

## Jim P. Rourke

### MEMBER

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### Practices

Nonprofit and Exempt Organizations

Employee Compensation and Benefits

Tax Law

Federal Taxation

State and Local Taxation

ERISA and Employee Benefits

Employment & Labor Law

### Industries

Life Sciences

Pharmaceuticals

### Education

→ University of South Carolina, J.D., 2010

→ New York University, LL.M., 2011

→ Harvard University, B.A., 2004

### Admissions

→ South Carolina

As an attorney in Nexsen Pruet's Tax Group, Jim focuses his practice in two distinct areas: employee benefits and state and local tax.

In the area of state and local tax, Jim regularly represents both corporate and individual taxpayers through all stages of the audit process and resulting litigation before the Department of Revenue, Administrative Law Court, and state appellate courts. Jim has represented clients both challenging proposed assessments and seeking refunds in the areas of corporate tax, income tax, sales and use tax, admissions tax, state tax withholding, and property tax. Jim regularly represents both South Carolina and multinational corporations.

Jim also works closely with businesses to find and take advantage of tax credits at both the state and federal level. He has experience with state infrastructure and other economic development incentives, as well as federal credits related to alternative energy and low income housing. He has assisted in the representation of Fortune 500 companies at the Administrative Law Court, South Carolina Court of Appeals, and South Carolina Supreme Court.

Jim handles matters related to 401(k), profit sharing, pension and other qualified retirement plan administration, as well as the administration of insurance and other fringe benefits. Jim also advises clients with respect to nonqualified plans, including deferred compensation and phantom stock plans. Jim has also helped clients navigate the extensive regulatory

network created by Health Care Reform under the Patient Protection and Affordable Care Act.

In addition to his primary focus, Jim regularly advises public charities, supporting organizations, private foundations, trade associations, social clubs, fraternal organizations, and cooperatives in applying for, receiving, and maintaining their exempt status. Additionally, Jim routinely works with exempt organizations regarding state property tax, admissions tax, and sales tax issues, and regularly assists clients in the sale and acquisition of exempt property to and from both for-profit and non-profit entities. Jim also has assisted in securing reinstatement of revoked and dissolved organizations at both the federal and state level.

Most recently, Jim has handled a number of appeals deriving from preliminary calculations of proposed Employer Shared Responsibility Payments assessed under the Affordable Care Act. In many cases, Jim has been able to resolve these assessments with the IRS quickly and in an efficient and favorable manner.

## Experience

*Fairfield Waverly, LLC, v. Dorchester County Assessor*, No. 5769 (S.C. Ct. App. August 26, 2020) (Property tax, late filed ATI exemption)

*Synovus Bank v. S.C. Dep't of Rev.*, 17-ALJ-17-0418-CC (April 17, 2020) (bank tax and net operating losses)

*McEntire Produce v. S.C. Dep't of Rev.*, 17-ALJ-17-0060-CC (Sept. 6, 2019) (machine, pollution control, and clean room sales tax exemptions)

*Colonial Pipeline Company v. S.C. Dep't of Rev.*, 18-ALJ-17-0443-CC (pollution control property tax exemption)

*Books-a-Million, Inc. v. S.C. Dep't of Rev.*, 2020 WL 2050898 (S.C. Ct. App. Filed April 29, 2020) (sales taxation of membership fees)

*SunBelt Furniture Xpress, Inc., v. S.C. Dep't of Rev.*, 19-ALJ-17-0110-IJ (S.C. Admin. Law Court filed June 11, 2019) (Order to Quash Subpoena)

*S.C. Dep't of Rev. v. Trader Joes East, Inc.*, d/b/a Trader Joes 752., 18-ALJ-17-0425-CC (S.C. Admin. Law Court Filed April 4, 2019) (alcohol licensing)

*InteliChart, LLC v. C. Dep't of Rev.*, 18-ALJ-17-0457-IJ (S.C. Admin. Law Court Filed February 3, 2019) (procedural issues)

*Sodisetti v. Lexington Cnty. Assessor.*, 18-ALJ-17-0157-CC (S.C. Admin. Law Court Filed January 2, 2019) (application of legal residence property tax exemption to immigrants on work visas)

*Synovus Bank v. S.C. Dep't of Rev.*, 17-ALJ-17-0418-CC (S.C. Admin. Law Court Filed October 22, 2018) (net operating loss carryforwards for banks)

