

Tax Maven

The Contemporary Tax Journal's Interview with Eileen Marshall

- Rani Vaishnavi Kothapalli, MST Student



Eileen Marshall is a partner in the tax practice at Wilson Sonsini Goodrich & Rosati. She graduated Juris Doctor (J.D.) from Yale Law School in 1996 and Bachelor of Arts (B.A.) from University of Pennsylvania in 1989 with the *Summa Cum Laude* (highest distinction). Eileen practices all aspects of domestic and cross-border mergers, acquisitions, divestitures, restructurings, tax-free reorganizations, taxable and tax-free spin-offs, incorporations, and partnership formations from Washington, D.C., and Palo Alto offices.

Eileen was selected to be included in the 2012, 2013, 2014 and 2015 editions of Washington D.C. Super Lawyers. She speaks regularly on panels for the District of Columbia Bar Taxation Section and the American Bar Association Taxation Section. She also spoke at the Practising Law Institute, New York University Annual Institute on Federal Taxation, and Tax Executives Institute.

She authored "Practical Run-Ins between Conventional Convertible Debt Instruments and Certain Interest Disallowance Provisions of the Code," Taxation of Financial Products and Transactions, Practising Law Institute, 2008; co-authored "A User's Guide to Call Spread Convertibles," Taxation of Financial Products and Transactions, Practising Law Institute, 2009; "Structuring the Corporate Start-Up," New York University 64th Annual Institute on Federal Taxation, 2006; "More from the Abyss of Debt and Equity," New York University 63rd Annual Institute on Federal Taxation, 2005 to name a few. Some of her speaking engagements include "Final Section 385 Regulations: How Will the Documentation Rules Apply in the Real World," American Bar Association Taxation Section Committee, Financial Transactions Committee, January 20, 2017; "Current Issues in Section 305," District of Columbia Bar Taxation Section, Corporate Tax Committee, December 14, 2016; "High Tech M&A Developments: Selected Topics," 32nd Annual Tax Executives Institute (TEI)-San Jose State University High Tech Tax Institute, November 8, 2016.

She is a Committee Officer, Corporate Tax Committee, American Bar Association Taxation Section; Former Chair, Financial Transactions Committee, American Bar Association Taxation Section; Former Chair, Financial Products Committee, District of Columbia Bar Association Tax Section; Member, District of Columbia Bar Taxation Section; Member, American Bar Association Taxation Section.

1. How did you get involved in the tax field? Was that your plan when you started law school?

I began my legal career as a corporate lawyer, but I became interested in tax early on in the late 1990s when I had a very small role as a second or third year associate at WSGR working on the Disney InfoSeek combination. It was a fascinating deal in many respects, but to me the most interesting aspects of it were tax-related. After that deal, when I imagined the future of my career, I did not see myself continuing to practice as a corporate lawyer, even though most people would have thought the corporate negotiations were the best part! Tax professionals in that respect are a distinctly self-selecting group; you don't wind up as a tax lawyer by accident. I immediately took the initiative to switch my practice to tax, which first required me to break the news to the corporate lawyers for whom I worked, and next to convince the head of the tax department that it was a good idea to hire me. Luckily, everyone at WSGR was very supportive of my career aspirations and professional development, and I was allowed to make the move a few months later, just after I returned to work after my first maternity leave.

It was not my aim when I started law school to become a tax lawyer. I went to Yale, which at the time did not have quite the broad array of tax courses that it has today, although I took individual income tax with Michael Graetz, who is of course a luminary in the field and gave me an abiding appreciation for tax policy. When I entered law school, I thought I wanted to be a divorce lawyer!

