

In The News

# David Otero Comments on Tax Case Headed to U.S. Supreme Court with *Law360*

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David Otero spoke to *Law360* about the U.S. Supreme Court's agreement to hear oral arguments on *Rodriguez v. Federal Deposit Insurance Corp* and whether it will have an impact on tax law. According to the case, the FDIC, acting as receiver for United Western Bank, is at odds with *United Western Bancorp*, the bank's holding company, over who is entitled to a tax refund, which stems from a \$35.4 million loss that United Western Bank incurred in the 2010 tax year that it carried back to its 2008 tax year. However, the Tax Cuts and Jobs Act of 2017 limited the ability of companies to carry back net operating losses, preventing companies from generating tax refunds.

"The same exact issue was at issue in *NetBank* that's at issue here in *Rodriguez*, and that's who gets the federal income tax refund, where the parent bank holding company files a consolidated return that includes the losses of the subsidiary bank and, before the refund came, the bank holding company filed bankruptcy. But most of these cases have been decided because most of them have already made their way through the courts," said Otero.

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