*Dollar Tree Stores v. S.C. Dep't of Rev.*, 17-ALJ-17-0414-CC (S.C. Admin. Law Court Filed February 16, 2018) (procedural issues)

*Retail Services & Systems, Inc. v. S.C. Dep't of Rev.*, 419 S.C. 469, 799 S.E.2d 665 (2017) (constitutionality of liquor license ownership limitation)

*Books-A-Million v. S.C. Dep't of Rev.*, 16-ALJ-17-0133 (S.C. Admin. Law Court filed June 6, 2017) (whether membership fees are subject to sales tax)

*Fairfield Waverly, LLC v. Dorchester Cnty. Assessor*, 14-ALJ-17-0601-CC (S.C. Admin. Law Court filed Feb. 1, 2017) (ATI exemption)

*Windsor Club, LLC v. Dorchester Cnty. Assessor*, 14-ALJ-17-0602-CC (S.C. Admin. Law Court filed Feb. 1, 2017) (ATI exemption)

*Bright-Meyers NA, LLC v. Aiken Cnty. Assessor*, 16-ALJ-17-0253-CC (S.C. Admin. Law Court filed Jan. 23, 2017) (property valuation dispute)

*Mead v. S.C. Dep't of Rev.*, Opinion No. 5460 (S.C. Ct. App. Dec. 21, 2016) (Homestead Exemption)

*Citigroup, Inc. and Subsidiaries v. S.C. Dep't of Rev.*, 15-ALJ-17-0135-CC (S.C. Admin. Law Court Filed October 20, 2016) (corporate tax allocation and apportionment/forced combination)

*Dish DBS Corp. and Affiliates v. S.C. Dep't of Rev.*, 14-ALJ-17-0285 (S.C. Admin. Law Court filed May 20, 2016) (SC apportionment of service provider based on income producing activity)

*P.F. Chang's China Bistro, Inc. v. S.C. Dep't of Rev.*, 16-ALJ-17-0083-CC (S.C. Admin. Law Court filed May 23, 2016) (ABL license dispute)

*Hunter-Gatherer Brewery, LLC v. S.C. Dep't of Rev.*, 16-ALJ-17-0031-CC (S.C. Admin Law Court filed May 2, 2016) (application for brewery license)

*McInnis v. S.C. Dep't of Rev.*, 13-ALJ-17-04430-CC (S.C. Admin. Law Court filed January 22, 2016) (hobby loss case involving deductions for plane)

*CarMax Auto Superstores West Coast, Inc. v. S.C. Dep't of Revenue*, Opinion No. 27474 (S.C. Dec. 23, 2014) (Amicus Curiae Brief filed on behalf of COST)

*Retail Services & Systems, Inc., dba Total Wine & More v. S.C. Dep't of Rev. and ABC Stores of South Carolina*, Docket No. 2014-CP-02-00259 (constitutionality of South Carolina alcohol licensing statutes)

*Frank R. Mead III v. Beaufort Cnty. Assessor*, 13-ALJ-17-0585-CC (S.C. Admin. Law Court filed Aug. 19, 2014) (Property Taxes, Homestead Exemption)

## Recognitions

→ *Columbia Business Magazine's* Legal Elite of the Midlands, 2019

Law School Recognitions include:

- Order of the Coif, 2010
- Order of the Wig and Robe, 2009-10
- CALI Awards – Legal Writing, Veterans Rights Seminar (I) and Clinic (II)

## Community & Professional

Board of directors, Cooperative Ministry

Jim stays abreast of developments that impact employee benefits and state and local taxation. He enjoys sharing what he learns by speaking and writing as often as possible.

## Publications

In addition to the Insights above, Jim as also authored:

- *Employment Law Update – Patient Protection and Affordable Care Act: Upcoming Deadlines Require Employer Action*, August 20, 2012
- *SALT Alert – Multi-state Taxpayers in South Carolina, Take Note*, March 16, 2012 (co-authored with Rick Reames)
- *Federal Tax Consequences of State Economic Development Incentives*, March 31, 2010 (co-authored with Burnet R. Maybank III)
- *Letters of Inconsistency: Southeast Resource Recovery, Inc. v. South Carolina Department of Health and Environmental Control and Local Loss of Landfill Development*, 17 Se. Envtl. L.J. 397 (2009)

