

MEMBER SPOTLIGHT: BRUCE ELY

Kyle H. Wingfield

Williams Mullen, P.C., Richmond, VA

Everyone knows Bruce Ely. Bruce has more than 35 years of experience and is the founding chair of Bradley's State and Local Practice Team. He's a guru on pass-through entities, an advocate in the legislative arena, and one of the nicest guys you'll ever meet. We are not aware of a State and Local Tax conference or seminar where Bruce hasn't spoken. Bruce is always generous with his time and is a great mentor to anyone entering the field of State and Local Tax. Bruce resides in Birmingham, Alabama with his wife, Karen, and two dogs. This interview was a real treat for me, and I know that you all will enjoy it as well.

Bruce – you have been practicing SALT for more than 35 years. Looking back – is there anything you would change? Practice any other type of law? Actually, 39 years now! You know, I've asked myself that very question several times over the past 10 years or so, and I always arrive at the same conclusion: I am where I'm supposed to be, with God's grace. Working initially in a small law firm allowed me to handle a variety of tax, corporate and real estate projects, and that broad base of experience helps me even today. Definitely thankful for the other employment and teaching opportunities presented to me over the years, but in hindsight, I'm glad I stayed the course and had time to devote to my patient wife and our two sons—and now the grandkids.

When you graduated from the University of Alabama with a degree in accounting why did you choose to go to law school rather than go down the route of CPA? By the time I had taken two tax accounting and two business law classes in my junior year at UA, I knew I wanted to be a tax lawyer, so I guess I'm one of those rare birds who knew where he or she wanted to go relatively early in the process.

Can't help but notice you went to NYU for your LL.M. in Tax – how did the guy from 'Bama end up in New York City? My wife always remarks that our one year stay in New York was the "most fun year of our marriage"—well, for her and the other law spouses anyway. I was stuck in the law library basement most of the time. UA Law School has a long tradition of sending grads each year to NYU for the Graduate Tax Program, and my boss at the time had graduated number 2 in his class there only 5-6 years before. Plus, it didn't hurt that the law firm for whom I was clerking, at the behest of my boss/mentor, graciously offered to send a nice monthly stipend [see wife's comment above].

Why did you go back to Alabama with the NYU LL.M.? I was loyal to the law firm and mentor who had "sponsored" me, plus my wife and I loved Tuscaloosa and felt it was a good environment for raising a family—of Crimson Tide fans, of course. It was only after 20 years of practice that I accepted Bradley's offer to join them here in Birmingham and help establish a Southeast regional SALT practice.



Did you go back intending to practice federal tax? Yep- naively thought I would focus on M&A/tax-free reorg's work. It turned out that there just weren't many complicated deals going on in Alabama and Mississippi at the time, but I learned to enjoy the federal tax controversy and planning side of the practice and worked in the corporate/contract-drafting area as well.

What happened that you ended up in SALT? Ironically, a partner in that same Tuscaloosa firm was also a state senator and soon became President Pro Tem of the Alabama Senate. So, every pending bill passed through his office. I would come into work many mornings to find a PILE of tax-related bills on my desk with a note from him asking for my comments "ASAP" and "any suggested edits." In retrospect, I've been privileged to co-author almost every major piece of tax or tax procedure legislation the Alabama Legislature has enacted since 1983. That started my transition from federal tax lawyer to a predominantly SALT-focused lawyer.

Do you remember your first SALT case? Did you win? Your most recent case? Anything of interest in the pipeline? Yep- it was a sales tax appeal involving a local lumber mill. The Alabama DOR's ALJ ruled against me, to my dismay, and unfortunately the client chose not to appeal since it was a small dollar case. But I find it comforting that the ALJ, who later became a good friend of mine, eventually conceded that his ruling was wrong. Currently, our SALT Practice Group is handling at least 25 add-back or transfer pricing cases, many involving foreign parent companies, in Alabama and Mississippi, as well as a number of sales/use and business license tax appeals in Alabama and Tennessee. The most interesting case, though, is one that I'm under a gag order now and can't discuss. Hopefully, you'll see a (favorable) ruling soon!

