

## MATTHEW E. RAPPAPORT, ESQ., LL.M.



Matthew E. Rappaport concentrates his practice in Taxation as it relates to Real Estate, Closely Held Businesses, Private Equity Funds, and Trusts & Estates. He advises clients regarding tax planning and structuring for commercial real estate projects, all stages of the business life cycle, generational wealth transfer, family business succession, and executive compensation. He also collaborates with other attorneys, accountants, financial advisors, bankers, and insurance professionals when they encounter matters requiring a threshold level of tax law expertise. He practiced at boutique law firms for several years before starting a firm of his own in 2015.

Mr. Rappaport graduated from Washington University in St. Louis in 2007, *cum laude*, with an undergraduate degree in Political Science. His undergraduate thesis was a cross-sectional analysis of the corporate culture of the privately held financial firm Edward Jones. He received his Juris Doctor and Master of Laws in Taxation from Georgetown University Law Center in 2011. Mr. Rappaport is licensed to practice in New York and is an active member of the Nassau County Bar Association, the New York State Bar Association, and the American Bar Association. He was the Co-Vice Chair of the Tax Committee of the Nassau County Bar Association from June 2015 until June 2016.

He serves on the Sales, Exchanges, and Basis Committee of the American Bar Association Section of Taxation. Mr. Rappaport has authored articles for Thomson Reuters' *Journal of Real Estate Taxation*, *The Tax Adviser*, Bloomberg BNA's *Tax Management – Real Estate Journal*, and the *Journal of Taxation of Investments*. He has spoken at the request of the American Bar Association, the National Conference of CPA Practitioners, Strafford Publications, the School of Accounting at LIU Post, and a wide variety of law, accounting, and wealth advisory firms. He is a founder of the young professionals networking group Hydra Collective.

Mr. Rappaport lives in Great Neck Plaza, Long Island with his wife of three years.

# Types of Matters and Issues Addressed

## Tax Planning and Structuring for Real Estate and Artwork

- § 1031 Exchanges
  - Drop-and-Swaps – Rev. Proc. 2002-22
  - Parking Exchanges – Rev. Proc. 2000-37, Rev. Proc. 2004-51
  - Vacation Homes – Rev. Proc. 2008-16
  - Development and “Build-to-Suit” Exchanges
  - General tax compliance services to ensure exchanges align with the requirements of federal, state, and local tax laws
- Tax credit allocations in governing agreements – historic preservation/rehabilitation, renewable energy, etc.
- Capital gain preservation in condominium conversions and residential real estate developments (and other conversions of investment real property to inventory, as per *Bramblett v. Commissioner* and *Phelan v. Commissioner*)
- Qualifying artwork and other collectibles for investment treatment (allowing the owner to deduct losses and claim capital gains treatment upon sale)
- Inbound investment by foreign persons/non-resident aliens into U.S. real estate
- Maximizing tax efficiency of dealer property, including “flips”

## Tax Planning and Structuring for Closely Held Businesses

- Corporate and Partnership Reorganizations
  - Mergers and Acquisitions - § 368, Treas. Reg. § 1.708-1(c)
  - Divisive Reorganizations (Spin-Offs, Split-Offs, and Split-Ups) - § 355, Treas. Reg. § 1.708-1(d)
  - § 336(e) and § 338(h)(10) Elections
- Partnership Taxation
  - Partnership Capital Accounts - § 704
  - Disguised Sale Issues - § 707
  - § 754 Elections
  - Tax Provisions in Partnership Agreements and LLC Operating Agreements
    - Special Allocations, including Carried/Promoted Interests and Waterfall Distribution Structures - § 704
  - Technical Terminations - § 708
- General Taxation of Subchapter S Corporations
  - Accumulated Adjustment Accounts
  - Avoidance of Inadvertent Termination of Subchapter S Election
  - Structuring Proper Ownership of Subchapter S Corporations
    - Qualified Subchapter S Trusts (QSSTs)
    - Electing Small Business Trusts (ESBTs)
- Business Succession Planning
  - Optimizing Tax Efficiency of Transfers of Business Interests
    - Partnership and Corporate Recapitalizations - § 368

