



Kevin M. Flynn

Counsel and Co-Founder



New York City

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Biography

Kevin M. Flynn is a co-founder of the firm, who left the managerial duties of partnership in 2020 to focus on his tax litigation practice with the firm as Counsel. He is a forceful advocate with proven skills in litigating federal civil and criminal tax controversies for clients with complex tax challenges. Kevin's particular experience in civil tax issues has led to him trying and winning numerous tax cases involving a broad range of corporate, partnership, personal income tax, and employment tax issues. Kevin's strong negotiating skills and business judgment have allowed him to achieve extraordinary results for clients at all levels of the Internal Revenue Service administrative process.

Kevin also defends clients in civil and criminal tax administrative proceedings and litigation involving New York State and New York City taxes. Kevin's litigation experience includes many New York State and City tax cases involving individuals, corporations, partnerships, estates, sales and use taxes, tobacco taxes, employment taxes, real property taxes, residency and income allocation issues, and penalty disputes.

Before Kostelanetz LLP, Kevin had a distinguished career of government service. Kevin was a Special Trial Attorney for the Office of Chief Counsel of the Internal Revenue Service in New York City. Before joining the IRS, Kevin served as an Assistant District Attorney prosecuting felony cases in Massachusetts.

Kevin has been recognized by "New York Super Lawyers." He also was awarded "Attorney-of-the-Year," North Atlantic Region, while at the IRS.

Education

- College of the Holy Cross, A.B., 1977, *Magna Cum Laude*
- Western New England College School of Law, J.D. (1981), Law Review
- Boston University School of Law, LL.M (1984)

Bar Admissions

- Massachusetts, 1981
- New York State, 1990
- Southern District of New York, 1992
- Eastern District of New York, 1992
- United States Tax Court, 1984
- Court of Federal Claims, 1998
- U.S. Court of Appeals, 2nd Cir., 1995

Representative Matters

- Mr. Flynn tried the first case litigated in the Tax Court involving an Internal Revenue Service challenge to an historic rehabilitation tax credit transaction. Mr. Flynn argued that the IRS' attack against a rehabilitation project involving a tax-exempt entity and a Fortune 500 company was unfounded, in light of the clear Congressional purpose behind the historic rehabilitation tax credit.
- Mr. Flynn successfully defended a corporate client in a three-week Tax Court trial against IRS challenges to the ownership of patent rights and to the patent royalty rate, under a royalty agreement between the corporation and its shareholders.
- Following a two-week trial in an innocent spouse case, Mr. Flynn obtained a favorable settlement for his client, substantially reducing her exposure to IRS claims for taxes.
- Mr. Flynn won partial summary judgment against the IRS in an I.R.C. § 6700 return preparer penalty case, which eliminated virtually all of the IRS' claim for penalties against his client.
- In an appeal to the United States Court of Appeals for the Second Circuit, Mr. Flynn obtained reversal of a district court's decision against his client in a case involving whether entertainers should be classified as employees or independent contractors.
- Mr. Flynn won a complete victory against the New York State and City tax authorities in a case where he proved that his client who owned a New York City apartment was not a resident of New York and, thus, not subject to New York State and City taxes.
- In litigation against the New York State tax authorities, Mr. Flynn successfully established that his client's withdrawals from his professional corporation were loans and not compensation, and that the client, an attorney, was not liable for civil penalties.

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- Represents a New York City bank before the Appeals Office of the Internal Revenue Service in a multi-million-dollar claim involving the bank's charge-off of customer loans.
- Represents a client in a Tax Court case with a deficiency asserted of more than \$30 million involving issues of alleged unreported income, abandonment losses, rental activity adjustments, and the civil fraud penalty.
- Represented a partner of a national accounting firm in criminal investigation by the United States Attorney's Office for SDNY involving "tax shelters." No charges were brought against his client.

Awards and Recognition

- Best Lawyers – Litigation and Controversy – Tax and Tax Law in New York
- Super Lawyers – Tax in New York
- Recognized by "New York Super Lawyers" for 2011
- Attorney-of-the-Year, North Atlantic Region, when at the IRS

Publications

- Proposed Regulations Provide Guidance on Deducting Fines and Penalties Paid to the Government: Important Questions Still Remain (September 22, 2020)
- The Death Knell for Salt Cap Workarounds? Treasury's Final Regulations Uphold the \$10,000 Cap (September 10, 2019)
- Has the New Partnership Representative Been Granted Too Much Power? (September 1, 2018)
- The Trust Fund Recovery Penalty (November 3, 2017)
- Filing a Claim for Refund of Overpaid Tax (September 16, 2016)