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CORPORATIONS, PARTNERSHIPS, ESTATES & TRUSTS



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PREFACE

New to this Edition

INDIVIDUALS

- Complete updating of the chapter material for the provisions in the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) of 2019, the Taxpayer Certainty and Disaster Tax Relief Act of 2019, and subsequent guidance affecting individual taxpayers
- Complete updating of significant court cases and IRS rulings and procedures during 2019 and early 2020
- All tax rate schedules have been updated to reflect the rates and inflation adjustments for 2020
- Updating of the end-of-chapter tax return problems to 2019 (2019 tax forms are included because the 2020 tax forms were not available when this edition went to print)

CORPORATIONS

- Complete updating of the chapter material for the provisions in the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) of 2019, the Taxpayer First Act of 2019, the Taxpayer Certainty and Disaster Tax Relief Act of 2019, and subsequent guidance affecting corporations and other entities
- Complete updating of significant court cases and IRS rulings and procedures during 2019 and early 2020
- All tax rate schedules have been updated to reflect the rates and inflation adjustments for 2020
- Updating of the end-of-chapter tax return problems to 2019 (2019 tax forms are included because the 2020 tax forms were not available when this edition went to print)
- Expanded discussion of global intangible low-taxed income (GILTI) and foreign-derived intangible income (FDII) in Chapter C:16

Solving Teaching and Learning Challenges

The Rupert/Anderson/Hulse 2021 Series in Federal Taxation is appropriate for use in any first course in federal taxation, and comes in a choice of three volumes:

- Federal Taxation 2021: Individuals
- Federal Taxation 2021: Corporations, Partnerships, Estates & Trusts (the companion book to Individuals)
- Federal Taxation 2021: Comprehensive (available in eText only; 14 chapters from Individuals and 15 chapters from Corporations)
- The *Individuals* volume covers *all* entities, although the treatment is often briefer than in the *Corporations* and *Comprehensive* volumes. The *Individuals* volume, therefore, is appropriate for colleges and universities that require only one semester of taxation as well as those that require more than one semester of taxation. Further, this volume adapts the suggestions of the Model Tax Curriculum as promulgated by the American Institute of Certified Public Accountants
- The *Corporations*, *Partnerships, Estates & Trusts* and *Comprehensive* volumes contain three comprehensive tax return problems. Problem C:3-66 contains the comprehensive corporate tax return, Problem C:9-58 contains the comprehensive partnership tax return, and Problem C:11-62 contains the comprehensive S corporation tax return, which is based on the same facts as Problem C:9-58 so that students can compare the returns for these two entities
- The *Corporations*, *Partnerships, Estates & Trusts* and *Comprehensive* volumes contain sections called Financial Statement Implications, which discuss the implications of Accounting Standards Codification (ASC) 740. The main discussion of accounting for income taxes appears in Chapter C:3. The financial statement implications of other transactions appear in Chapters C:7, C:8, and C:16 (*Corporations* volume only)

Real-World Approach

The Pearson 2021 Series in Federal Taxation has an appropriate blend of technical content of the tax law with a high level of readability for students. It is focused on enabling students to apply tax principles within the chapter to real-life situations using many strong pedagogical aids:

Real-World Example

These comments relate the text material to events, cases, and statistics occurring in the tax and business environment. The statistical data presented in some of these comments are taken from the IRS's Statistics of Income at www.irs.gov.

Book-to-Tax Accounting Comparison

These comments compare the tax discussion in the text to the accounting and/or financial statement treatment of this material. Also, the last section of Chapter C:3 discusses the financial statement implications of federal income taxes.

What Would You Do in This Situation?

Unique to the Rupert/Anderson/Hulse series, these boxes place students in a decision-making role. The boxes include many *controversies* that are as yet unresolved or are currently being considered by the courts. These boxes make extensive use of **Ethical Material** as they represent choices that may put the practitioner at odds with the client.

Stop & Think

These “speed bumps” encourage students to pause and apply what they have just learned. Solutions for each issue are provided in the box.

Ethical Point

These comments provide the ethical implications of material discussed in the adjoining text. Apply what they have just learned.

Tax Strategy Tip

These comments suggest tax planning ideas related to material in the adjoining text.

Additional Comment

These comments provide supplemental information pertaining to the adjacent text.

Instructor Teaching Resources

This program comes with the following teaching resources.

Supplements available to instructors at www.pearsonhighered.com/pearsontax	Features of the Supplement
Instructor's Resource Manual authored by Mitchell Franklin from LeMoyne College and Joshua Coyne from University of Memphis	<ul style="list-style-type: none"> • Sample syllabi • Instructor outlines • Information regarding problem areas for students • Solutions to the tax form/tax return preparation problems
Instructor's Solutions Manual authored by Kenneth Anderson from University of Tennessee, David Hulse from University of Kentucky, and Timothy Rupert from Northeastern University	<ul style="list-style-type: none"> • Solutions to discussion questions • Solutions to problems • Solutions to comprehensive and tax strategy problems
Test Bank authored by Anthony Masino from East Tennessee State University and Ann Burstein Cohen from SUNY at Buffalo	Over 1,500 multiple-choice, true/false, short-answer, essays, and worked problems. <ul style="list-style-type: none"> • Type (Multiple-choice, true/false, short-answer, essay) • Page references to where content is found in the text
Computerized TestGen	TestGen allows instructors to: <ul style="list-style-type: none"> • Customize, save, and generate classroom tests • Edit, add, or delete questions from the Test Item Files • Analyze test results • Organize a database of tests and student results.
PowerPoint Presentations authored by Allison McLeod from University of North Texas	Slides include key graphs, tables, and equations in the textbook. PowerPoints meet accessibility standards for students with disabilities. Features include, but not limited to: <ul style="list-style-type: none"> • Keyboard and Screen Reader access • Alternative text for images • High color contrast between background and foreground colors
TaxAct 2019 Professional Software	Available online with Individuals, Corporations, and Comprehensive Texts—please contact your Pearson representative for assistance with the registration process. This user-friendly tax preparation program includes more than 80 tax forms, schedules, and worksheets. TaxAct calculates returns and alerts the user to possible errors or entries. Consists of Forms 990, 1040, 1041, 1065, 1120 and 1120-S.

Acknowledgments

Our policy is to provide annual editions and to prepare timely updated supplements when major tax revisions occur. We are most appreciative of the suggestions made by outside reviewers because these extensive review procedures have been valuable to the authors and editors during the revision process.

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Please send any comments to Kenneth E. Anderson, David S. Hulse, or Timothy J. Rupert.

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CHAPTER

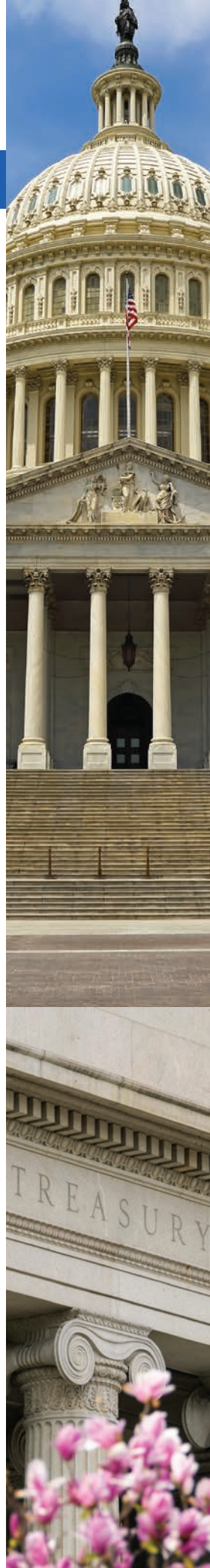
1

TAX RESEARCH

LEARNING OBJECTIVES

After studying this chapter, you should be able to

- 1** Distinguish between closed fact and open fact tax situations
- 2** Describe the steps in the tax research process
- 3** Explain how the facts influence tax consequences
- 4** Identify the sources of tax law and assess the authoritative value of each
- 5** Consult tax services to research an issue
- 6** Apply the basics of Internet-based tax research
- 7** Use a citator to assess tax authorities
- 8** Describe the professional guidelines that CPAs in tax practice should follow
- 9** Prepare work papers and communicate to clients



CHAPTER OUTLINE

Overview of Tax Research...1-2
 Steps in the Tax Research Process...1-3
 Importance of the Facts to the Tax Consequences...1-5
 The Sources of Tax Law...1-7
 Tax Services...1-25
 The Internet as a Research Tool...1-26
 Citators...1-28
 Professional Guidelines for Tax Services...1-30
 Sample Work Papers and Client Letter...1-34

This chapter introduces the reader to the tax research process. Its major focus is the sources of the tax law (i.e., the Internal Revenue Code and other tax authorities) and the relative weight given to each source. The chapter describes the steps in the tax research process and places particular emphasis on the importance of the facts to the tax consequences. It also describes the features of frequently used tax services and computer-based tax research resources. Finally, it explains how to use a citator.