- Freeze Partnerships and Reverse Freeze Partnerships - § 2701
      - Restrictions on Transfer
      - Buy-Sell Agreements
      - Employment and Consulting Agreements
        - Executive Compensation, including § 409A
  - Streamlining transition of management responsibility from an owner to a junior generation and/or key employees
  - Contingency Planning (Death, Disability, Bankruptcy, Criminal Activity)
    - Formulating continuity plans in the event an owner or key employee is incapacitated or otherwise unavailable long-term
    - Key Man Life Insurance and Disability Insurance
  - Equalization of Inheritance
    - Preventing conflict between siblings, cousins, and other family members when only some work for the family business and others do not

### **Tax Planning and Structuring for Trusts & Estates**

- Wills and Trusts of all types for U.S. citizens and permanent residents
  - Planning to preserve and optimize the use of federal and state transfer tax exemptions (Estate, Gift, and Generation-Skipping Transfer)
    - Credit Shelter Trusts
    - Disclaimer and QTIP Trusts
    - Generation-Skipping Transfer Trusts
  - Special/Supplemental Needs Trusts (SNTs)
  - Decanting of Existing Trusts – New York EPTL § 10-6.6
  - Intentionally Defective Grantor Trusts
  - Irrevocable Life Insurance Trusts (ILITs)
    - Structuring to maximize transfer tax leverage of insurance premiums
    - Using life insurance to complement other planning techniques
  - Grantor Retained Annuity Trusts (GRATs)
  - Split-Interest Charitable Trusts (Charitable Lead and Remainder Trusts)
    - Income Tax Planning Using *Inter Vivos* Charitable Trusts
    - Estate Planning Using Testamentary Charitable Trusts
  - Self-Canceling Installment Notes (SCINs) and Private Annuities
  - Private Foundations and Donor-Advised Funds
  - Planning to maximize “stretch” provisions and asset protection for inherited IRAs and other qualified retirement accounts
- Estate Freezes – Maintaining income from assets and continuing control while removing equity value from the taxable estate
- International Trust & Estate Planning
  - Qualified Domestic Trusts (QDOTs)
  - Gift Transfers by Foreign Parents to U.S.-Based Issue
  - Estate Planning for U.S.-Based Parents with Expatriate Children
  - Planning for Persons in the U.S. with Special Visas
- “Wraparound Planning” for Non-Transferable Assets (Restricted Stock, Retirement Accounts, etc.)

- Generational Wealth Transfer Planning
  - Avoidance of the Estate, Gift and Generation-Skipping Transfer Taxes
  - Maximizing the Step-Up in Basis

### **General Income Tax Matters**

- Opinions of Counsel regarding items to be reported on a tax return
- Audit Assistance
  - Analysis and strategy for highly technical tax matters
- Windfall Planning – Tax Planning for High-Income Realization Events
  - Sales of Real Estate or Artwork
  - Sales of Business Interests
  - Receipt and Sale of Restricted Corporate Stock
  - Conversion of Traditional Retirement Accounts to Roth Retirement Accounts
- Self-Directed IRAs - § 408, § 408A
- Planning and Analysis for the Net Investment Income Tax (the “Obamacare Tax”) - § 1411
- The Passive Activity Rules - § 469
- Affiliated and Consolidated Groups
- Tax Structuring and Analysis of Legal Settlement Agreements
- Analysis of Tax-Motivated Transactions for Compliance Purposes
  - Reportable Transactions (Promoted Tax Shelters, Listed Transactions, Transactions of Interest, Loss Transactions, etc.)

### **Asset Protection**

- Planning for the Possibility of Divorce
- Restructuring Business Holdings for Maximum Insulation from Future Creditor Claims
  - Forming brother-sister companies and subsidiaries
  - Observing formalities necessary to ensure the courts honor the corporate shield
- Spousal Lifetime Access Trusts (SLATs) and other techniques using the spousal unit
- Optimization of ERISA-Qualified Retirement Plans
- Proper Structuring of Captive Insurance Companies - § 831(b)
- Life Insurance and Annuities (including Private Placement Life Insurance)
- Domestic and Offshore Asset Protection Trusts
- Ensuring Proper Observance of Fraudulent Transfer Prohibitions
- Optimization of Property & Casualty Insurance Policies

