

## MARJORIE R. ROBERTS

Principal

Marjorie Rawls Roberts PC

St. Thomas, U.S. Virgin Islands

# A HARBOR VIEW

It's a Saturday afternoon and I'm sitting in my office in Charlotte Amalie, St. Thomas. I'm on the second floor of a building overlooking the harbor that I can see through my floor-to-ceiling windows.

While my view is perhaps the best in the United States for any tax attorney, the work on my desk is similar to that of my peers on the mainland. I'm working on submissions for audits that the IRS has been conducting for several years to determine the residency of about 200 individual taxpayers. I have applications to review before submission to the territory's Economic Development Commission, which grants tax incentives to qualifying businesses. I have memoranda to complete.

Much of what I do involves explaining and applying the combination of a "mirror" tax code and the Internal Revenue Code. In the Virgin Islands, the Internal Revenue Code applies but "USVI" is substituted for "the United States." Tax revenues remain here, except for estate and gift taxes and employment taxes. Because the territory is outside of the U.S. customs zone, federal excise taxes don't apply. Local customs duties trace back to Danish sovereignty. The unique aspects of taxation here continue to fascinate me.

The career path to my own firm—and to my office overlooking a beautiful, cruise ship-filled Caribbean harbor—was a combination of fluke and of making less traditional choices. At the same time, however, it was in a real sense very traditional, too—I worked hard at jobs that helped me to develop the skills and

connections that are critical in a small firm practice.

First, the fluke. In 1977, during my first year at Harvard Law, I happened to peruse Martindale-Hubbell one day. I noticed that the territory of Guam—“where America’s day begins” in the far-western Pacific—had several law firms. I sent a resume. About a week later, I got a response—and a summer job offer.

It was a small, general practice firm, but at one point I was assigned a tax matter to research. I hadn’t taken tax law yet but was fascinated by the “mirror” concept, which applies to Guam, too. At Smith College I’d majored in government and immediately loved the policy aspects of not just of “mirror” taxation, but the decisions that Congress and the Internal Revenue Service make through the tax system in the broader sense.

Returning to Harvard I immediately took “baby tax” from one of the great tax gurus, Stanley Surrey. I was quickly hooked. Eventually I took most of the tax courses that were offered at the time. I wrote my third year paper—which is in my desk next to me today although I can’t bring myself to reread it—on the taxation of foreign investment in U.S. territories.

My summer on Guam was followed by some additional non-traditional choices. I spent the second summer of law school clerking for Coudert Brothers in Paris, then went to Cambridge (England, this time) for a degree in international law. I worked at Gibson Dunn & Crutcher’s London office in a practice that mixed tax and general commercial law.

Later, having transferred to Gibson Dunn’s Washington office, I spent three years as a tax associate before doing what many associates in D.C. firms do—I went into government service. There were openings at the Tax Legislative Counsel’s office at Treasury; that’s where I ended up. It was just before the passage of the Tax Reform Act of 1986.

Most people leave the Tax Legislative Counsel’s office after a few years for large law firms or accounting firms, but I’d met my now-husband, who happened to be looking to leave his own large firm. Consequently, in late 1987 we found ourselves considering several U.S. territories where there were both tax and litigation opportunities, which I suggested due to my fond memories of my summer in Guam. We found what we were looking for in the Virgin Islands and took the plunge.

I’ve now been in the Virgin Islands for more than 20 years. However, I didn’t open my own firm immediately. It took some years and two key positions before I was able to comfortably hang out my shingle and begin developing a tax practice. (While the positions I took were uniquely Caribbean, their counterparts exist anywhere for attorneys seeking to develop skills before going solo.)

First, I worked as Technical Advisor, then as Chief Counsel, for the Virgin Islands Bureau of Internal Revenue. For seven years I served as the territory’s appeals officer, drafted legislation, and worked with the IRS and Treasury on

“possessions issues” (which also allowed me to maintain my Washington contacts). I testified, wrote articles as a contributing editor for *Tax Notes International* and *State Tax Notes*, spoke at conferences, assisted in collection matters, and drafted briefs to the Third Circuit Court of Appeals. In short, I learned every aspect of tax law as applied in the Virgin Islands, from the earned income tax credit rules to issues raised in applying the Code’s reorganization provisions in a “mirror” context.