The end product of the tax research process—the communication of results to the client—also is discussed. This text uses a hypothetical set of facts to provide a comprehensive illustration of the process. Sample work papers demonstrating how to document the results of research are included in Appendix A. The text also discusses two types of professional guidelines for CPAs in tax practice: the American Institute of Certified Public Accountants' (AICPA's) *Statements on Standards for Tax Services* (reproduced in Appendix E) and Treasury Department *Circular 230*.

OVERVIEW OF TAX RESEARCH

OBJECTIVE 1

Distinguish between closed fact and open fact tax situations

Tax research is the process of solving tax-related problems by applying tax law to specific sets of facts. Sometimes it involves researching several issues and often is conducted to formulate tax policy. For example, policy-oriented research would determine how far the level of charitable contributions might decline if such contributions were no longer deductible. Economists usually conduct this type of tax research to assess the effects of government policy.

Tax research also is conducted to determine the tax consequences of transactions to specific taxpayers. For example, client-oriented research would determine whether Smith Corporation could deduct a particular expenditure as a trade or business expense. Accounting and law firms generally engage in this type of research on behalf of their clients.

This chapter deals only with client-oriented tax research, which occurs in two contexts:

1. **Closed fact or tax compliance situations:** The client contacts the tax advisor after completing a transaction or while preparing a tax return. In such situations, the tax consequences are fairly straightforward because the facts cannot be modified to obtain different results. Consequently, tax saving opportunities may be lost.

ADDITIONAL COMMENT

Closed-fact situations afford the tax advisor the least amount of flexibility. Because the facts are already established, the tax advisor must develop the best solution possible within certain predetermined constraints.

EXAMPLE C:1-1 ►

Tom informs Carol, his tax advisor, that on November 4 of the current year, he sold land held as an investment for \$500,000 cash. His basis in the land was \$50,000. On November 9, Tom reinvested the sales proceeds in another plot of investment property costing \$500,000. This is a closed fact situation. Tom wants to know the amount and the character of the gain (if any) he must recognize. Because Tom solicits the tax advisor's advice after the sale and reinvestment, the opportunity for tax planning is limited. For example, the possibility of deferring taxes by using a like-kind exchange or an installment sale is lost. ◀

ADDITIONAL COMMENT

Open-fact or tax-planning situations give a tax advisor flexibility to structure transactions to accomplish the client's objectives. In this type of situation, a creative tax advisor can save taxpayers dollars through effective tax planning.

2. **Open fact or tax planning situations:** Before structuring or concluding a transaction, the client contacts the tax advisor to discuss tax planning opportunities. Tax-planning situations generally are more difficult and challenging because the tax advisor must consider the client's tax and nontax objectives. Most clients will not engage in a transaction if it is inconsistent with their nontax objectives, even though it produces tax savings.

EXAMPLE C:1-2 ►

Diane is a widow with three children and five grandchildren and at present owns property valued at \$30 million. She seeks advice from Carol, her tax advisor, about how to minimize her estate taxes and convey the greatest value of property to her descendants. This is an open-fact situation. Carol could advise Diane to leave all but \$11.58 million of her property to a charitable organization so that her estate would owe no estate taxes. Although this recommendation would eliminate Diane's estate taxes, Diane is likely to reject it because she wants her children or grandchildren to be her primary beneficiaries. Thus, reducing estate

taxes to zero is inconsistent with her objective of allowing her descendants to receive as much after-tax wealth as possible. ▶

TAX STRATEGY TIP

Taxpayers should make investment decisions based on after-tax rates of return or after-tax cash flows.

ADDITIONAL COMMENT

It is important to consider nontax as well as tax objectives. In many situations, the nontax considerations outweigh the tax considerations. Thus, the plan eventually adopted by a taxpayer may not always be the best when viewed strictly from a tax perspective.

When conducting research in a tax planning context, the tax professional should keep a number of points in mind. First, the objective is not to minimize taxes per se but rather to maximize a taxpayer's after-tax return. For example, if the federal income tax rate is a constant 30%, an investor should not buy a tax-exempt bond yielding 5% when he or she could buy a corporate bond of equal risk that yields 9% before tax and 6.3% after tax. This is the case even though his or her explicit taxes (actual tax liability) would be minimized by investing in the tax-exempt bond.¹ Second, taxpayers typically do not engage in unilateral or self-dealing transactions; thus, the tax ramifications for all parties to the transaction should be considered. For example, in the executive compensation context, employees may prefer to receive incentive stock options (because they will not recognize income until they sell the stock), but the employer may prefer to grant a different type of option (because the employer cannot deduct the value of incentive stock options upon issuance). Thus, the employer might grant a different number of options if it uses one type of stock option versus another type as compensation. Third, taxes are but one cost of doing business. In deciding where to locate a manufacturing plant, for example, factors more important to some businesses than the amount of state and local taxes paid might be the proximity to raw materials, good transportation systems, the cost of labor, the quantity of available skilled labor, and the quality of life in the area. Fourth, the time for tax planning is not restricted to the beginning date of an investment, contract, or other arrangement. Instead, the time extends throughout the duration of the activity. As tax rules change or as business and economic environments change, the tax advisor must reevaluate whether the taxpayer should hold onto an investment and must consider the transaction costs of any alternatives.

One final note: the tax advisor should always bear in mind the financial accounting implications of proposed transactions. An answer that may be desirable from a tax perspective may not always be desirable from a financial accounting perspective. Though interrelated, the two fields of accounting have different orientations and different objectives. Tax accounting is oriented primarily to the Internal Revenue Service (IRS). Its objectives include calculating, reporting, and predicting one's tax liability according to legal principles. Financial accounting is oriented primarily to shareholders, creditors, managers, and employees. Its objectives include determining, reporting, and predicting a business's financial position and operating results according to Generally Accepted Accounting Principles. Because tax and financial accounting objectives may differ, planning conflicts could arise. For example, management might be reluctant to engage in tax reduction strategies that also reduce book income and reported earnings per share. Success in any tax practice, especially at the managerial level, requires consideration of both sets of objectives and orientations.

STEPS IN THE TAX RESEARCH PROCESS

OBJECTIVE 2

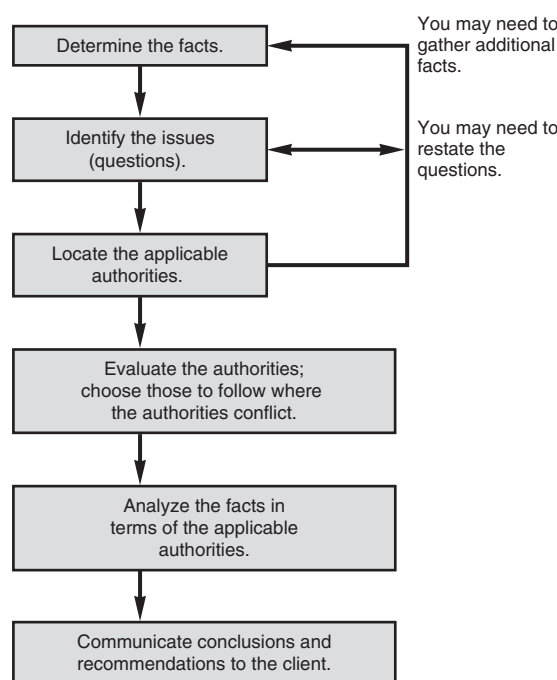
Describe the steps in the tax research process

In both open- and closed-fact situations, the tax research process involves six basic steps:

1. Determine the facts.
2. Identify the issues (questions).
3. Locate the applicable authorities.
4. Evaluate the authorities and choose those to follow where the authorities conflict.
5. Analyze the facts in terms of the applicable authorities.
6. Communicate conclusions and recommendations to the client.

¹ For an excellent discussion of explicit and implicit taxes and tax planning see M. M. Erickson, M. L. Hanlon, E. L. Maydew, and T. J. Shevlin, *Scholes & Wolfson's Taxes and Business Strategy* (Cambridge Business Publishers, 2020). Also see Chapter I:18 of the *Individuals* volume. An

example of an implicit tax is the excess of the before-tax earnings on a taxable bond over the risk-adjusted before-tax earnings on a tax-favored investment (e.g., a municipal bond).

**FIGURE C:1-1** ► STEPS IN THE TAX RESEARCH PROCESS**ADDITIONAL COMMENT**

The steps of tax research provide an excellent format for a written tax communication. For example, a good format for a client memo includes (1) statement of facts, (2) list of issues, (3) discussion of relevant authority, (4) analysis, and (5) recommendations to the client of appropriate actions based on the research results.

