

# Tax

The Cozen O'Connor Tax Practice has been providing sound advice to clients for decades. We serve public and private companies, joint ventures, real estate interests, high net worth individuals, and exempt organizations.

In both our U.S. federal and Canadian federal tax practices, we advise clients on the tax implications of mergers and acquisitions, financings, real estate deals, entity structure, contractual arrangements, cross-border transactions, and other business arrangements. In our U.S. state and local tax practice, we provide the full range of transactional counsel and represent clients in tax controversies and litigation. Our Canadian federal tax practice has significant experience in advising on tax matters related to the mining industry. On occasion, the U.S. state and local tax team also supports client efforts to reform state and local tax statutes or regulations.

Tax is a key element of Cozen O'Connor's transactional practice. Our tax group collaborates closely with colleagues from corporate law, capital markets, real estate, public and project finance, private client services, health law, labor and employment, and mergers and acquisitions on a full range of business matters. The firm's culture of cross-disciplinary cooperation benefits clients enormously. Our tax advisors are involved from the start to ensure that every project is structured and carried out to achieve tax efficiency.

Cozen O'Connor's tax lawyers provide support at inception and throughout the entire life cycle of a deal. For pure transactional lawyers, work is done at closing. But our tax attorneys provide tactical advice for as long as a business decision has tax implications, which can be several years or several decades. Having continuous tax counsel is essential because our attorneys accrue invaluable institutional knowledge over time. They learn the hot-button issues and logic of prior decisions to quickly assess how future changes will affect a client's tax position.

Because every tax matter is inherently case-specific and subject to interpretation, Cozen O'Connor attorneys carefully avoid generic solutions and reject a this-is-how-it's-always-done mentality. For analytical purposes, we often calculate the cost of following a standard model. But that figure simply represents an opening bid. We then undertake to lawfully improve on that baseline by adding nuance and creativity. Through innovation, we are often able to reduce tax costs considerably.

An essential aspect of a strong tax practice is good communication. Because few people other than tax lawyers are fully fluent in code-speak, a good tax attorney must be able to translate the tax code into plain English, focus on core issues, and present information to clients in a manner that is at once sophisticated and comprehensible. Cozen O'Connor attorneys can operate at a high level using a common lexicon and are known for their candor and lack of pretense.

## SERVICES

### Mergers, Acquisitions, and Business Transactions

- Advise clients on the tax aspects of public and private mergers, acquisitions, buyouts, and joint ventures, as well as spin-offs, liquidations, and other divestitures
- Counsel clients on structured finance, project finance, leasing transactions, and the use of derivatives to hedge business operations and debt issuances
- Advise clients on appropriate business structure, including general and limited partnerships, limited liability and series limited liability companies, Canadian unlimited liability companies, and business trusts
- Provide tax planning prior to incorporation or securities offerings



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### Related Practice Areas

- Bankruptcy, Insolvency & Restructuring
- Business
- Capital Markets & Securities
- Capital Markets & Securities — Canada
- Corporate
- Family Office
- Health Care & Life Sciences
- Insurance Corporate & Regulatory
- Italy Practice
- Mergers & Acquisitions
- Mergers & Acquisitions – Global
- Mining – Canada
- Nonprofit & Tax-Exempt Organizations
- Private Client, Trusts and Estates
- Private Equity
- Real Estate

### Industry Sectors

- Gaming
- Real Estate & Construction
- Retail
- Sports

- Guide the organization and syndication of private equity funds
- Structure cross-border transactions with the goal of minimizing U.S. and Canadian federal income tax consequences
- Advise clients on corporate tax issues related to the use of exchangeable shares and the distribution of assets to shareholders
- Provide guidance on Canadian flow-through limited partnership offerings

### **Real Estate**

- Advise clients on the optimal structure for real estate investments
- Represent public real estate investment trusts in the entire gamut of tax matters, including the management of REIT income and asset tests and formation of non-publicly traded REITS
- Counsel clients regarding securitizations, including real estate mortgage investment conduits (REMICs) and other asset securitizations
- Advise clients with real estate investments that qualify for safe harbor protection
- Assist with tax-free exchanges of like-minded properties