Second, I served as Vice President and General Counsel for a fund manager that set up operations under the territory’s economic development program and that managed funds investing in South America. While there I focused on the program and came to appreciate its benefits in terms of employment, financial contributions, and brain-drain reversal. I learned the program’s rules, from the forms to the bidding process to calculation of the tax credit.

Finally, beginning in 1999 (first part-time, then full-time), I transitioned to my own practice. It has grown steadily ever since, largely due to a continually growing client base of companies seeking economic development benefits or clarification of the application of local and “mirror” taxes.

There has been other work as well. For example, the USVI was the major jurisdiction for foreign sales corporations until they were basically eliminated under WTO pressure. I spoke at FSC/DISC tax conferences for ten years. Although FSCs no longer exist for all practical purposes, the contacts I made during the “FSC years” have led to other work and speaking engagements.

I’ve also been involved with Virgin Islands exempt companies, which led to the territory being the only U.S. jurisdiction ever included on the OECD tax havens “blacklist” (we’re off now and should never have been on). Moreover, four years ago the Service began an extensive audit project involving Virgin Islands taxpayers to determine if claims of residency were bona fide.

The best thing about heading a small firm is the flexibility. I have crafted the firm that I always wanted to work for. I focus on ability in hiring, but also look for a sense of humor and a willingness to pitch in until the task at hand (whatever it may be) is done. Presently I have five associates, three of whom specialize in tax, one in estate planning, and one in real estate and general corporate work. I ask my employees to work hard (as I do), but I also encourage them to take a few Fridays off to sail in various regattas, for example. I offer lots of client contact and basically tell my associates to let me know when there’s a problem. I make everyone take four weeks of vacation, remembering stories of mainland firms where offered vacation and taken vacation rarely coincided.

My firm gets clients from a number of sources. We get many referrals from “stateside” lawyers, including a good many from law school classmates. We get referrals as a result of writing articles, both due to people seeking advice on the specific issues addressed and also simply because the existence of publications makes us easier to find when people search “USVI taxes” on the internet. I speak whenever asked—at conferences sponsored by the ABA Tax Section, the

International Bar Association, and the International Tax Planning Association, among many others. Each organization has its constituencies. Every constituent is a potential client.

In advising young attorneys who may be considering solo or small firm practice, especially in a place that might be considered “off the beaten path” such as the eastern Caribbean, I’d make several suggestions.

First, if you want to be your own boss, get broad experience first. You may not need each of big firm, governmental and in-house counsel experience, but time invested in different settings gives you the connections, the expertise, and the confidence to go out on your own. Also, after working in a number of different capacities, you’ll have gained the perspective to understand what you are—or aren’t—missing as a solo practitioner or member of a small firm. (Frankly, I can’t imagine working for anyone else in the practice of law at this point.)

Second, develop expertise, then write and lecture about it. I leave the corporate tax matters to my associates, but I love territorial tax issues and look for opportunities to write about them. There are any number of legal and tax publications always looking for articles.

Third, go with your gut—whether in accepting clients, hiring associates, or making the decision to expand your firm—but do your due diligence, too. I’ve rarely had a problem being paid by a client who was referred by a major law firm or accounting firm. But when potential clients walk through the door and don’t have established professional contacts, I know to be cautious.

Fourth, figure out what type of marketing and civic participation works for you. I like to speak at professional conferences and occasionally attend even when I’m not speaking. My associates joke about my five-card rule—I try to collect at least five business cards a day and contact those persons after the conference. I encourage my associates to attend law school reunions. My firm supports local charities and typically places notices in fund-raiser booklets. I often assist organizations in obtaining tax-exempt status without charge. We pay to be included in Martindale-Hubbell. However, we don’t advertise in local publications.

Fifth, be ready to evolve—which is much easier when practicing solo or in a smaller firm. My practice has grown from focusing almost exclusively on tax planning to maintaining a significant tax controversy practice because we had clients under audit and that led to new clients wanting our services as controversy attorneys. We’re now litigating as well and several of my associates came to the firm with litigation skills. My newest associates have accounting backgrounds, a critical element of a controversy practice that we needed to add.

Finally, have fun practicing law. There’s nothing better than a small firm where good-humored people enjoy each other’s company while working hard. And have a belly laugh or two at the end of a long day.