TYPICAL MISCONCEPTION

Many taxpayers think the tax law is all black and white. However, most tax research deals with gray areas. Ultimately, when confronted with tough issues, the ability to develop strategies that favor the taxpayer and then to find relevant authority to support those strategies will make a successful tax advisor. Thus, recognizing planning opportunities and avoiding potential traps is often the real value added by a tax advisor.

Although the above outline suggests a linear approach, the tax research process often is circular. That is, it does not always proceed step-by-step. Figure C:1-1 illustrates a more accurate process, and Appendix A provides a comprehensive example of this process.

In a closed-fact situation, the facts have already occurred, and the tax advisor's task is to analyze them to determine the appropriate tax treatment. In an open-fact situation, by contrast, the facts have not yet occurred, and the tax advisor's task is to plan for them or shape them so as to produce a favorable tax result. The tax advisor performs the latter task by reviewing the relevant legal authorities, particularly court cases and IRS rulings, all the while bearing in mind the facts of those cases or rulings that produced favorable results compared with those that produced unfavorable results. For example, if a client wants to realize an ordinary loss (as opposed to a capital loss) on the sale of several plots of land, the tax advisor might consult cases involving similar land sales. The advisor might attempt to distinguish the facts of those cases in which the taxpayer realized an ordinary loss from the facts of those cases in which the taxpayer realized a capital loss. The advisor then might recommend that the client structure the transaction based on the fact pattern in the ordinary loss cases.

Often, tax research involves a question to which no clearcut, unequivocally correct answer exists. In such situations, probing a related issue might lead to a solution pertinent to the central question. For example, in researching whether the taxpayer may deduct a loss as ordinary instead of capital, the tax advisor might research the related issue of whether the presence of an investment motive precludes classifying a loss as ordinary. The solution to that issue might be relevant to the central question of whether the taxpayer may deduct the loss as ordinary.

Identifying the issue(s) to be researched often is the most difficult step in the tax research process. In some instances, the client defines the issue(s) for the tax advisor, such as where the client asks, "May I deduct the costs of a winter trip to Florida recommended by my physician?" In other instances, the tax advisor, after reviewing the documents submitted to him or her by the client, identifies and defines the issue(s) himself or herself. Doing so presupposes a firm grounding in tax law.²

² Often, in an employment context, supervisors define the questions to be researched and the authorities that might be relevant to the tax consequences.

Once the tax advisor locates the applicable legal authorities, he or she might have to obtain additional information from the client. Example C:1-3 illustrates the point. The example assumes that all relevant tax authorities are in agreement.

EXAMPLE C:1-3 ▶

Mark calls his tax advisor, Al, and states that he (1) incurred a loss on renting his beach cottage during the current year and (2) wonders whether he may deduct the loss. He also states that he, his wife, and their minor child occupied the cottage only eight days during the current year.

This is the first time Al has dealt with the Sec. 280A vacation home rules. On reading Sec. 280A(d), Al learns that a loss is *not* deductible if the taxpayer used the residence for personal purposes for longer than the greater of (1) 14 days or (2) 10% of the number of days the unit was rented at a fair rental value. He also learns that the property is *deemed* to be used by the taxpayer for personal purposes on any days on which it is used by any member of his or her family (as defined in Sec. 267(c)(4)). The Sec. 267(c)(4) definition of family members includes brothers, sisters, spouse, ancestors (e.g., parents and grandparents), or lineal descendants (e.g., children and grandchildren).

Mark's eight-day use is not long enough to make the rental loss nondeductible. However, Al must inquire about the number of days, if any, Mark's brothers, sisters, or parents used the property. (He already knows about use by Mark, his spouse, and his lineal descendants.) In addition, Al must find out how many days the cottage was rented to other persons at a fair rental value. Upon obtaining the additional information, Al proceeds to determine how to calculate the deductible expenses. Al then derives his conclusion concerning the deductible loss, if any, and communicates it to Mark. (This example assumes the passive activity and at-risk rules restricting a taxpayer's ability to deduct losses from real estate activities will not pose a problem for Mark. See Chapter I:9 for a comprehensive discussion of these topics.) ◀

Many firms require that a researcher's conclusions be communicated to the client in writing. Members or employees of such firms may answer questions orally, but their oral conclusions should be followed by a written communication. According to the AICPA's *Statements on Standards for Tax Services* (reproduced in Appendix E),

Although oral advice may serve a taxpayer's needs appropriately in routine matters or in well-defined areas, written communications are recommended in important, unusual, substantial dollar value, or complicated transactions. The member may use professional judgment about whether, subsequently, to document oral advice.³

In addition, Treasury Department *Circular 230* covers all written advice communicated to clients. These requirements are more fully discussed at the end of this chapter and in Chapter C:15.

IMPORTANCE OF THE FACTS TO THE TAX CONSEQUENCES

OBJECTIVE 3

Explain how the facts influence tax consequences

Many terms and phrases used in the Internal Revenue Code (IRC) and other tax authorities are vague or ambiguous. Some provisions conflict with others or are difficult to reconcile, creating for the researcher the dilemma of deciding which rules are applicable and which tax results are proper. For example, as a condition to claiming another person as a dependent, the taxpayer must provide a certain level of support for such person.⁴ Neither the IRC nor the Treasury Regulations define "support." This lack of definition could be problematic. For example, if the taxpayer purchased a used automobile costing \$8,000 for an elderly parent whose only source of income is \$7,800 in Social Security benefits, the question of whether the expenditure constitutes support would arise. The tax advisor would have to consult court opinions, revenue rulings, and other IRS pronouncements to ascertain the legal meaning of the term "support." Only after thorough research would the meaning of the term become clear.

³ AICPA, *Statement on Standards for Tax Services*, No. 7, "Form and Content of Advice to Taxpayers," 2010 (updated in 2018 to include required citations), Para. 6.

⁴ Sec. 152(e)(1)(A) and Sec. 152(d)(1)(C).

In other instances, the legal language is quite clear, but a question arises as to whether the taxpayer's transaction conforms to a specific pattern of facts that gives rise to a particular tax result. Ultimately, the peculiar facts of a transaction or event determine its tax consequences. A change in the facts can significantly change the consequences. Consider the following illustrations:

Illustration One

Facts: A holds stock, a capital asset, that he purchased two years ago at a cost of \$1,000. He sells the stock to B for \$920. What are the tax consequences to A?

Result: Under Sec. 1001, A realizes an \$80 capital loss. He recognizes this loss in the current year. A must offset the loss against any capital gains recognized during the year. Any excess loss is deductible from ordinary income up to a \$3,000 annual limit.

Change of Facts: A is B's son.

New Result: Under Sec. 267, A and B are related parties. Therefore, A may not recognize the realized loss. However, B may use the loss if she subsequently sells the stock at a gain.

Illustration Two

Facts: C donates to State University ten acres of land that she purchased two years ago for \$10,000. The fair market value (FMV) of the land on the date of the donation is \$25,000. C's adjusted gross income is \$100,000. What is C's charitable contribution deduction?

Result: Under Sec. 170, C is entitled to a \$25,000 charitable contribution deduction (i.e., the FMV of the property unreduced by the unrealized long-term gain).

Change of Facts: C purchased the land 11 months ago.

New Result: Under the same IRC section, C is entitled to only a \$10,000 charitable contribution deduction (i.e., the FMV of the property reduced by the unrealized short-term gain).

Illustration Three

Facts: Acquiring Corporation pays Target Corporation's shareholders one million shares of Acquiring voting stock. In return, Target's shareholders tender 98% of their Target voting stock. The acquisition is for a bona fide business purpose. Acquiring continues Target's business. What are the tax consequences of the exchange to Target's shareholders?

Result: Because the transaction qualifies as a reorganization under Sec. 368(a)(1)(B), Target's shareholders are not taxed on the exchange, which is solely for Acquiring voting stock.

Change of Facts: In the transaction, Acquiring purchases the remaining 2% of Target's shares with cash.

New Result: Under the same IRC provision, Target's shareholders are now taxed on the exchange, which is not solely for Acquiring voting stock.

CREATING A FACTUAL SITUATION FAVORABLE TO THE TAXPAYER

TYPICAL MISCONCEPTION

Many taxpayers believe tax practitioners spend most of their time preparing tax returns. In reality, providing tax advice that accomplishes the taxpayer's objectives is one of the most important responsibilities of a tax advisor. This latter activity is tax consulting as compared to tax compliance.

