

# On Tax—Eric Hilfers of Cravath

**Len Teti:**

Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City. On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today, I am joined by Eric Hilfers, who is the Head of Cravath's Executive Compensation and Benefits Department. Eric, welcome to the program and thanks for joining us.

**Eric Hilfers:**

Thanks, Len. Glad to be here.

**Len:**

So, Eric, when I was speaking with Steve Gordon, the Head of the Tax Department, we were talking about how we like tax lawyers who could function well as corporate lawyers, who have a kind of transactional way of thinking about things. And, in your case, you started in the Corporate Department at Cravath. So, as part of explaining to us how you found your way to the tax universe, I thought maybe you could tell us a little bit about that.

**Eric:**

Sure. Well, it starts in law school. And like a lot of law students who end up in a transactional or tax practice, what I knew coming out of law school was I didn't want to be a litigator, and that's really all I knew. When I was in law school, I took Introduction to Federal Tax Law, but only because it was one of those classes, sort of like Evidence and some of the other things, that are on the Bar. I was told, "It's a good thing to have, it's important to know at least a little about tax law." And I really enjoyed it, had good professors and ended up taking a couple of additional classes. And so, coming into Cravath as a summer associate, when I was filling out my paperwork as to what department I wanted to work in, I signaled corporate. That's the default for not litigation, or was in my mind, and then said, you know, possibly tax. I remember filling it out and then, for my summer, I was assigned to work with a corporate partner, Allen Parker, who later became the head of the Firm and, for a while, CEO of Wells Fargo. And it was a fantastic experience. I got to do work that was at least as sophisticated as a first-year lawyer, had just a wonderful experience with it and completely forgot about tax as a potential practice area. I finished up third-year law school, graduated, came back to Cravath and was gung ho—I want to be a corporate lawyer—and ended up working for Allen again, and was still having a great experience, but something was kind of nagging in the back of my head that maybe that wasn't the path I wanted to be on for the rest of my professional life. And I started talking to people within the Firm about making a change. And, ultimately, after a couple of years as a corporate lawyer, moved into the Tax Department working for Steve Gordon, among others. So it's a bit of a circuitous path to the tax practice and, of course, made another left turn later in my career and moved over to the executive compensation practice, which, particularly at that time—2004—was a sort of a hybrid in terms of the substantive legal work that's done in this area, the executive comp area. It's a blend of corporate law and tax law.

**Len:**

Now, Allen Parker was and is one of the premier banking lawyers of his generation. And so, I gather in the Corporate Department, you were working as his associate on financing transactions with financial institutions and banks as your main clients. Can you talk a bit about how the skills that you learned, the transactional kind of deal lawyering skills, translated when you moved over to be a tax associate? What kinds of similarities did you find?

**Eric:**

Sure. And you're right, working with Allen, it was almost entirely syndicated, leveraged lending, so, in particular, lending the funds to finance private equity buyouts of companies—very large loans, syndicated, etc. And there were any number of things which were incredibly important. One of which was simply attention to detail. The credit agreements, the loan documentation for those sorts of transactions is extremely intricate. If you've ever had the pleasure of reading one, you would see, unlike a typical contract where there are a few pages of defined terms, a credit agreement has dozens upon dozens of pages of defined terms, interlocking financial concepts. And it's not the sort of thing you can just scan and eyeball and be confident you've gotten anything right. It commands a deep, deep attention to detail.

And then, on top of that, you've got just drafting. As part of that attention to detail is precision in drafting. And then, in addition, we sometimes call them "soft skills" that transactional lawyers need to have to be very successful. The ability to distill things down for a client. The client will not sit through a half an hour of discourse on a defined term. They need to understand the commercial issue, what the stakes are, what the alternatives are, and what you, the lawyer, think they ought to do. And that is tremendously helpful in the tax practice. Obviously, the intricacies of the tax law and the sort of things we work on require attention to all the fine points, understanding all the facts that are involved in your situation, not losing track of anything, because the wrong tax answer can be enormously consequential. And then having done all that hard work internally—reading everything, researching everything, getting to the right answer—explaining to a client is a completely different matter. Again, they don't want you to spend an hour reading to them what will sound like a treatise on some obscure and complex tax provision. They want to know what the stakes are. They want to know what the risks are and what you think the right answer to the problem is.

