (October 2009)
- “Tax Aspects of Corporate Equity Compensation,” (September 2009)

## PROFESSIONAL & CIVIC ACTIVITIES

- Former President, Utah State Bar Tax Section
- Member, Tax Law Sections, American and Utah Bar Associations
- Member, Bar Admissions Committee, Utah State Bar
- Listed in Mountain States Super Lawyers and Utah Business magazine’s “Legal Elite”

## EDUCATION

- University of Minnesota Law School – J.D., cum laude (2003)
- University of Utah – B.S., Accounting (2000)

## PRIOR PROFESSIONAL EXPERIENCE

- Tax and Corporate Associate, Stoel Rives, Salt Lake City, Utah
- Tax Consultant, Deloitte & Touche, Minneapolis, Minnesota