Based on his or her research, a tax advisor might recommend to a taxpayer how to structure a transaction or plan an event so as to increase the likelihood that related expenses will be deductible. For example, suppose a taxpayer is assigned a temporary task in a location (City Y) different from the location (City X) of his or her permanent employment. Suppose also that the taxpayer wants to deduct the meal and lodging expenses incurred in City Y as well as the cost of transportation thereto. To do so, the taxpayer must establish that City X is his or her tax home and that he or she temporarily works in City Y. (Section 162 provides that a taxpayer may deduct travel expenses while "away from home" on business. A taxpayer is deemed to be "away from home" if his or her employment at the new location does not exceed one year, i.e., it is "temporary.") Suppose the taxpayer wants to know the tax consequences of his or her working in City Y for ten months and then, within that ten-month period, finding permanent employment in City Y. What is tax research likely to reveal?

Tax research will lead to an IRS ruling stating that, in such circumstances, the employment will be deemed to be temporary until the date on which the realistic expectation about the temporary nature of the assignment changes.⁵ After this date, the employment

⁵ Rev. Rul. 93-86, 1993-2 C.B. 71.

will be deemed to be permanent, and travel expenses relating to it will be nondeductible. Based on this finding, the tax advisor might advise the taxpayer to postpone his or her permanent job search in City Y until the end of the ten-month period and simply treat his or her assignment as temporary. So doing would lengthen the time he or she is deemed to be “away from home” on business and thus increase the amount of meal, lodging, and transportation costs deductible as travel expenses. The taxpayer should compare the tax savings to any additional personal costs of maintaining two residences.

THE SOURCES OF TAX LAW

OBJECTIVE 4

Identify the sources of tax law and assess the authoritative value of each

The language of the IRC is general; that is, it prescribes the tax treatment of broad categories of transactions and events. The reason for the generality is that Congress can neither foresee nor provide for every conceivable transaction or event. Even if it could, doing so would render the statute narrow in scope and inflexible in application. Accordingly, interpretations of the IRC—both administrative and judicial—are necessary. Administrative interpretations are provided in Treasury Regulations, revenue rulings, revenue procedures, and several other pronouncements discussed later in this chapter. Judicial interpretations are presented in court opinions. The term *tax law* as used by most tax advisors encompasses administrative and judicial interpretations in addition to the IRC. It also includes the meaning conveyed in reports issued by Congressional committees involved in the legislative process.

THE LEGISLATIVE PROCESS

Tax legislation begins in the House of Representatives. Initially, a tax proposal is incorporated in a bill. The bill is referred to the House Ways and Means Committee, which is charged with reviewing all tax legislation. The Ways and Means Committee holds hearings in which interested parties, such as the Treasury Secretary and IRS Commissioner, testify. At the conclusion of the hearings, the Ways and Means Committee votes to approve or reject the measure. If approved, the bill goes to the House floor where it is debated by the full membership. If the House approves the measure, the bill moves to the Senate where it is taken up by the Senate Finance Committee. Like Ways and Means, the Finance Committee holds hearings in which Treasury officials, tax experts, and other interested parties testify. If the committee approves the measure, the bill goes to the Senate floor where it is debated by the full membership. Upon approval by the Senate, it is submitted to the President for his or her signature. If the President signs the measure, the bill becomes public law. If the President vetoes it, Congress can override the veto by at least a two-thirds majority vote in each chamber.

Generally, at each stage of the legislative process, the bill is subject to amendment. If amended, and if the House version differs from the Senate version, the bill is referred to a House-Senate conference committee.⁶ This committee attempts to resolve the differences between the House and Senate versions. Ultimately, it submits a compromise version of the measure to each chamber for its approval. Such referrals are common. For example, in 1998 the House and Senate disagreed over what the taxpayer must do to shift the burden of proof to the IRS. The House proposed that the taxpayer assert a “reasonable dispute” regarding a taxable item. The Senate proposed that the taxpayer introduce “credible evidence” regarding the item. A conference committee was appointed to resolve the differences. This committee ultimately adopted the Senate proposal, which was later approved by both chambers.

After approving major legislation, the Ways and Means Committee and Senate Finance Committee usually issue official reports. These reports, published by the U.S. Government Printing Office (GPO) as part of the *Cumulative Bulletin* and as separate documents, explain the committees’ reasoning for approving (and/or amending) the legislation.⁷ In addition, the GPO publishes records of both the committee hearings and transcripts of the floor debates. The records are published as separate House or Senate documents. The transcripts are incorporated in the *Congressional Record* for the day of the

ADDITIONAL COMMENT

Committee reports can be helpful in interpreting new legislation because they indicate the intent of Congress. With the proliferation of tax legislation, committee reports have become especially important because the Treasury Department often is unable to draft the needed regulations in a timely manner.

⁶ The size of a conference committee can vary. It is made up of an equal number of members from the House and the Senate.

⁷ The *Cumulative Bulletin* is described in the discussion of revenue rulings on page C:1-12.

debate. In tax research, these records, reports, and transcripts are useful in deciphering the meaning of the statutory language. Where this language is ambiguous or vague, and the courts have not interpreted it, the documents can shed light on **Congressional intent**, i.e., what Congress *intended* by a particular term, phrase, or provision.

EXAMPLE C:1-4 ► In 1998, Congress passed legislation concerning shifting the burden of proof to the IRS. This legislation was codified in Sec. 7491. The question arises as to what constitutes “credible evidence” because the taxpayer must introduce such evidence to shift the burden of proof to the IRS. Section 7491 does not define the term. Because the provision was relatively new, few courts had an opportunity to interpret what “credible evidence” means. In the absence of relevant statutory or judicial authority, the researcher might have looked to the committee reports to ascertain what Congress intended by the term. Senate Report No. 105-174 states that “credible evidence” means evidence of a quality, which, “after critical analysis, the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted.”⁸ This language suggests that Congress intended the term to mean evidence of a kind sufficient to withstand judicial scrutiny. Such a meaning should be regarded as conclusive in the absence of other authority. ◀

THE INTERNAL REVENUE CODE

The IRC, which comprises Title 26 of the United States Code, is the foundation of all tax law. First codified (i.e., organized into a single compilation of revenue statutes) in 1939, the tax law was recodified in 1954. The IRC was known as the Internal Revenue Code of 1954 until 1986, when its name was changed to the Internal Revenue Code of 1986. Whenever changes to the IRC are approved, the old language is deleted and new language added. Thus, the IRC is organized as an integrated document, and a researcher need not read through the relevant parts of all previous tax bills to find the current version of the law. Nevertheless, a researcher must be sure that he or she is working with the law in effect when a particular transaction occurred.

The IRC contains provisions dealing with income taxes, estate and gift taxes, employment taxes, alcohol and tobacco taxes, and other excise taxes. Organizationally, the IRC is divided into subtitles, chapters, subchapters, parts, subparts, sections, subsections, paragraphs, subparagraphs, and clauses. Subtitle A contains rules relating to income taxes, and Subtitle B deals with estate and gift taxes. A set of provisions concerned with one general area constitutes a subchapter. For example, the topics of corporate distributions and adjustments appear in Subchapter C, and topics relating to partners and partnerships appear in Subchapter K. Figure C:1-2 presents the organizational scheme of the IRC.

An IRC section contains the operative provisions to which tax advisors most often refer. For example, they speak of “Sec. 351 transactions,” “Sec. 306 stock,” and “Sec. 1231 gains and losses.” Although a tax advisor need not know all the IRC sections, paragraphs, and parts, he or she must be familiar with the IRC’s organizational scheme to read and interpret it correctly. The language of the IRC is replete with cross-references to titles, paragraphs, subparagraphs, and so on.

EXAMPLE C:1-5 ► Section 7701, a definitional section, begins, “When used in this title. . .” and then provides a series of definitions. Because of this broad reference, a Sec. 7701 definition applies for all of Title 26; that is, it applies for purposes of the income tax, estate and gift tax, excise tax, and other taxes governed by Title 26. ◀

EXAMPLE C:1-6 ► Section 302(b)(3) allows taxpayers whose stock holdings are completely terminated in a redemption (a corporation’s purchase of its stock from one or more of its shareholders) to receive capital gain treatment on the excess of the redemption proceeds over the stock’s basis instead of ordinary income treatment on the entire proceeds. Section 302(c)(2)(A) states, “In the case of a distribution described in subsection (b)(3), section 318(a)(1) shall not apply if. . . .” Further, Sec. 302(c)(2)(C)(i) indicates “Subparagraph (A) shall not apply to a distribution to any entity unless. . . .” Thus, in determining whether a taxpayer will receive capital gain treatment in a stock redemption, a tax advisor must be able to locate and interpret various cross-referenced IRC sections, subsections, paragraphs, subparagraphs, and clauses. ◀

ADDITIONAL COMMENT

The various tax services, discussed later in this chapter, provide IRC histories for researchers who need to work with prior years’ tax law.

⁸ S. Rept. No. 105-174, 105th Cong., 1st Sess. (unpaginated) (1998).