# MATTHEW EVAN RAPPAPORT, ESQ., LL.M.

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## EXPERIENCE

### **Law Offices of Matthew E. Rappaport, Esq., LL.M.**

*Sole Practitioner*

New York, NY

October 2015 – Present

- Serving as outsourced tax counsel and providing advice, research, and opinions; clientele primarily consists of real estate professionals and closely held business owners.
- Drafting matters include estate planning, business succession planning, and corporate reorganization documents of all types; tax and business succession provisions of entity governing documents; tax opinion and planning memoranda; and tax compliance documents in connection with § 1031 exchanges, such as tenant-in-common agreements.
- Constructed and implemented an estate and business succession plan for two brothers owning a portfolio of approximately \$150 million of rental real estate; steps included formation of a freeze partnership, transfers through GRATs, recapitalization of existing S-Corps, and drafting of complex wills and trusts for both brothers.
- Constructed and implemented an estate plan for a client who inherited \$120 million in fractional interests in real estate holding companies from her deceased father.
- Planned and implemented a *Bramblett*-style capital gain preservation transaction, preventing approximately \$10,000,000 of unrealized appreciation from being recognized as ordinary gain upon disposition of condominium units to customers.
- Planned an LLC division designed to achieve disparate treatment of two different sets of condominium units within the same building.
- Drafted a Tax Opinion Memorandum advising a client what to do after his Basket Option Transaction became listed by the IRS under Notice 2015-47 and Notice 2015-73.
- Drafted a Tax Opinion Memorandum addressing whether a legal settlement for an action pertaining to an investment property should be recovered against the property's basis or recognized as income.
- Drafted a Tax Opinion Memorandum addressing whether a taxpayer could deduct a theft loss under § 165 and the corresponding Treasury Regulations in the taxable year 2015.
- Drafted a Tax Opinion Memorandum advising that the Restricted Property Trust, a technique currently employed by several financial advisors and accountants across the nation, is a listed transaction as described in IRS Notice 2007-83.
- Drafted a Tax Opinion Memorandum analyzing what authority would assist a valuation professional in valuing a chose in action includible in a decedent's estate under § 2031(a).
- Drafted a Tax Opinion Memorandum
- Planned and implemented several "drop-and-swap" structures for clients to complete § 1031 exchanges with tenant-in-common interests.
- Analyzed a technique known as the "Shark Fin CLAT" to determine whether the transaction could reasonably be recommended to an insurance adviser's clients.
- Assisted a C-Corp owned by several individuals and complex trusts in achieving S-Corp status.

### **Sahn Ward Coschignano PLLC**

*Of Counsel*

Uniondale, NY

April 2017 – Present

### **Ronald Fatoullah & Associates**

*Of Counsel*

Great Neck, NY

January 2017 – Present

**Karol & Sosnik, P.C.**  
*Associate*

Garden City, NY  
September 2014 – October 2015

- Planning and analyzing the tax structuring associated with real estate transactions, closely held business transactions, and generational wealth transfer.
- Drafting tax opinion memoranda; corporate, partnership, and LLC governing documents; purchase and sale transaction documents; and simple and complex wills and trusts.
- Assuming primary responsibility for most matters serviced, including matters originated by myself and by the firm's partners; duties include client communications and oversight of review and signing meetings.
- Planned a *Wandry/Hendrix*-style "defined value" sale of a \$15,000,000 minority interest in a real estate holding company from a client to a grantor trust for the benefit of his son; drafted "defined value" clause and wrote corresponding Tax Opinion Memorandum regarding the advisability of using such a clause.
- Planned a *Bramblett*-style capital gain preservation transaction, preventing approximately \$3,000,000 of unrealized appreciation from being recognized as ordinary gain upon disposition of condominium units to customers; wrote corresponding Tax Opinion Memorandum.
- Advised a client with a significant real estate portfolio regarding several transactions under § 1031, including "drop-and-swaps," immediate contribution of a TIC interest into an LLC after an exchange, and exchange of a 100% fee simple interest in real property for an 85% TIC interest in a different property.
- Wrote a Tax Opinion Memorandum recommending proper trust structure for a non-resident alien client who wished to set up a trust for the benefit of his non-U.S. citizen/permanent resident son and his three U.S. citizen grandchildren.
- Wrote a Tax Opinion Memorandum advising that a proposed transaction would be considered self-dealing under I.R.C. §§ 4941 and 4946 and the corresponding Treasury Regulations.
- Wrote a Tax Opinion Memorandum advising of the tax consequences to two trusts after selling the stock of a subchapter C corporation that owned part of a marina.
- Wrote a memorandum to a client comparing the pros and cons of using an Intentionally Defective Grantor Trust (IDGT), as opposed to a Grantor Retained Annuity Trust (GRAT), when transferring a minority interest in a closely held business.
- Planned a spin-off of three parcels of real property owned within the same subchapter S corporation as an operating retail pharmacy.