2. What stands out as one or two of your most significant accomplishments in your career?

To be perfectly frank, I think that all of my best accomplishments are ahead of me! That said, I have worked on many merger transactions between technology companies that mattered, both to the parties involved and to the marketplace; too many to name and the most interesting and impactful of which might not have been the ones reported in the Wall Street Journal. I have also been involved in structuring many financial instruments issued by technology companies, and wrote an article on one of these trades that practitioners have found useful. I have had a hand in helping my clients achieve their business goals, and that is very satisfying. To date, the professional accomplishment that I am most proud of relate to the relationships I have formed and the network that I have built over the last 20 years. I have been active in tax sections of the American Bar Association, the DC bar and some private tax clubs. Most importantly, I have been closely involved in the management and operations of WSGR, as a leader of the tax group and member at various times of the compensation committee, board nominating committee and board of directors. The opportunity to have a voice in shaping the strategic direction of my firm has been one of the things that has kept me engaged and oriented toward the future.

3. How do you keep up to date with the changes in tax law and the ever-changing technology of the Silicon Valley tech companies?

The most important thing that I do in order to stay abreast of current developments is to read a lot! I try to make it my practice to read the relevant tax publications and news first thing in the morning, and failing that, last thing before I leave the office every day. I try not to worry about

whether the publications are directly relevant to my own practice, because you really never know how some new developments or the commentary of a smart tax practitioner might be useful. It's a little bit like basic science, in that it is not necessarily pursued with a particular aim of producing something, there is good in simply exposing yourself to as much information as possible; just read, think and see what you find.

4. What do you think is one key area of our federal or state tax system that could/should be improved and why?

An invaluable improvement to tax administration would be to establish and adequately fund the processes necessary to more regularly provide published guidance to taxpayers. The dearth of widely applicable guidance, such as revenue rulings and final regulations, has hindered the efficient delivery of tax advice by practitioners, and has caused taxpayers to incur undue costs and delays in executing business-motivated transactions. The government's relatively consistent private letter ruling practice has provided some useful insight into its positions on a wide variety of issues, but private letter rulings cannot be relied on by other taxpayers.

5. What do you think is the biggest challenge facing tax professionals today?

In my experience, the biggest challenge for tax professional is the fact that technologies have made it almost impossible to disconnect from work, which is both a blessing and a curse. The pace of change in the legal landscape and deal environment is extremely fast, so it is important to stay in step. Technology makes it possible to do so even if you are not in the office. On the other hand, some of my best thinking has been done while walking in the Marin headlands or on Bethany Beach or even on the sidelines at a kid's soccer game. Work/life balance is a constant challenge that is important to take seriously as a goal.

6. What advice do you have for students preparing for a career in tax?

In terms of advice for the next generation, I have a sign in my office that says, "Work hard and be nice," which really are words to live by. Although legal work is by nature adversarial, the lawyers on both sides by necessity must work together to get the deal done, so maintaining an open professional demeanor is key. I would add: Stay curious and keep yourself in learning mode all the time. Some of my most interesting learning experiences have come at unexpected moments, in particular where I had fallen into a sense of complacency about my expertise in a particular area of the law. Often a person with less experience and more fresh thinking has something to say about a particular issue, so stay humble and keep an open mind, but in any case, work hard and be nice.

7. If you could have dinner with anyone, who would it be?

Far and away my top choice for dinner would be Jane Austen, whose novels have transported me to a bucolic, but somehow intellectually rich and satisfying, place and time. Escapist fantasy, doubtless, but in so many ways perfection!

8. What is the most unusual item in your office or something in it that has special meaning to you?

I have a framed poster in my office from The Facebook Analog Research Laboratory that says, "WHAT WOULD YOU DO IF YOU WEREN'T AFRAID?" in orange capital letters. I originally got the poster from a client when I admired it in his office, tacked on his bulletin board. He immediately took it down, rolled it up, and handed it to me. A few weeks later, a close colleague and friend was struggling with a decision about whether to accept a new professional opportunity as general counsel of a public company. He was really agonizing over the decision of whether to leave the firm. I gave him the poster, and he took the job. A little while later, the client called and asked to meet with me urgently in the lobby of our building; I hurried downstairs and, unexpectedly, he presented me with another copy of the same poster, having learned that I had passed the first one along in the spirit of paying it forward. It has been a mainstay in my office ever since.