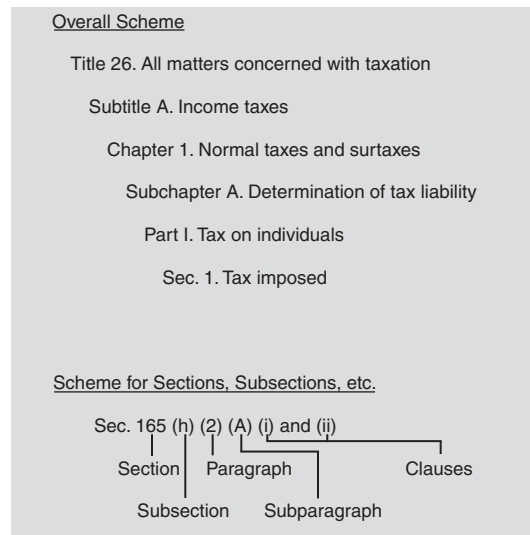


FIGURE C:1-2 ► ORGANIZATIONAL SCHEME OF THE INTERNAL REVENUE CODE

TREASURY REGULATIONS

The Treasury Department issues regulations that expound upon the IRC. Treasury Regulations often provide examples with computations that assist the reader in understanding how IRC provisions apply. Treasury Regulations are formulated on the basis of Treasury Decisions (T.D.s). The numbers of the Treasury Decisions that form the basis of a Treasury Regulation usually are found in the notes at the end of the regulation.

Because of frequent IRC changes, the Treasury Department does not always update the regulations in a timely manner. Consequently, when consulting a regulation, a tax advisor should check its introductory or end note to determine when the regulation was adopted. If the regulation was adopted before the most recent revision of the applicable IRC section, the regulation should be treated as authoritative to the extent consistent with the revision. Thus, for example, if a regulation issued before the passage of an IRC amendment specifies a dollar amount, and the amendment changed the dollar amount, the regulation should be regarded as authoritative in all respects except for the dollar amount.

Proposed, Temporary, and Final Regulations. A Treasury Regulation is first issued in proposed form to the public, which is given an opportunity to comment on it. Parties most likely to comment are individual tax practitioners and representatives of organizations such as the American Bar Association, the Tax Division of the AICPA, and the American Taxation Association. The comments may suggest that the proposed rules could affect taxpayers more adversely than Congress had anticipated. In drafting a final regulation, the Treasury Department generally considers the comments and may modify the rules accordingly. If the comments are favorable, the Treasury Department usually finalizes the regulation with minor revisions. If the comments are unfavorable, it usually finalizes the regulation with major revisions or allows the proposed regulation to expire.

Proposed regulations are just that—proposed. Consequently, they carry no more authoritative weight than do the arguments of the IRS in a court brief. Nevertheless, they represent the Treasury Department’s official interpretation of the IRC. By contrast, **temporary regulations** are binding on the taxpayer. Effective as of the date of their publication, they often are issued immediately after passage of a major tax act to guide taxpayers and their advisors on procedural or computational matters. Regulations issued as temporary are concurrently issued as proposed. Because their issuance is not preceded by a public comment period, they are regarded as somewhat less authoritative than final regulations.

Once finalized, regulations can be effective the earliest of (1) the date they were filed with the *Federal Register*, a daily publication that contains federal government pronouncements; (2) the date temporary regulations preceding them were first published in the *Federal Register*; or (3) the date on which a notice describing the expected contents of the regulation was issued to the public.⁹ For changes to the IRC enacted after July 29, 1996, the Treasury Department generally cannot issue regulations with retroactive effect.

Interpretative and Legislative Regulations. In addition to being officially classified as proposed, temporary, or final, Treasury Regulations are unofficially classified as interpretative or legislative. **Interpretative regulations** are issued under the general authority of Sec. 7805 and, as the name implies, merely make the IRC's statutory language easier to understand and apply. In addition, they often illustrate various computations. **Legislative regulations**, by contrast, arise where Congress delegates its rule-making authority to the Treasury Department. When Congress believes it lacks the expertise necessary to deal with a highly technical matter, it instructs the Treasury Department to set forth substantive tax rules relating to the matter.

Whenever the IRC contains language such as “The Secretary shall prescribe such regulations as he may deem necessary” or “under regulations prescribed by the Secretary,” the regulations interpreting the IRC provision are legislative. The consolidated tax return regulations are an example of legislative regulations. In Sec. 1502, Congress delegated to the Treasury Department authority to issue regulations that determine the tax liability of a group of affiliated corporations filing a consolidated tax return. As a precondition to filing such a return, the corporations must consent to follow the consolidated return regulations.¹⁰ Such consent generally precludes the corporations from later arguing in court that the regulatory provisions are invalid.

Authoritative Weight. Final Treasury Regulations are presumed to be valid and have almost the same authoritative weight as the IRC. Despite this presumption, taxpayers occasionally argue that a regulation is invalid and, consequently, should not be followed.

Prior to 2011, courts held interpretive and legislative regulations to different standards, giving more authority to legislative regulations that Congress specifically delegated to the Treasury Department to draft. The difference in authoritative weight largely disappeared, however, in 2011 with the Supreme Court decision in *Mayo Foundation*.¹¹ Going forward, both types of regulations will have the same authoritative weight and will be overturned only in very limited cases such as when, in the Court's opinion, the regulations exceed the scope of power delegated to the Treasury Department,¹² are contrary to the IRC,¹³ or are unreasonable.¹⁴

In assessing the validity of long-standing Treasury Regulations, some courts apply the **legislative reenactment doctrine**. Under this doctrine, a regulation is deemed to receive congressional approval whenever the IRC provision under which the regulation was issued is reenacted without amendment.¹⁵ Underlying this doctrine is the rationale that, if Congress believed that the regulation offered an erroneous interpretation of the IRC, it would have amended the IRC to conform to its belief. Congress's failure to amend the IRC signifies approval of the regulation.¹⁶ This doctrine is predicated on Congress's constitutional authority to levy taxes. This authority implies that, if Congress is dissatisfied with the manner in which either the executive or the judiciary has interpreted the IRC, it can invalidate these interpretations through new legislation.

KEY POINT

The older a Treasury Regulation becomes, the less likely a court is to invalidate the regulation. The legislative reenactment doctrine holds that if a regulation did not reflect the intent of Congress, lawmakers would have changed the statute in subsequent legislation to obtain their desired objectives.

STOP & THINK

Question: You are researching the manner in which a deduction is calculated. You consult Treasury Regulations for guidance because the IRC states that the calculation is to be done “in a manner prescribed by the Secretary.” After reviewing these authorities, you

⁹ Sec. 7805(b).

¹⁰ Sec. 1501.

¹¹ *Mayo Foundation for Medical Education & Research, et al. v. U.S.*, 107 AFTR 2d 2011-341, 131 S.Ct. 704 (2011).

¹² *McDonald v. CIR*, 56 AFTR 2d 85-5318, 85-2 USTC ¶9494 (5th Cir., 1985).

¹³ *Jeanese, Inc. v. U.S.*, 15 AFTR 2d 429, 65-1 USTC ¶9259 (9th Cir., 1965).

¹⁴ *United States v. Vogel Fertilizer Co.*, 49 AFTR 2d 82-491, 82-1 USTC ¶9134 (USC, 1982).

¹⁵ *United States v. Homer O. Correll*, 20 AFTR 2d 5845, 68-1 USTC ¶9101 (USC, 1967).

¹⁶ One can rebut the presumption that Congress approved of the regulation by showing that Congress was unaware of the regulation when it reenacted the statute.

conclude that another way of doing the calculation arguably is correct under an intuitive approach. This approach would result in a lower tax liability for the client. Should you follow the Treasury Regulations, or should you use the intuitive approach and argue that the regulations are invalid?

Solution: Because of the language “in a manner prescribed by the Secretary,” the Treasury Regulations dealing with the calculation are legislative. Whenever Congress calls for legislative regulations, it explicitly authorizes (directs) the Treasury Department to write the “rules.” Thus, a challenge based on the existence of a reasonable alternative method is unlikely to succeed in court. Under the *Mayo Foundation* decision, you should reach the same conclusion even if dealing with an interpretive Treasury Regulation.

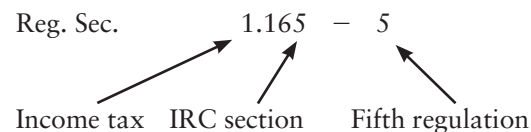
ADDITIONAL COMMENT

Citations serve two purposes in tax research: first, they substantiate propositions; second, they enable the reader to locate underlying authority.