### **Tax-Exempt Organizations**

- Serve public charities, museums, trade associations, health care providers, veterans' organizations, and private foundations
- Advise on the formation of non-profit corporations and charitable trusts
- Obtain tax rulings and federal, state, and local tax exemptions
- Counsel high net worth individuals and businesses on the advantages of establishing and operating private foundations

### **U.S. State and Local Tax**

- Represent clients in state and local tax controversies and litigation
- Advocate for legislative and regulatory changes in state and local tax codes
- Advise clients about variations in state tax laws and perform multi-state tax analyses

### **Tax Compliance, Controversy, and Litigation**

- Render formal tax opinions in connection with specific transactions and obtain rulings from the Internal Revenue Service and state and local tax authorities
- Represent clients in connection with IRS tax examinations, including before the IRS appeals branch, and in litigation before state and local taxing authorities, the U.S. Tax Court, and the federal district and appeals courts

### **TEAM**

Cozen O'Connor's Tax Practice is made up of exceptionally qualified practitioners, including a former chief counsel to the Pennsylvania Department of Revenue. Several attorneys are certified public accountants and have master's degrees in taxation law. Our most seasoned attorneys are leading scholars in the field and have authored or edited widely referenced treatises on state tax law and real estate tax.

The firm differentiates itself, in part, through its staffing model. In plain terms, we do not believe clients are best served by sprawling teams of undermanaged associates. While we have the capacity to add support as necessary, at Cozen O'Connor tax matters are primarily handled by experienced tax professionals who are deeply knowledgeable about the relevant subject area and have credibility with judges and counterparts. Because veteran attorneys are fully cognizant of the details of every matter, they are prepared to engage in peer-to-peer dialogue with clients at any time. When clients call at 3

a.m., they don't just get a response – they get an answer.

## Experience

Represented Steinman Communications in connection with its gift of LNP Media Group, owner of local newspapers and a marketing agency in Lancaster, Pennsylvania, to WITF, a Section 501(c)(3) public media organization, establishing the Steinman Institute for Civil Engagement. The representation involved structuring, negotiating, and documenting all aspects of the transaction.

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Represented Elite Clinical Network, LLC (ECN), an integrated platform operating a network of Phase I-IV clinical research sites in California, Arizona, and Nevada, in its \$200 million sale to Surge Private Equity, LLC, a Dallas-based private equity firm. The transaction involved various complex tax matters and structurings to effectuate a tax-efficient result for the partners and involved internal pre-closing reorganization of ECN entities.

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Represented the real estate investment affiliate of a leading logistics company in the \$750 million recapitalization of a national portfolio of industrial warehouse and outdoor storage facilities with a foreign sovereign wealth fund and with significant debt financing provided by a major U.S.-based life insurance company, including the corporate and tax structuring of the transaction and negotiation and documentation of the joint venture and loan documentation.

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Represented Lincotek Surface Solutions, a global leader in contract manufacturing services for the aerospace and medical businesses, in its acquisition of Hitemco, LLC, a provider of diffusion and thermal sprayed enhanced surfaces.

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Represented the shareholders of Aries Global Logistics, Inc., an international air and ocean freight forwarder, in its \$105 million sale to NTG Air & Ocean USA, Inc., a subsidiary of NTG Nordic Transport Group A/S, a publicly traded Danish transportation company.

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Represented Larchmont Imaging Associates, LLC and Radiology Associates of Burlington County PA in the sale of its radiology practice to US Radiology Specialists, Inc., a partnership of physician-owned radiology practices and diagnostic centers backed by private equity firm Welsh, Carson, Anderson & Stowe.

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Represented Nevada-based cannabis company Planet 13 Holdings Inc. (OTC: PLNHF) in its \$91 million (CAD) acquisition of Next Green Wave Holdings Inc.

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Represented Pinnacle 21, LLC, a provider of SaaS solutions for clinical data fitness, regulatory compliance, and FDA submission readiness, in its \$310 million sale to Certara, Inc. (Nasdaq: CERT), a biosimulation company.