**Len:** That's interesting. There's a lot of similarities, and it's easy to see how that translates to a tax practice. My experience as a tax associate, and I gather yours too, is that you're not quite the center of the transaction anymore, you're one of the spokes that's coming into the hub, which is the Corporate Department and maybe the lead corporate associate. What kind of adjustments did you feel like you had to make as you were transitioning to a specialty area? Still requiring a lot of technical expertise and mastery over a subject area, but yet, working on more matters at once and kind of being on the periphery of many of them? What was that transition like?

**Eric:** You certainly sense that you are not in charge. In a typical corporate transaction, it's the corporate lawyers who are the vanguard. They are keeping track of all the different subject matter experts and pieces, the timeline. They're the organizers. They handle the logistics of the transaction. And as a specialist, you are not going to be that person, whether it's tax, exec comp or anything else. You are not that person. Offsetting that is the fact that, as a business matter, the Tax Department of a firm is going to be much smaller than the Corporate Department. And even though you are not in charge of any particular transaction, you are working on many, many more at any given time than your colleagues on the corporate side. And so, you're replacing a skill set, a sort of logistics and management skill set that the corporate team will have. They're managing lots of pieces of one transaction and you're replacing that with a different organizational skill or requirement, which is to organize and manage yourself, so that you're keeping up with half a dozen transactions each with their own set of complexities, their own issues, and making sure all those are handled properly. Whereas, each of those transactions will have a lead corporate lawyer, who is managing many, many pieces of one transaction.

**Len:** Interesting. So, Eric, we first met in the fall of 2003 when I was a law student and I was doing my call-back interviews at Cravath. And in the afternoon, you interviewed me for a summer associate job, and I suppose that went well. I remember at the time you were a pretty senior tax associate and you were very, very busy. You were working on a private letter ruling filing, as I recall. By the time I became a summer associate the following summer, and then by the time I started in the fall of 2005, you were the senior associate in the department in this totally new field. It wasn't even quite its own department yet in the Firm, which we call ECB, Executive Compensation and Benefits. Something must have happened in those couple of years that made you transition to do that kind of work and start building out what has now become a very full department, kind of a sibling, in the Tax Department. Tell us about that process.

**Eric:** Yeah, it's unusual. I was as surprised as anyone. So I was a couple of years away from the end of my associate career—a senior tax associate, things are going well. And, unbeknownst to me, because I wasn't in the inner circle when any of these decisions were made, the Firm had decided it needed a standalone Executive Compensation and Benefits Department. If you look at it from a broader legal industry standpoint, what is done today in exec comp departments, in basically all law firms, was originally done by corporate lawyers with the assistance of a tax department. Just like any other transaction really.

If you go back 30 years, CEOs didn't need specialists. Boards and compensation committees didn't need specialists. An employment agreement was just another type of contract. There were very few special legal rules in those days and very little public disclosure for public companies. And the tax rules were, frankly, ancient. There was nothing new or terribly interesting about when an option was taxable or when a bonus was taxable or how you had to write them. And starting with a series of corporate scandals, including some from the 1980s, others in the '90s—Enron, in particular—and related scandals in the early 2000s led to, on the

tax side, an array of new tax provisions specific to executive pay. And they dictated not just the percentage tax rates, but how contracts and plans and mergers had to be written. And sometimes, in enormous detail. Some of the regulations I'm talking about here run into the hundreds of pages. On top of that, you had a huge shift in the disclosure world, at least for public companies, a shift in the disclosure world which empowered institutional investors to start to dictate terms to boards and compensation committees. Also, backstopped by the so-called "Say-on-Pay" vote, where investors and shareholders get to vote on, indirectly approve or disapprove of the compensation packages of the senior executives of really every public company in America. And so, the exec comp field, sort of the bottom line—how people are paid and how much they're paid—was being regulated directly by the Tax Code, indirectly through institutional investor pressure, empowered by disclosure and things like Say-on-Pay votes and the market. What was done, how it was done, what was normal—what was market, as they say—became a real specialty. And a corporate lawyer on their own, who didn't do it full-time, would be lost, would not know what was market, you would expect, would blunder into a tax disaster. And that's really the business rationale and the underlying currents that have created this exec comp practice, which is distinct basically everywhere.