Citations. Citations to Treasury Regulations are relatively easy to understand. One or more numbers appear before a decimal place, and several numbers follow the decimal place. The numbers immediately following the decimal place indicate the IRC section being interpreted. The numbers preceding the decimal place indicate the general subject of the regulation. Numbers that often appear before the decimal place and their general subjects are as follows:

<i>Number</i>	<i>General Subject Matter</i>
1	Income tax
20	Estate tax
25	Gift tax
301	Administrative and procedural matters
601	Procedural rules

The number following the IRC section number indicates the numerical sequence of the regulation, such as the fifth regulation. No relationship exists between this number and the subsection of the IRC being interpreted. An example of a citation to a final regulation is as follows:



Citations to proposed or temporary regulations follow the same format. They are referenced as Prop. Reg. Sec. or Temp. Reg. Sec. For temporary regulations the numbering system following the IRC section number always begins with the number of the regulation and an upper case T (e.g., -1T).

Section 165 addresses the broad topic of losses and is interpreted by several regulations. According to its caption, the topic of Reg. Sec. 1.165-5 is worthless securities, which also is addressed in subsection (g) of IRC Sec. 165. Parenthetical information following the text of the Treasury Regulation indicates that the regulation was last revised on March 11, 2008, by Treasury Decision (T.D.) 9386. Section 165(g) was last amended in 2000. A researcher must always check when the regulations were last amended and be aware that an IRC change may have occurred after the most recent regulation amendment, potentially making the regulation inapplicable.

When referencing a regulation, the researcher should fine-tune the citation to indicate the precise passage that supports his or her conclusion. An example of such a detailed citation is Reg. Sec. 1.165-5(j), Ex. 2(i), which refers to paragraph (i) of Example 2, found in paragraph (j) of the fifth regulation interpreting Sec. 165.

ADMINISTRATIVE PRONOUNCEMENTS

The IRS interprets the IRC through **administrative pronouncements**, the most important of which are discussed below. After consulting the IRC and Treasury Regulations, tax advisors are likely next to consult these pronouncements.

TYPICAL MISCONCEPTION

Even though revenue rulings do not have the same weight as Treasury Regulations or court cases, one should not underestimate their importance. Because a revenue ruling is the official published position of the IRS, in audits the examining agent will place considerable weight on any applicable revenue rulings.

Revenue Rulings. In **revenue rulings**, the IRS indicates the tax consequences of specific transactions encountered in practice. For example, in a revenue ruling, the IRS might indicate whether the exchange of stock for stock derivatives in a corporate acquisition is tax-free.

The IRS issues more than 50 revenue rulings a year. These rulings do not rank as high in the hierarchy of authorities as do Treasury Regulations or federal court cases. They simply represent the IRS's view of the tax law. Taxpayers who do not follow a revenue ruling will not incur a substantial understatement penalty if they have substantial authority for different treatment.¹⁷ Nonetheless, the IRS presumes that the tax treatment specified in a revenue ruling is correct. Consequently, if an examining agent discovers in an audit that a taxpayer did not adopt the position prescribed in a revenue ruling, the agent will contend that the taxpayer's tax liability should be adjusted to reflect that position.

A revenue ruling appears in the weekly *Internal Revenue Bulletin* (cited as I.R.B.), published by the U.S. Government Printing Office (GPO). Prior to 2009, revenue rulings appeared in the *Cumulative Bulletin* (cited as C.B.), a bound volume issued semiannually by the GPO. An example of a citation to a revenue ruling appearing in the *Cumulative Bulletin* is as follows:

Rev. Rul. 97-4, 1997-1 C.B. 5.

This is the fourth ruling issued in 1997, and it appears on page 5 of Volume 1 of the 1997 *Cumulative Bulletin*. For rulings after 2008, researchers should use citations to the *Internal Revenue Bulletin*. An example of such a citation follows:

Rev. Rul. 2013-8, 2013-15 I.R.B. 763.

For revenue rulings (and other IRS pronouncements) issued after 1999, the full four digits of the year of issuance are set forth in the title. For revenue rulings (and other IRS pronouncements) issued before 2000, only the last two digits of the year of issuance are set forth in the title. The above citation represents the eighth ruling for 2013. This ruling is located on page 763 of the *Internal Revenue Bulletin* for the fifteenth week of 2013. Once a revenue ruling is published in the *Cumulative Bulletin*, only the citation to the *Cumulative Bulletin* should be used. Thus, a citation to the I.R.B. is temporary.

Revenue Procedures. As the name suggests, **revenue procedures** are IRS pronouncements that usually deal with the procedural aspects of tax practice. For example, one revenue procedure deals with the manner in which tip income should be reported. Another revenue procedure describes the requirements for reproducing paper substitutes for informational returns such as Form 1099.

As with revenue rulings, revenue procedures are published in the *Internal Revenue Bulletin* and, prior to 2009, in the *Cumulative Bulletin*. For revenue procedures issued after 2008, the I.R.B. is the final reference. An example of a citation to a revenue procedure appearing in the *Internal Revenue Bulletin* is as follows:

Rev. Proc. 2017-4, 2017-1 I.R.B. 146.

This pronouncement is found in the first issue of the *Internal Revenue Bulletin* on page 146. It is the fourth revenue procedure issued in 2017.

In addition to revenue rulings and revenue procedures, the *Cumulative Bulletin* contains IRS notices, as well as the texts of proposed regulations, tax treaties, committee reports, and U.S. Supreme Court decisions.

Letter Rulings. **Letter rulings** are initiated by taxpayers who ask the IRS to explain the tax consequences of a particular transaction.¹⁸ The IRS provides its explanation in the form of a letter ruling, a response personal to the taxpayer requesting an answer. Only the

SELF-STUDY QUESTION

Are letter rulings of precedential value for third parties?

ANSWER

No. A letter ruling is binding only on the taxpayer to whom the ruling was issued. Nevertheless, letter rulings can be very useful to third parties because they provide insight as to the IRS's opinion about the tax consequences of various transactions.

¹⁷ Chapter C:15 discusses the authoritative support taxpayers and tax advisors should have for positions they adopt on a tax return.

¹⁸ Chapter C:15 further discusses letter rulings.

taxpayer to whom the ruling is addressed may rely on it as authority. Nevertheless, letter rulings are relevant for other taxpayers and tax advisors because they offer insight into the IRS's position on the tax treatment of particular transactions.

Originally the public did not have access to letter rulings issued to other taxpayers. As a result of Sec. 6110, enacted in 1976, letter rulings (with confidential information deleted) are accessible to the general public and have been reproduced by major tax services. An example of a citation to a letter ruling appears below:

Ltr. Rul. 200130006 (July 30, 2001).

The first four digits (two if issued before 2000) indicate the year in which the ruling was made public, in this case, 2001.¹⁹ The next two digits denote the week in which the ruling was made public, here the thirtieth. The last three numbers indicate the numerical sequence of the ruling for the week, here the sixth. The date in parentheses denotes the date of the ruling.

ADDITIONAL COMMENT

A technical advice memorandum is published as a letter ruling. Whereas a taxpayer-requested letter ruling deals with prospective transactions, a technical advice memorandum deals with past or consummated transactions.

Other Interpretations

Technical Advice Memoranda. When the IRS audits a taxpayer's return, the IRS agent might ask the IRS national office for advice on a complicated, technical matter. The national office will provide its advice in a **technical advice memorandum**, released to the public in the form of a letter ruling.²⁰ Researchers can identify which letter rulings are technical advice memoranda by introductory language such as, "In response to a request for technical advice. . . ." An example of a citation to a technical advice memorandum is as follows:

T.A.M. 9801001 (January 2, 1998).

This citation refers to the first technical advice memorandum issued in the first week of 1998. The memorandum is dated January 2, 1998.

News Releases. If the IRS wants to disseminate information to the general public, it will issue a **news release**. News releases are written in lay terms and are dispatched to thousands of newspapers throughout the country. The IRS, for example, may issue a news release to announce the standard mileage rate for business travel. An example of a citation to a news release is as follows:

I.R. News Release 2012-25 (February 17, 2012).

This citation is to the twenty-fifth news release issued in 2012. The release is dated February 17, 2012.

ADDITIONAL COMMENT

Announcements are used to summarize new tax legislation or publicize procedural matters. Announcements generally are aimed at tax practitioners and are considered to be "substantial authority" [Rev. Rul. 90-91, 1990-2 C.B. 262].

Announcements and Notices. The IRS also disseminates information to tax practitioners in the form of **announcements** and **notices**. These pronouncements generally are more technical than information releases and frequently address current tax developments. After passage of a major tax act, and before the Treasury Department has had an opportunity to issue proposed or temporary regulations, the IRS may issue an announcement or notice to clarify the legislation. The IRS is bound to follow the announcement or notice just as it is bound to follow a revenue procedure or revenue ruling. Examples of citations to announcements and notices are as follows:

Announcement 2007-3, 2007-1 C.B. 376.

Notice 2007-9, 2007-1 C.B. 401.