Describe your workload and how you determine what cases you "take." Although my workload is predominantly SALT-oriented, I'm always looking for a juicy IRS audit or appeal, especially if it involves a worker re-classification dispute or Subchapter K or S issues. Whether we take the case depends on a variety of factors, including how much tax is involved, whether it's for an ongoing client, whether it's an interesting issue, and whether we think the client is prepared to litigate the issue (\$\$) if necessary.

Can you share how you blend your interests in economic development and SALT? As mentioned, I was involved early in my career in editing or drafting a lot of tax legislation for the Alabama Senate. This eventually got me involved in a clandestine industrial recruiting project called "Project Rosewood" - the first Mercedes-Benz manufacturing plant in the U.S.- and later with the Hyundai project. The Governor appointed me as counsel to a bipartisan tax incentives reform commission and apparently folks thought I knew something about the subject. Now, Bradley Arant Boult Cummings LLP has an incredibly talented group of lawyers working in all three Alabama offices and in our Nashville and Jackson offices who handle these projects daily and across the United States, so I'm more of a cheerleader these days.

We notice you are also an advocate for taxpayers in the legislative arena. How do you identify issues that need a "legislative fix?" Can you describe one piece of legislation you are most proud of working on? Indeed, you have identified one of my real passions. Oftentimes we find these issues simply because we're in the middle of them, or a business or professional association (or legislator) asks us to look into a legislative fix for a group of their members. Sometimes it's a state-level tax issue, but sometimes it's a city/county tax issue since Alabama is one of the few states--thankfully--that allows its local governments to levy and collect their own sales, use, rental and business license tax. I'm most proud of the comprehensive, 180+ page Alabama Taxpayers' Bill of Rights/Uniform Revenue Procedures Act of 1992. It was a collegial effort involving the Alabama DOR, the State Bar Tax Section (of which I was chair), and the Business Council of Alabama and Alabama Society of CPAs, but it took us *four years* and a lot of sausage-making to finally pass the bill.

One of the areas you are well known for is the area of pass-through entities (PTE). How did you get interested in the PTE world? What do you think is the most important thing up and coming SALT attorneys need to know about PTEs? Do you think the area will continue to create issues? Working in a relatively small boutique tax firm in Tuscaloosa, we were constantly dealing with S corporations and limited partnerships-- there was no such thing as an LLC or LLP until several of us drafted the Alabama LLC Act and the Alabama LLP Act in the early to mid-90's. For many years, the ABA Tax Section has sponsored a vibrant S Corporations Committee, and thankfully I became involved with that group early on, even to the point of co-authoring the ABA's Model State S Corporation Income Tax Act as a young pup.

That's why I encourage my tax partners and associates to find a niche within the Tax Section and get involved. Up and coming SALT attorneys working in the PTE field first need to master Subchapters K and S- and their constant iterations- since so much of PTE lore is driven by federal tax concepts. And get involved with the Tax Section's SALT and Partnerships/LLCs Committees. Absolutely, we will continue to see new issues and iterations of old issues as long as we have PTEs and clever tax practitioners.

No interview would be complete without some info sharing about your dogs – update? Hah! Ol' Murphy the Goldendoodle has never apologized or shown any sign of remorse for causing my torn Achilles tendon and four surgeries, but I was the idiot who held on to his leash when he (at 70 pounds of solid muscle) started chasing those deer up the mountain.

And of course, your prediction about the place of SALT going forward. Thoughts? No surprise that I tell my students and the few summer associates we host each year who seem to have a tax-bent that our field is one of the most exciting and most collegial and increasingly diverse. They can always find a niche in the SALT world, and someone to mentor them, which is critical. And that's when I pitch the SALT Committee...

Bruce, thanks for your time and all that you do for the Tax Section! We hope to see you in person in 2021!