## Speaking

- "Employee Benefits Compliance: Critical Steps to Take for Compliance and Risk Mitigation," Nexsen Pruet's Employment Law Certificate Series Webinar - August 14, 2019
- Presenter, Nexsen Pruet Nonprofit Symposium, "IRS Quid Pro Quo and Substantiation Rules" February 24, 2017
- Presenter, Nexsen Pruet Retail and Commercial Project Development Seminar, "ATI Exemption" February 17, 2017
- Webinar - "Implications of the Changing Administration on Employment and Labor Law" February 8, 2017
- "The Main Duties of a Plan Sponsor" - January 19, 2017
- Presenter at Oct. 2016 SALT Seminar - "Circular 230 Update" and "2016 Attorney General Opinion Update"
- Webinar - "Benefits and Executive Compensation" - October 12, 2016
- "401(k) Plans: A new Landscape Today" presentation - October 4-5, 2016
- Presenter, Nexsen Pruet Employment Law Quarterly Breakfast Briefing, Topic - *PPACA: Lessons from Several Months of Full Implementation*, May 3, 2016 (South Carolina) and May 10, 2016 (North Carolina)

- "Monetizing Tax Credits," Economic Development Fundamentals Seminar, April 8, 2016
- Presenter, Nexsen Pruet SALT Seminar, Topics: *Attorney General Opinion Update, Ethics Circular 230*, October 2, 2015
- "PPACA Reporting Requirements," Government Financial Officers Association of South Carolina, May 4, 2015
- "Wellness Programs and the ACA," McLaughlin, Smoak & Clarke InFORUM Presentation, April 16, 2015
- "Sales Tax Issues Related to Sales of Electricity," Annual Meeting of Electric Cooperative Office Managers & Accountants, March 13, 2015
- "Federal and State Quid Pro Quo & Substantiation Rules," SC Bar CLE – South Carolina Nonprofit Corporate Practice Manual, February 5, 2015
- "Federal & State Tax Issues for State Guard Members," South Carolina State Guard, January 10, 2015
- "PPACA Update – Entering 2015," Government Financial Officers Association of South Carolina, October 15, 2014
- "Attorney General Opinion Update – 2013-14," SALT Seminar, October 3, 2014
- "Medicare Tax on Real Estate Professionals," Realtors Association Seminar, May 23, 2014
- "Effect of Affordable Care Act on Tax Exempt Entities," Roundtable Discussion Presentation, March 2013
- "PPACA Update," Greenwood County Chamber of Commerce HR Update, November 19, 2013
- "Attorney General Opinion Update – 2012-13," SALT Seminar, November 8, 2013
- "The Impact of Health Care Reform on Your Clients (and You)," South Carolina Association of CPAs (SCACPA), October 17, 2013
- "Incentives for Real Estate Developers: Commercial, Retail, Tourism, Multi-Family," SALT Seminar, October 5, 2012
- "Selected Issues Regarding Spec Industrial Parks and Mega Sites," Legal Update Presentation, June 8, 2012

## Speaking Engagements

12.01.2021 | Webinar | WebEx

2021 Employment Law Certificate Series

10.28.2020

Employment Law Briefing Webinar Series: Campaigning and the Workplace

05.29.2020

WEBINAR: 2020 Nexsen Pruet Realtors Seminar

05.06.2020

Employment Law Briefing Webinar Series: Getting Back to Work During the Pandemic

## Insights

10.12.2021 | Article

Department of Labor Responds to COVID-Related Medical Premium Discounts and Surcharges

08.25.2021 | Article

Paid Time Off For Vaccinations – A Reason for an Employer Tax Credit

04.21.2021 | Article

The ARPA COBRA Premium Subsidy - The List of Must Do's

02.23.2021 | Article

Providing Incentives Can Be "Taxing"

10.08.2020

Deferred Compensation Plans: Options and Considerations

08.25.2020

Retirement Plan Sponsors Must Soon Provide Annual Lifetime Income Illustrations

06.11.2020

IRS Provides Cafeteria Plans New Temporary COVID-19 Flexibility

04.21.2020

Nexsen Pruet and SCHA Team Up for a Q&A on Labor Related COVID-19 Topics

04.06.2020

Five Things to Consider when Calculating Qualified Health Plan Expenses Under the FFCRA

04.01.2020

Employers Take Note: How to Properly Substantiate Your Payroll Tax Credits under the FFCRA

03.27.2020

CARES Act -- New Employee Benefit Tools to Support Affected Employees

03.19.2020

New Federal Law Provides Emergency Paid Sick and Family and Medical Leave

07.24.2019

Fourth Circuit Affirms Abuse of Discretion Finding in Denial of Coverage for Long Term Disability Claim