



## J. Dudley B. Kimball

Mr. Kimball has a diverse practice touching on many areas of employee benefits law, tax law, corporate and general business law, and fiduciary law. He represents global companies engaged in a variety of businesses, such as manufacturing and extractive industries, consumer products and financial services, as well as closely held companies, investment firms, and not-for-profit entities. Areas of particular expertise include executive compensation (including representing employers in drafting and negotiating employment, non-competition, clawback, secondment and other senior executive agreements); bonus, incentive (both stock and non-stock based) and deferred compensation plans (including designing and drafting such plans); tax-qualified defined contribution and defined benefit retirement plans (including designing, drafting and obtaining governmental approval of such plans); ERISA and non-ERISA fiduciary issues (including advising boards of directors, compensation committees, retirement plan committees, trustees and other fiduciaries on their duties); ERISA, fiduciary and executive termination litigation; general tax (including representing businesses in connection with tax audits and litigation, providing transactional tax advice for businesses and individuals, and providing tax planning for high net worth families); not-for-profits (including drafting organizational documents and obtaining tax exemptions for not-for-profits and representing them in mergers and other corporate transactions); and business contracts (including drafting and negotiating licensing, asset purchase and sale, finder's fee, consulting, supply and other commercial contracts, as well as LLC, partnership, shareholder and joint venture agreements).

### NEW YORK OFFICE

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### EDUCATION

Hamilton College (A.B., 1969)

New York University School of Law  
(J.D., 1974; LL.M., Taxation, 1978)

### PRACTICES & INDUSTRIES

Corporate

Employee Benefits

Litigation

Tax

Trusts & Estates, Private Client &  
Not-For-Profit

### ADMISSIONS

New York, 1975

### PROFESSIONAL ACTIVITIES

American Bar Association (Section of  
Taxation and Section of Labor and  
Employment Law)

New York State Bar Association (Tax  
Section and Labor and Employment  
Law Section)

New York County Lawyers'  
Association

### Representative Matters

- Redesigned a long-term incentive plan maintained by a multinational business for its global executives in order to comply with Section 409A while at the same time remaining as true as possible to the plan's original structure.
- Successfully defended a tax-qualified pension plan against an Internal Revenue Service claim that it failed the general non-discrimination test because a scattershot test revealed disproportionate benefits to executives.
- Devised an equity-flavored incentive program for non-shareholder executives of a closely held corporation that rewards them as if they were shareholders, taking into account annual profits and gains upon ultimate sale of the company, but that is not deferred compensation subject to Section 409A.
- Developed an approach pursuant to which U.S. citizens working abroad for a multinational business can participate in foreign non-qualified retirement plans without being subject to immediate tax under Section 457A.

## **RELATED NEWS**

Update on Federal Tax Reform -  
October 2017  
October 19, 2017

Dudley Kimball and Robert  
Morgan, who both practice in the  
Emmet, Marvin & Martin, LLP Tax,  
ERISA and Corporate group, are  
the authors of an article, A  
Reform Proposal for Social  
Security, that appeared in the  
October 31, 2016 issue of Barron's.  
October 31, 2016

Tax Techniques  
October 06, 2016

Longevity Annuities  
October 06, 2016

- Successfully handled an Internal Revenue Service audit of a publicly traded oil company, prevailing on issues relating to characterization of expenses as intangible drilling and development costs or other types of immediately deductible expenses rather than depreciable capital costs.
- Rendered an opinion to shareholders of a publicly traded company that an exchange of a specified number of shares of one class of common stock for an equal number of shares of another class of common stock was tax-free, even though the values of the exchanged shares differed.
- Drafted and negotiated a battery of contracts with travel websites (Expedia, Travelocity, etc.) and third party service providers on behalf of a major international airline when it commenced passenger service in the United States.
- Advised directors of a public authority on their responsibilities in connection with a governmental investigation of various spending and other practices.
- Represented taxpayer with undeclared foreign accounts and reduced taxes and penalties owed to IRS by proving that the taxpayer lacked sufficient control over certain of the accounts.
- Advised in connection with the establishment of a private trust company for foreign trusts and the U.S. tax requirements applicable thereto, including FATCA requirements.
- Designed and drafted a shareholder buy-sell agreement for investment management firm, as well as voting and first refusal agreements to ensure on-going family control of a block of stock in a closely held business.