**L'Abbate, Balkan, Colavita & Contini, L.L.P.**  
*Associate*

Garden City, NY  
July 2012 – September 2014

- Planned real estate, corporate, partnership, and gift transactions to achieve clients' optimal tax and non-tax objectives.
- Researched the tax consequences of various corporate, partnership, gift, estate, and real estate transactions.
- Structured comprehensive, tax-advantaged estate, gift, and business succession plans for high net worth clients, including trust drafting and concomitant corporate work; given primary responsibility for certain cases, including frequent communication with clients.
- Planned a spin-off of a parcel of real property owned within the same subchapter S corporation as a mortgage brokerage business; navigated issues raised by I.R.C. § 355(e) and Treas. Reg. §§ 1.355-3(b)(2) and 1.355-7(b)(2).
- Researched and wrote a Tax Opinion Memorandum concluding that a Qualified Subchapter S Trust (QSST) would not be subject to the net investment income tax under I.R.C. § 1411 when it recognized income from the sale of a parcel of real estate owned by a subchapter S corporation.
- Planned a spin-off of the subsidiary of a closely held business pursuant to I.R.C. § 355 and the corresponding Treasury Regulations.
- Researched and wrote a Tax Opinion Memorandum regarding a proposed related-party merger under I.R.C. §§ 269, 368, 381, 382, and 384.
- Researched and wrote a memorandum discussing the tax consequences of the distribution of units of an Operating Partnership of a Real Estate Investment Trust (REIT) with a significant negative capital account from a Family Limited Partnership (FLP) to the FLP's general partner under I.R.C. § 731(a) and the corresponding Treasury Regulations.
- Researched and wrote a memorandum outlining the mechanics of *Crummey* powers and the "hanging" power of withdrawal for an Irrevocable Life Insurance Trust (ILIT) under I.R.C. §§ 2503(b) and 2514(e).

- Researched and wrote a memorandum discussing whether a gift from a majority shareholder of a Subchapter S corporation to an unrelated third party would be re-characterized under *Commissioner v. Duberstein*, 363 U.S. 278 (1960).
- Researched and wrote a memorandum discussing how a bargain sale of stock in a closely held Subchapter S corporation would be treated under I.R.C. § 102(c) and the corresponding Treasury Regulations.
- Formulated an estate equalization plan to resolve an intra-family dispute over the inheritance of a \$15,000,000 portfolio of income-producing real estate and municipal bonds.