**Len:** So the Firm sort of tapped you to become an expert in that substantive area and then, over time, I suppose, made plans to have you build out the department. You made partner in, I guess, the fall of '05, because I was a first-year associate when that happened. And since then, the department has added three other partners—Jen Conway, Jonathan Katz, who actually started in the tax group as a tax associate himself, and Matthew Bobby. So now there are four ECB partners. Can you talk about, over the last decade or so, besides doing the work and getting the deals done, what kind of experiences you've had building out the department and, sort of, shaping the group in the way that you have?

**Eric:** Yeah. It was a fantastic opportunity. It was presented to me as sort of an offer I couldn't refuse. Literally, the way it happened was I got a phone call from Steve Gordon's secretary asking me to come down to his office. I was working for him at the time, so I grabbed a pad and a pencil and walked down to his office. That was the normal procedure, as you know, Len, for, "I have a new deal that I need you to work on, here are the details." And, instead, two of the other tax partners were there. That sort of scenario is normally the, "It's time for you to leave." You know, "Thanks for all your hard work. It's time for you to find a new job."

**Len:** Well, it's certainly very good or very bad.

**Eric:** Yeah. Maybe being a lawyer, my issue spotting radar says, "This is bad. Nothing good's going to happen."

**Len:** So you sit down?

**Eric:** Yeah, and was told, essentially, "We want to have a separate exec comp practice. The Corporate Department wants it. We want it, and we view the field as being a hybrid of transactional corporate legal expertise and tax expertise. You have a couple of years of transactional corporate expertise under your belt." And, at that point, I think, three years as a tax lawyer. So, "You have the hybrid skill set. So, why don't you spend the next couple of years learning this practice and we'll see what happens."

**Len:** Did you say yes right away? Did you take a deep breath and sleep on it? What was your reaction?

**Eric:** I said, "I need some time to think about it and I will get back to you within a week or less." I talked to my wife, talked to some friends, talked to Allen Parker, talked to a few other people and came back and accepted enthusiastically. I was off to the races from there. In those days—so, that's '04—some of these additional complexities I talked about earlier on the disclosure side, institutional investors, etc., even some of what is now the worst of the tax issues we deal with, weren't on the books yet. So the timing was perfect. It was a simple enough field to be able to get up to speed pretty quickly. And then, as all these additional complexities occurred, I was there. And some others, like Jen Conway who was with us—she was a junior associate at the time I was a senior associate—she was there as well. We kind of all learned it together. It's one of the great things about a new practice area. Unlike, I would say—and tell me if you disagree—unlike normal corporate tax practice, where some of the tax rules you deal with go back to not just the '86 code, but some of them you can find back in the code of '54 and, some of them, even earlier.