The first citation is to the third announcement issued in 2007. It can be found on page 376 of the first *Cumulative Bulletin* for 2007. The second citation is to the ninth

¹⁹ Sometimes a letter ruling is cited as PLR (private letter ruling) instead of Ltr. Rul.

²⁰ Technical advice memoranda are discussed further in Chapter C:15.

notice issued in 2007. It can be found on page 401 of the first *Cumulative Bulletin* for 2007. Notices and announcements issued prior to 2009 appear in both the *Internal Revenue Bulletin* and the *Cumulative Bulletin*, but after 2008 they appear only in the *Internal Revenue Bulletin*.

JUDICIAL DECISIONS

Judicial decisions are an important source of tax law. Judges are reputed to be unbiased individuals who decide questions of fact (the existence of a fact or the occurrence of an event) or questions of law (the applicability of a legal principle or the proper interpretation of a legal term or provision). Judges do not always agree on the tax consequences of a particular transaction or event. Therefore, tax advisors often must derive conclusions against a background of conflicting judicial authorities. For example, a U.S. district court might disagree with the Tax Court on the deductibility of an expense. Likewise, one circuit court might disagree with another circuit court on the same issue.

Overview of the Court System. A taxpayer may begin tax litigation in any of three courts: the U.S. Tax Court, the U.S. Court of Federal Claims (formerly the U.S. Claims Court), or U.S. district courts. Court precedents are important in deciding where to begin such litigation (see page C:1-21 for a discussion of precedent). Also important is when the taxpayer must pay the deficiency the IRS contends is due. A taxpayer who wants to litigate either in a U.S. district court or in the U.S. Court of Federal Claims must first pay the deficiency. The taxpayer then files a claim for refund, which the IRS is likely to deny. Following this denial, the taxpayer must petition the court for a refund. If the court grants the taxpayer's petition, he or she receives a refund of the taxes in question plus accrued interest. If the taxpayer begins litigation in the Tax Court, on the other hand, he or she need not pay the deficiency unless and until the court decides the case against him or her. In that event, the taxpayer also must pay interest and penalties.²¹ A taxpayer who believes that a jury would be sympathetic to his or her case should litigate in a U.S. district court, the only forum where a jury trial is possible.

If a party loses at the trial court level, it can appeal the decision to a higher court. Appeals of Tax Court and U.S. district court decisions are made to the court of appeals for the taxpayer's circuit. The appeals court system is comprised of 11 geographical circuits designated by numbers, the District of Columbia Circuit, and the Federal Circuit.²² Table C:1-1 shows the states that lie in the various circuits. California, for example, lies in the Ninth Circuit. When referring to these appellate courts, instead of saying, for example, "the Court of Appeals for the Ninth Circuit," one generally says "the Ninth Circuit." All decisions of the U.S. Court of Federal Claims are appealable to one court—the Court of Appeals for the Federal Circuit—irrespective of where the taxpayer resides or does business.²³ The only cases the Federal Circuit hears are those that originate in the U.S. Court of Federal Claims.

The party losing at the appellate level can petition the U.S. Supreme Court to review the case under a **writ of certiorari**. If the Supreme Court agrees to hear the case, it grants certiorari.²⁴ If it refuses to hear the case, it denies certiorari. In recent years, the Court has granted certiorari in only about six to ten tax cases per year. Figure C:1-3 and Table C:1-2 provide an overview and summary of the court system with respect to tax matters.

The U.S. Tax Court. The U.S. Tax Court was created in 1942 as a successor to the Board of Tax Appeals. It is a court of national jurisdiction that hears only tax-related cases. All taxpayers, regardless of their state of residence or place of business, may litigate in the Tax Court. It has 19 judges, including one chief judge.²⁵ The President, with the consent of the Senate, appoints the judges for a 15-year term and may reappoint them for an additional

SELF-STUDY QUESTION

What are some of the factors that a taxpayer should consider when deciding in which court to file a tax-related claim?

ANSWER

(1) Each court's published precedent pertaining to the issue, (2) desirability of a jury trial, (3) tax expertise of each court, and (4) when the deficiency must be paid.

ADDITIONAL COMMENT

Because the Tax Court deals only with tax cases, it presumably has a higher level of tax expertise than do other courts. Tax Court judges are appointed by the President, in part, due to their considerable tax experience. The Tax Court typically maintains a large backlog of tax cases, sometimes numbering in the tens of thousands.

²¹ Revenue Procedure 2005-18, 2005-1 C.B. 798, provides procedures for taxpayers to make remittances or apply overpayments to stop the accrual of interest on deficiencies.

²² The Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws.

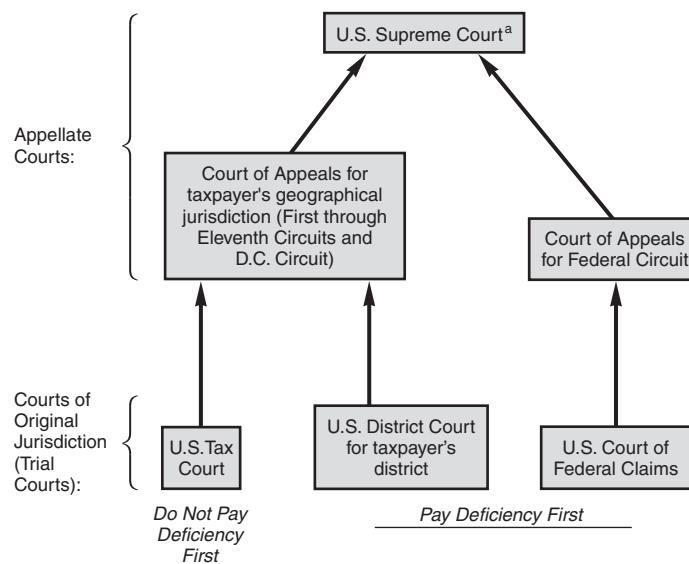
²³ The Court of Claims was reconstituted as the United States Court of Claims in 1982. In 1992, this court was renamed the U.S. Court of Federal Claims.

²⁴ The granting of certiorari signifies that the Supreme Court is granting an appellate review. The denial of certiorari does not necessarily mean that the Supreme Court endorses the lower court's decision. It simply means the court has decided not to hear the case.

²⁵ The Tax Court also periodically appoints, depending on budgetary constraints, a number of trial judges and senior judges who hear cases and render decisions with the same authority as the regular Tax Court judges.

▼ **TABLE C:1-1**
Federal Judicial Circuits

Circuit	States Included in Circuit
First	Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico
Second	Connecticut, New York, Vermont
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia
Fifth	Louisiana, Mississippi, Texas
Sixth	Kentucky, Michigan, Ohio, Tennessee
Seventh	Illinois, Indiana, Wisconsin
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
Ninth	Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marina Islands
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
Eleventh	Alabama, Florida, Georgia
D.C.	District of Columbia
Federal	All jurisdictions (for taxpayers appealing from the U.S. Court of Federal Claims)



^a Cases are heard only if the Supreme Court grants certiorari.

FIGURE C:1-3 ► OVERVIEW OF COURT SYSTEM—TAX MATTERS

term. The judges, specialists in tax-related matters, periodically travel to roughly 100 cities throughout the country to hear cases. In most instances, only one judge hears a case.

The Tax Court issues both regular and memorandum (memo) decisions. Generally, the first time the Tax Court decides a legal issue, its decision appears as a **regular decision**. **Memo decisions**, on the other hand, usually deal with factual variations of previously decided cases. Nevertheless, regular and memo decisions carry the same authoritative weight.

At times, the chief judge determines that a particular case concerns an important issue that the entire Tax Court should consider. In such a situation, the words *reviewed by the court* appear at the end of the majority opinion. Any concurring or dissenting opinions follow the majority opinion. A judge who issues a concurring opinion agrees with the basic outcome of the majority's decision but not with its rationale. A judge who issues a dissenting opinion believes the majority reached an erroneous conclusion.