## EDUCATION

**Georgetown University Law Center**  
Master of Laws – Taxation

Washington, DC  
May 2011 – December 2011

**Georgetown University Law Center**  
Juris Doctor

Washington, DC  
September 2008 – May 2011

**Washington University in St. Louis**  
Bachelor of Arts – Political Science (*cum laude*)

St. Louis, MO  
September 2004 – December 2007

## PROFESSIONAL CREDENTIALS AND ACTIVITIES

- **Bar Admissions:** New York State, Eastern & Southern Districts of New York, United States Tax Court, United States Court of Appeals for the Second Circuit, United States Supreme Court
- **Memberships:** American Bar Association (Taxation Section), New York State Bar Association, Nassau County Bar Association
- **Executive Positions:**
  - Founding Member of Hydra Collective, Inc., a business networking organization for young professionals with members throughout Long Island, NYC, and Westchester
  - Co-Vice Chair, Tax Law Committee of the Nassau County Bar Association, June 2015-June 2016
  - American Bar Association (Taxation Section), Sales Exchanges & Basis Committee
- **Publications:**
  - “Tax Consequences of Partnership Mergers and Divisions” (with Professor Bradley T. Borden of Brooklyn Law School – in progress)
  - “Fill-Up Allocations of Boot Gain: The Implications Might Surprise You,” 35 J. TAX’N. INV. \_\_\_ (2018)
  - “Section 355 and the Suffering of Closely Held Corporations: Will Anyone Help the Little Guy?,” 34 J. TAX’N. INV. 31 (2017)
  - “The Tangled Web: Substance vs. Form, *Webber*, and the Revenge of the Investor Control Doctrine,” 34 J. TAX’N. INV. 19 (2017) (with Steven A. Horowitz, Esq.; Edward W. Gordon, CEP; and Louis Zuckerbraun)
  - “The Unique Income Tax Issues of Collectibles,” 33 J. TAX’N. INV. 29 (2016).
  - “Is an Anomaly in Form 8960 Resulting in an Unintended Tax on Tax-Exempt Income?” *The Tax Adviser* (November 2015) (with Michele Schlereth, Esq., CPA, MST)
  - “What *Allen v. U.S.* Means for Real Estate Tax Planning,” 32 J. TAX’N. INV. 35 (2015)
  - “Pre-Transfer Development in *Bramblett* Transactions,” 41 REAL EST. TAX’N. 162 (2014) (with Professor Bradley T. Borden of Brooklyn Law School)
  - “Real Estate Capital Gain Preservation Transactions After *Pool v. Commissioner*,” 31 J. TAX’N. INV. 67 (2014)
  - “Beware the Reciprocal Trust Doctrine,” *Nassau Lawyer* (December 2012)
- **Speaking Engagements:**
  - “The Impact of Tax Reform on Wealth Management, Private Equity, and Hedge Funds,” a national webinar through CPA Academy, various dates 2018
  - “The Impact of Tax Reform on the Real Estate Industry,” a national webinar through CPA Academy, various dates 2018
  - “Planning for Real Estate Owners: Advanced Strategies for Attorneys and CPAs to Consider,”

presented before an audience of CPAs and attorneys at Oppenheimer Wealth Management, February 22, 2018