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Represented The Burgiss Group, LLC, a provider of systems and data on private capital, in its acquisition of Caissa LLC, a developer of an investment analytics software platform.

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Represented QuickFrame, a developer of an online video marketing platform, in its sale to MNTN, a provider of online digital advertising software.

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Represented inTEST Corporation in its \$12 million acquisition of Videology Imaging Solutions, Inc. and Netherlands-based Videology Imaging Solutions Europe B.V., which together are a global developer and manufacturer of imaging solutions serving medical, industrial, government security, and other original equipment manufacturers (OEMs).

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Represented Keystone Risk Partners, LLC, a firm specializing in captive insurance management services, in its sale to Ryan Specialty Group, LLC, a publicly traded international specialty insurance firm.

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Represented Shank's Extracts, Inc., a privately held specialty ingredient, flavoring, and food company with bottling and packaging capabilities, in its \$100 million sale to Universal Corporation, a multinational tobacco and other agricultural products processing company, and the sale by a related party of certain real estate to Universal for an additional \$13 million.

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Represented Utz Brands, Inc. (NYSE:UTZ) in its \$56 million acquisition of R.W. Garcia Holdings, LLC and certain real estate owned by a related entity. R.W. Garcia Holdings, LLC is a maker of Better-For-You tortilla chips, crackers, and corn chips.

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Represented South Jersey Industries, Inc. and its natural gas public utility operating subsidiaries, South Jersey Gas Company and Elizabethtown Gas Company, in connection with a \$1 billion master credit facility.

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Represented Biomeme, Inc., a biotechnology company and leading provider of portable PCR testing solutions, in its acquisition of Predigen, Inc., a privately held diagnostic company and emerging leader in precision medicine focused on host response diagnostics.

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Represented Acreage Holdings, Inc. in an agreement to be purchased by Canada-based Canopy Growth Corporation once federal prohibition of marijuana is lifted in the United States. Canopy Growth Corporation is a world-leading diversified cannabis company and operates a collection of diverse brands and curated strain varieties. This transaction involved complex cross-border tax issues structured as a reverse triangular merger with the same effect as if the parties amalgamated under Canadian law.

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Served as U.S. tax counsel to Acreage Holdings, Inc. – a large, multistate owner of cannabis licenses and assets in the United States -- in a reverse takeover transaction resulting in the listing of Acreage shares on the Canadian Securities Exchange. The deal was structured as a “three-cornered amalgamation” and RTO under Canadian law. Cozen O'Connor was instrumental in resolving cross border tax matters, including structuring the RTO as an “Up-C” transaction that resulted in an inverted publicly traded corporation.

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Represented Hydrofarm Holdings Group, Inc. (NASDAQ: HYFM), a leading hydroponic equipment and supplies manufacturer, in its acquisition of all of the membership interests of Field 16, LLC, a manufacturer and distributor of plant nutrients under the Heavy 16 brand, as well as in its acquisition of House & Garden, Inc., Humboldt Wholesale, Inc., Allied Imports & Logistics, Inc., and South Coast Horticultural Supply, Inc. (collectively House & Garden).

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Successfully represented a business in a dispute over tax breaks it applied for as part of a planned move from an expired Keystone Opportunity Zone (“KOZ”) to a new KOZ. The Department of Economic and Community Affairs denied the client's application, and argued to the courts that allowing “zone-hopping” would incentivize businesses to leave the zones when they expired and avoid going back on the tax rolls. The Commonwealth Court, sitting en banc, unanimously allowed the client to claim the tax breaks, finding that the law provides for benefits in a new KOZ, and the Pennsylvania Supreme Court unanimously affirmed that decision.

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Represented Acreage Holdings, Inc., and its subsidiary High Street Capital Partners, LLC, in the sale of Acreage Florida, Inc. and related real estate to Red White and Bloom Brands, Inc., a multi-state cannabis operator. Acreage Florida is licensed to operate medical marijuana dispensaries, a processing facility, and a cultivation facility in the state of Florida.