**Len:** Right, right.

- Eric:** There is case law that's 50 years old that still matters today. And how does a new lawyer fresh out of law school digest all of that? For this practice area, the exec comp area, it was a matter of just keeping up with new developments, and it enabled us—all of us in the group—to be on top of everything because we were there to see it as it was born.
- Len:** You're right. I mean, the tax practice—many concepts we deal with in the tax practice—are ancient and relatively stable, and, of course, in 2017, the Tax Cuts and Jobs Act changed a lot of what we deal with and changed some foundations of the tax system, but still some of the basic principles we deal with really haven't changed. One of the interesting things I've observed over the course of my career is the extent to which the tax and the ECB practices overlap, which can be substantial, and the extent to which they're very different, they don't overlap at all. Some of what you and your group does is very much like a corporate practice with the disclosure work and the SEC filings and things like this. And then our teams will join arm-in-arm and work on some issue that is really kind of connected to tax deductions for some executive comp issue and it's sort of both. We joke with each other from time to time, "Well, this is a benefits issue, Eric," and he'll say, "No, Len, this is a tax issue." And we'll fight over it, and neither of us will give ground.
- Eric:** Exactly. Yeah. No, for sure.
- Len:** Can you tell us, now that you've worked in the corporate group and the tax group and the ECB group, particularly with respect to tax lawyers, what do you think the most effective tax lawyers do well? Certainly our own internal lawyers, associates and partners, but also from other firms, what kinds of skills and characteristics do you observe in very effective tax practitioners?
- Eric:** Really, I think it's the same couple of things that lawyers in every practice area need to have to be able to operate at the highest level. I'll distill it to two. And that is the ability to explain the matters they are working on in short, clear, concise ways. There is an enormous premium for every type of lawyer to be able to explain what's going on as simply and briefly as possible. And the second thing I would say is the ability to give commercial recommendations. It's not simply to explain an issue, to explain pros and cons, risks and rewards. That's just summarizing. And it's critical, the client can't make a decision unless they know what those things are. But to also give the client direction as to what these things really mean, what the risks really are, how they should think about them, how they should weigh them and to be a partner with the client to reaching the best decision, the optimal decision, in the circumstances.
- Len:** That point is important. It's sort of the difference between just being a legal analyzer and an advisor, a trusted advisor. It's one thing to summarize the law—and you've got to get that right. You're right. But clients want to know, "What should I do?" Or, "You understand this tax risk or this legal risk better than I do. Would you do this if you were running the company?" They want to know the answer to that question, and it helps them to be able to hear from you, "Look, this is a substantial risk, but I think I would do this, I think I could live with this risk." Or to see a stop sign put up instead. I think they really value that. That's a good observation.
- Eric:** Yes. It's a question we ask people all the time. You see a doctor, "What would you do if you were me?" We ask that question of all sorts of advisors of different kinds, in different ways. And I think for a lot of people, it seems out of place to think of that question being asked for something like a billion-something-dollar transaction, or an issue with a billion-dollar tax consequence associated with it. "What would you do if you were me?" But that really is the basic thing every advisor is answering.
- Len:** That's for sure. It has to do with professional skill and expertise, no matter the field. As you say, medicine or law, but also when somebody comes to fix my water heater, they'll tell me all the stuff that is wrong with it or that I might do with it, but sometimes I just say to them, "If it were your house, would you replace it or would you do this work-around you are describing?" A lot of times you get the best advice when you ask that question.
- Eric:** Yeah, exactly.
- Len:** Eric, in the few minutes we have left, I wonder if we can talk about some non-tax things. I'm curious about what you like to do in your spare time, what your interests are, your hobbies. Do you have any?

**Eric:** The main thing that I do when I've got spare time is, I like to work with my hands. The law job consists of reading, writing and talking. Just endless amounts of reading, writing and talking. That's a lawyer's job. And thinking, obviously. It's not a physical product that we supply to our clients. There's paper, but really it's ideas and concepts and things, and the paper is what we are producing if you think of it. What is the widget we sell? It's ideas and thinking. I like to go the opposite direction from that. A long time ago, for no particular reason, I got the idea of—I have a big, unfinished basement, which no one else in my family likes because it's cold and sort of gross. But it's mine, and so I've set up a workshop there. And I make furniture, period American furniture. I don't make it quickly. My current project is a reproduction of a Louis XV style desk that George Washington had made for him when he was the first president and the Capitol was New York City. If you've ever done the tour of City Hall downtown, they'll walk you through a room and there's a—it's really the only thing in the room, they've taken everything else out—but there's a big mahogany desk sitting there that they'll show you. And I am in the process of finishing the drawers. And when those are done, then I can oil it, shellac it and then figure out how to get it out of the basement, which is going to be a bigger problem, I think, than building the desk. I didn't measure everything very carefully, so I'm gonna have to take some doors out to be able to get it upstairs.

**Len:** Are you working off of photographs or designs that you've drawn or that you found somewhere?

**Eric:** Yeah, a lot of period pieces of significance have been measured and mapped out. So, yeah, there are tons of photographs and measurements and whatnot, and the interior structure kind of doesn't matter. There are a handful of ways you can put it all together, and they don't affect the exterior visual look of it.

**Len:** Is your plan for this particular piece to use it yourself when it's finished?

**Eric:** Yes, that's the idea. It will be in the office at some point.

**Len:** Well, that's fascinating and, in some respects, there's the same sort of level of attention to detail and mastery of craft that we talked about when we were talking about just paper and ideas in the tax world. That's great.

Eric, it's been a pleasure to have you. Thanks so much for joining us.

**Eric:** You're welcome. Thanks, Len. Nice to talk to you.

**Len:** That's all for this episode of On Tax—A Cravath Podcast. You can find us online at [cravath.com/podcast](http://cravath.com/podcast), and don't forget to subscribe on Apple Podcasts, Google Podcasts or Spotify. I'm your host, Len Teti. Thanks for listening.