- “Tax Reform: Corporate Tax Provisions and the Section 199A Deduction,” presented before the National Conference of CPA Practitioners, January 11, 2018
- “Trusts & Estates Tax Update,” presented before the SCORE Organization, December 1, 2017
- “Partnership Mergers and Divisions,” presented before the National Conference of CPA Practitioners’ Long Island Tax Professionals Symposium, November 17, 2017
- “Impact of Proper Succession Planning on Closely Held Businesses” (with Joshua P. Friedlander of the Center for Wealth Preservation, and Marc Sonnenberg and Howard Fielstein of Citrin Cooperman LLP), November 8, 2017
- “How to Start a Law Firm from Scratch,” a webinar before the Kansas City Bar Association Young Tax Lawyers Section, September 28, 2017
- “Advanced Concepts in Business Succession Planning” (with Joshua P. Friedlander of the Center for Wealth Preservation), July 19, 2017
- “Fundamentals of Partnership Taxation,” presented before an audience of CPAs at LIU Post’s Lorber Hall, July 18, 2017
- “Reorganizations of LLCs and Other Tax Partnerships,” a national webinar through the American Bar Association Tax Section, July 18, 2017
- “Estate Planning with Retirement Accounts,” presented before the New York County Lawyers Association Trusts & Estates Section, May 17, 2017
- “The GOP’s Tax Reform Plans,” presented before the Cerebral Palsy Association of Nassau County, January 24, 2017
- “The New Partnership Audit Rules/The New York Real Property Transfer Tax,” presented before an audience of CPAs at LIU Post’s Lorber Hall, December 6, 2016
- “Trusts & Estates Tax Update,” presented before the SCORE Organization, December 2, 2016
- “Partnership Tax: The Basics,” presented before the National Conference of CPA Practitioners’ Long Island Tax Professionals Symposium, November 18, 2016
- “The Proposed Section 2704 Regulations,” presented before the New York County Lawyers Association Trusts & Estates Section, November 16, 2016
- “Mastering the Net Investment Income Tax for Trusts & Estates,” a national webinar through Strafford Publishing, October 19, 2016 (with Michele Schlereth, Esq., CPA, MST of Baker Tilly Virchow Krause LLP)
- “Planning for Real Estate Owners: Advanced Strategies to Add to the Playbook,” presented before the Financial Planning Association of Long Island, September 21, 2016
- “Estate Planning for Professionals,” presented before the Professional Practice Development Group, August 5, 2016
- “Key Provisions in Operating and Partnership Agreements,” presented before an audience of attorneys and accountants invited by Hydra Collective, August 4, 2016 (with Kyle Lawrence of Moritt, Hock & Hamroff LLP; Michael Garcia and Ross Hurwitz of Berdon LLP; Robert Van de Veire of Malecki Law)
- “The Intermediary Installment Sale Transaction,” presented before the Bloomberg BNA Tax Management Advisory Board, July 14, 2016 (with Alan Lederman of Gunster, Yoakley & Stewart P.A.)
- “1031 Exchanges: The Basics,” presented before the Long Island Real Estate Alliance, December 15, 2015
- “A Critical Look at Intermediary Installment Sales,” presented before the Sales, Exchanges & Basis Committee at the January Meeting of the American Bar Association Section on Taxation, January 30, 2016 (with Alan Lederman of Gunster, Yoakley & Stewart P.A. and Mark Wilensky of Meltzer, Lippe, Goldstein & Breitstone)
- “Choice of Entity in Real Estate Ventures,” presented before the Long Island Real Estate Alliance, December 15, 2015
- “Opportunities and Pitfalls of Advanced Life Insurance Techniques,” presented before the National Conference of CPA Practitioners’ Long Island Tax Professionals Symposium, November 19, 2015
- “Networking 101,” presented before Hydra Collective, November 18, 2015
- “How a Tax Lawyer Enhances the CPA’s Practice,” presented before professionals assembled by



- Dr. Ronald K. Stair of Creative Plan Designs, November 17, 2015
- “Estate Planning for Young Professionals,” presented before the Young Lawyers Committee of the Nassau County Bar Association, November 12, 2015
  - “Navigating the Net Investment Income Tax,” presented before the advisors of Morgan Stanley, October 20, 2015
  - “Tax Consequences of Divorce,” a panel discussion at the Nassau County Bar Association with Alisa Geffner of Samuelson, Hause, Samuelson, Kersch & Geffner, October 7, 2015
  - “New York State Estate Taxes: What’s New After 2014,” presented before the advisors of Morgan Stanley, September 24, 2015
  - “Business Succession Planning,” presented before the advisors of Morgan Stanley, July 28, 2015
  - “Opportunities and Pitfalls of ILITs,” presented before the advisors of Francis Financial, May 20, 2015
  - “Tax Treatment of Franchises,” presented before the Sales, Exchanges & Basis Committee at the May Meeting of the American Bar Association Section on Taxation, May 9, 2015 (with Alan Lederman of the Gunster Law Firm and Mark Wilensky of Meltzer, Lippe, Goldstein & Breitstone)
  - “1031 and Other Real Estate Tax Techniques,” presented before Morgan Stanley Wealth Management (Jericho, NY), May 5, 2015
  - “Protection of Inherited Retirement Assets After *Clark v. Rameker*,” presented before WEB-NY at the Manhattan offices of Alston & Bird LLP, March 18, 2015
  - “The New Normal: Estate Planning After Changes in State and Federal Law,” presented before an audience of accountants and financial advisors at the request of Integrity Advisors Pension Consultants, November 13, 2014 (800 Westchester Avenue, Rye Brook, NY) and November 18, 2014 (Yale Club, New York, NY)
  - “Don’t Fall In: *Pool v. Commissioner*’s Impact Upon Capital Gain Preservation Transactions,” presented before the Sales, Exchanges & Basis Committee at the May Meeting of the American Bar Association Section on Taxation, May 10, 2014 (with E. John Wagner II of Williams, Parker, Harrison, Dietz & Getzen and Stephen Breitstone of Meltzer, Lippe, Goldstein & Breitstone)