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Obtained a 5-2 *en banc* decision from the Pennsylvania Commonwealth Court, on an issue of first impression in Pennsylvania, holding that a \$35 million whistleblower payment our client received under the federal False Claims Act was not subject to Local Earned Income Tax.

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Represented Utz Brands, Inc. (NYSE:UTZ), a leading supplier of salty snacks, in its \$480 million acquisition from Insignia Capital Group, a private equity firm, of Truco Enterprises, LP and from OTB Acquisition LLC of the ON THE BORDER® trademarks for the manufacture, sale, and distribution of snack food products in the United States and certain other international markets. Truco is a leading seller of tortilla chips, salsa, and queso under the ON THE BORDER® brand.

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Represented Utz Quality Foods, LLC (NYSE: UTZ) in its business combination transaction with Collier Creek Holdings, a consumer goods special purpose acquisition company (SPAC), to form Utz Brands, Inc. The result of this business combination was that the almost 100-year-old family-owned Utz became a public company. The transaction valued Utz in excess of \$1.5 billion.

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Represented the owners in the sale of more than 25 franchises in eastern Pennsylvania and New Jersey, and exclusive territorial rights, to a growing franchisee. The owners sold the business operations only, with the franchisee continuing to lease many of the restaurants from the sellers.

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Represented Renaissance Food Group, LLC, a wholly-owned subsidiary of Calavo Growers, Inc., an international consumer goods and farm products company, in its acquisition of 100 percent of the equity of SFFI Company, Inc. (d/b/a Simply Fresh Fruit), a processor and supplier of fresh cut fruit.

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Represented Utz Quality Foods, LLC in its acquisition of Kitchen Cooked Inc., a manufacturer and distributor of snack foods serving Central Illinois and Eastern Iowa.

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Represented an insurance agency in connection with its going independent transaction with Nationwide Mutual Insurance Company and simultaneous sale to HUB International Limited, a leading North American insurance brokerage firm.

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Represented Utz Quality Foods, LLC in connection with its acquisition of Conagra Brands, Inc.'s direct-store delivery (D.S.D.) snacks business for \$138 million. The business includes Tim's® Cascade Snacks, Hawaiian® Snacks, Erin's®, Snyder® of Berlin, and Husman's® and has manufacturing facilities in Pennsylvania and Washington.

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Represented PrecisionLender, a financial services software company, in its \$510 million acquisition by Q2 Holdings Inc., a publicly traded provider of digital solutions for financial institutions. The firm has long represented PrecisionLender, and previously represented the company in connection with five rounds of private equity financing.

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Represented an insurance broker/producer client in connection with its acquisition of both a Florida-based provider of managed care reinsurance and stop loss products and a California-based wholesale insurance brokerage firm.

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Represented a leading health and fitness direct marketing company in its acquisition of an on-demand fitness app, through a two-step merger transaction (reverse followed by forward).

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Represented a multi-state owner of cannabis licenses and assets in connection with an agreement to acquire, by merger, a California corporation holding a license for a cannabis dispensary in Oakland.

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Represented an insurance company and its wholly owned subsidiaries in a nine-figure sale of stock and related real estate.

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Represented Acreage Holdings, Inc. (Acreage) -- a large, multistate owner of cannabis licenses and assets in the United States -- in its acquisition of Form Factory, Inc. through an all-stock transaction valued at \$160 million. Form Factory is a cannabis manufacturer, co-packer, and distributor headquartered in Portland, Oregon.

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Represented Ezaki Glico Co., Ltd., a publicly traded Japanese food company doing business across 30 countries, in its purchase of TCHO Ventures, Inc., a San Francisco-based fair trade chocolate manufacturer. The acquisition was Ezaki Glico's first acquisition of a United States company.

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Represented Utz Quality Foods, LLC in its acquisition of Inventure Foods, Inc. in a deal valued at \$165 million. The transaction was completed via a cash tender offer for all outstanding shares of Inventure Foods common stock, followed by a merger of a wholly owned subsidiary of Utz into Inventure Foods pursuant to Section 251(h) of the Delaware General Corporation Law. Inventure Foods will operate as a wholly-owned subsidiary of Utz. Inventure Foods manufactures and sells salted snacks under the brands Boulder Canyon®, TGI Fridays™, Nathan's Famous®, Vidalia Brands®, Poore Brothers®, Tato Skins®, and Bob's Texas Style® and has manufacturing facilities in Arizona and Indiana.

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Represented Eurofins Scientific SE in the acquisition of EAG Laboratories from affiliates of Odyssey Investment Partners. The transaction is valued at \$780 million on a cash-free, debt-free basis and includes EAG's 21 laboratories in 18 locations around the world, including subsidiaries in the United States and six other countries.

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Represented a global provider of brand solutions, memorialization products, and industrial products in its Rule 144A and Regulation S \$300 million senior notes offering.

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Achieved a favorable en banc decision by the Pennsylvania Commonwealth Court on behalf of a corporate taxpayer that the client's corporate net income tax could be calculated without capping the amount the client could take on its net operating loss (NOL) carryover deduction. The Court held that the limit on NOL carryforward deductions violated the Uniformity Clause of the Pennsylvania Constitution because it results in two classifications, one for taxpayers that can completely eliminate their taxable income and another that can only limit the deduction to the extent of the limit.

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Represented Sony Electronics Inc. in connection with the corporate, tax, and certain benefits aspects of its acquisition of Crispin Corporation, which develops master control automation and asset management solution for broadcasters, cable operators, and other television and media operations.

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In the Commonwealth Court of Pennsylvania, secured summary judgment in favor of a coalition of nonprofit electric cooperatives in connection with consolidated petitions for review of orders of the Pennsylvania Board of Finance and Revenue. In granting summary judgment, the court held that the cooperatives were not subject to taxation under the Pennsylvania Public Utility Realty Tax Act.

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Through two state courts and the U.S. Supreme Court, successfully overcame both a statutory and a constitutional challenge to franchise tax assessed against a bank by our client, the state bank commissioner.

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In the Court of Common Pleas of Philadelphia County, secured dismissal, on preliminary objections, of a complaint by the city against various online travel agencies, alleging that they were in violation of the city's hotel room rental tax.

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In the Commonwealth Court of Pennsylvania, secured a sales tax refund on behalf of the owner of compressed air vending machines. In reversing the denial of the taxpayer's petition for refund, the court held as a matter of first impression that air from the machines was not "tangible personal property," and a fee the taxpayer charged for using the machines was not a taxable "sale at retail."

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In the Commonwealth Court of Pennsylvania, secured reversal of a ruling by the Pennsylvania Department of Revenue under which our client, a professional employer organization, was assessed sales tax on its fees for services deemed to constitute “help supply services.”

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Represented Petroleum Products Corporation, a midstream oil company, and certain of its affiliates in its acquisition by Arclight Capital Partners.

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Represented Delphi Midstream Partners, LLC in its \$200 million acquisition of the rights to construct and operate a 31-mile natural gas pipeline in the Marcellus Shale region in New York and Pennsylvania.

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Represented Beachbody, LLC, a leading marketer of health and fitness programs and products (i.e., P90X, Insanity), in the growth capital investment by LNK Partners.

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Represented Utz Quality Foods, LLC in its purchase of the intellectual property (including the “Bachman” and “Jax” brands), distribution rights and certain other assets of The Bachman Company, a manufacturer of pretzels and cheese curls.

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Represented Portico Systems of Delaware, Inc. in its acquisition by McKesson Health Solutions, a subsidiary of McKesson Corporation (15th on the Fortune 500), for approximately \$90 million. The firm represented this company since its formation and through multiple transactions, including several investments by Safeguard Scientifics and Edison Venture Fund.

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Represented a group of actively practicing physicians/minority owners in connection with their interests in the sale of Kremer Laser Eye Centers to a public company, TLC Vision Corporation. Our clients were only selling a portion of their stock and chose to invest in the successor company.

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Represented Thalheimer Brothers, LLC, a large Philadelphia scrap metal company, in its sale to Audax Management Company, LLC, a private equity firm, which resulted in principals of Thalheimer owning a minority interest in the company.

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