▼ **TABLE C:1-2**
Summary of Court System—Tax Matters

Court(s) (Number of)	Number of Judges on Each	Personal Jurisdiction	Subject Matter Jurisdiction	Determines Questions of Fact	Trial by Jury	Precedents Followed	Where Opinions Published
U.S. district courts (over 95)	1–28*	Local	General	Yes	Yes	Same court Court for circuit where situated U.S. Supreme Court	<i>Federal Supplement</i> <i>American Federal Tax Reports</i> <i>United States Tax Cases</i>
U.S. Tax Court (1)	19	National	Tax	Yes	No	Same court Court for taxpayer's circuit U.S. Supreme Court	<i>Tax Court of the U.S. Reports</i> <i>CCH Tax Court Memorandum Decisions</i> <i>RIA Tax Court Memorandum Decisions</i>
U.S. Court of Federal Claims (1)	16	National	Claims against U.S. Government	Yes	No	Same court Federal Circuit Court U.S. Supreme Court	<i>Federal Reporter (pre-1982)</i> <i>U.S. Court of Federal Claims</i> <i>American Federal Tax Reports</i> <i>United States Tax Cases</i>
U.S. Courts of Appeals (13)	About 20	Regional	General	No	No	Same court U.S. Supreme Court	<i>Federal Reporter</i> <i>American Federal Tax Reports</i> <i>United States Tax Cases</i>
U.S. Supreme Court (1)	9	National	General	No	No	Same court	<i>U.S. Supreme Court Reports</i> <i>Supreme Court Reporter</i> <i>United States Reports, Lawyers'</i> <i>Edition</i> <i>American Federal Tax Reports</i> <i>United States Tax Cases</i>

*Although the number of judges assigned to each court varies, only one judge hears a case.

Another phrase sometimes appearing at the end of a Tax Court opinion is *Entered under Rule 155*. This phrase signifies that the court has reached a decision concerning the tax treatment of an item but has left computation of the deficiency to the two litigating parties.

SELF-STUDY QUESTION

What are some of the considerations for litigating under the small cases procedure of the Tax Court?

ANSWER

The small cases procedure gives the taxpayer the advantage of having his or her “day in court” without the expense of an attorney. But if the taxpayer loses, the decision cannot be appealed. On the other hand, the IRS also cannot appeal if *it* loses.

ADDITIONAL COMMENT

The only cases with respect to which the IRS will acquiesce or nonacquiesce are decisions that the government loses. Because the majority of cases, particularly Tax Court cases, are won by the government, the IRS will potentially acquiesce in only a small number of cases.

ADDITIONAL COMMENT

If a particular case is important, the chief judge will instruct the other judges to review the case. If a case is reviewed by the entire court, the phrase *reviewed by the court* is inserted immediately after the text of the majority opinion. A reviewed decision provides an opportunity for Tax Court judges to express their dissenting opinions.

Small Cases Procedure. Taxpayers have the option of having their cases heard under the **small cases procedure** of the Tax Court if the amount in controversy on an annual basis does not exceed \$50,000.²⁶ This procedure is less formal than the regular Tax Court procedure, and taxpayers can represent themselves without an attorney.²⁷ The cases are heard by special commissioners instead of by one of the 19 Tax Court judges. A disadvantage of the small cases procedure for the losing party is that the decision cannot be appealed. The opinions of the commissioners generally are not published and have no precedential value.

Acquiescence Policy. The IRS has adopted a policy of announcing whether, in future cases involving similar facts and similar issues, it will follow federal court decisions that are adverse to it. This policy is known as the **IRS acquiescence policy**. If the IRS wants taxpayers to know that it will follow an adverse decision in future cases involving similar facts and issues, it will announce its “acquiescence” in the decision. Conversely, if it wants taxpayers to know that it will not follow the decision in such future cases, it will announce its “nonacquiescence.” The IRS does not announce its acquiescence or nonacquiescence in every decision it loses.

The IRS publishes its acquiescences and nonacquiescences as “Actions on Decision” first in the *Internal Revenue Bulletin*, then in the *Cumulative Bulletin*. Before 1991, the IRS acquiesced or nonacquiesced in regular Tax Court decisions only. In 1991, it broadened the scope of its policy to include adverse U.S. Claims Court, U.S. district court, and U.S. circuit court decisions.

In cases involving multiple issues, the IRS may acquiesce in some issues but not others. In decisions supported by extensive reasoning, it may acquiesce in the result but not the rationale (*acq. in result*). Furthermore, it may retroactively revoke an acquiescence or nonacquiescence. The footnotes to the relevant announcement in the *Internal Revenue Bulletin* and *Cumulative Bulletin* indicate the nature and extent of IRS acquiescences and nonacquiescences.

These acquiescences and nonacquiescences have important implications for taxpayers. If a taxpayer bases his or her position on a decision in which the IRS has nonacquiesced, he or she can expect an IRS challenge in the event of an audit. In such circumstances, the taxpayer’s only recourse may be litigation. On the other hand, if the taxpayer bases his or her position on a decision in which the IRS has acquiesced, he or she can expect little or no challenge. In either case, the examining agent will be bound by the IRS position.

Published Opinions and Citations. Regular Tax Court decisions are published by the U.S. Government Printing Office in a bound volume known as the *Tax Court of the United States Reports*. Soon after a decision is made public, Research Institute of America (RIA) and Commerce Clearing House (CCH) each publish the decision in its respective reporter of Tax Court decisions. An official citation to a Tax Court decision is as follows:²⁸

MedChem Products, Inc., 116 T.C. 308 (2001).

The citation indicates that this case appears on page 308 in Volume 116 of *Tax Court of the United States Reports* and that the case was decided in 2001.

²⁶ Sec. 7463. The \$50,000 amount includes penalties and additional taxes but excludes interest.

²⁷ Taxpayers also can represent themselves in regular Tax Court proceedings even though they are not attorneys. Where taxpayers represent themselves, the words *pro se* appear in the opinion after the taxpayer’s name. The Tax Court is the only federal court before which non-attorneys, including CPAs, may practice.

²⁸ In a citation to a case decided by the Tax Court, only the name of the plaintiff (taxpayer) is listed. The defendant is understood to be the Commissioner of Internal Revenue whose name usually is not shown in the citation. In cases decided by other courts, the name of the plaintiff is listed first and the name of the defendant second. For non-Tax Court cases, the Commissioner of Internal Revenue is referred to as *CIR* in our footnotes and text.

From 1924 to 1942, regular decisions of the Board of Tax Appeals (predecessor of the Tax Court) were published by the U.S. Government Printing Office in the *United States Board of Tax Appeals Reports*. An example of a citation to a Board of Tax Appeals case is as follows:

J.W. Wells Lumber Co. Trust A., 44 B.T.A. 551 (1941).

This case is found in Volume 44 of the *United States Board of Tax Appeals Reports* on page 551. It is a 1941 decision.

ADDITIONAL COMMENT

Once the IRS has acquiesced in a federal court decision, other taxpayers generally will not need to litigate the same issue. However, the IRS can change its mind and revoke a previous acquiescence or nonacquiescence. References to acquiescences or nonacquiescences in federal court decisions can be found in the citators.

If the IRS has acquiesced or nonacquiesced in a federal court decision, the IRS's action should be denoted in the citation. At times, the IRS will not announce its acquiescence or nonacquiescence until several years after the date of the decision. An example of a citation to a decision in which the IRS has acquiesced is as follows:

Security State Bank, 85 AFTR 2d 2000-1980, *acq.* 2001-001.

The case appears on page 2000-1980 of Volume 85 of the AFTR, Second Series. In 2001, the IRS acquiesced in this decision. A citation to a decision in which the IRS has nonacquiesced is as follows:

Estate of Algerine Allen Smith, 108 T.C. 412 (1997), *nonacq.* A.O.D. 2000-1.

KEY POINT

To access all Tax Court cases, a tax advisor must refer to two different publications. The regular opinions appear in the *Tax Court of the United States Reports*, published by the U.S. Government Printing Office, and the memo decisions are published by both RIA (formerly PH) and CCH in their own court reporters.

The case appears on page 412 of Volume 108 of the *Tax Court of the United States Reports*. In 2000, the IRS nonacquiesced in this 1997 decision.

Tax Court memo decisions are not published by the U.S. Government Printing Office. They are, however, published by RIA in *RIA T.C. Memorandum Decisions* and by CCH in *CCH Tax Court Memorandum Decisions*. In addition, shortly after its issuance, an opinion is made available electronically and in loose-leaf form by RIA and CCH in their respective tax services. The following citation is to a Tax Court memo decision:

Edith G. McKinney, 1981 PH T.C. Memo ¶81,181 (T.C. Memo 1981-181), 41 TCM 1272.

ADDITIONAL COMMENT

In its Internet-based tax service (see page C:1-26), RIA uses a different format for its Tax Court Memorandum Decisions, which in this text appear in parentheses after the "official" RIA citation.

McKinney is found at Paragraph 81,181 of Prentice Hall's (now RIA's)²⁹ 1981 *PH T.C. Memorandum Decisions* reporter, and in Volume 41, page 1272, of CCH's *Tax Court Memorandum Decisions*. The 181 in the PH citation indicates that the case is the Tax Court's 181st memo decision of the year. A more recent citation is formatted in the same way but refers to RIA memo decisions.

Paul F. Belloff, 1992 RIA T.C. Memo ¶92,346 (T.C. Memo 1992-346), 63 TCM 3150.

U.S. District Courts. Each state has at least one U.S. district court, and more populous states have more than one. Each district court is independent of the others and is thus free to issue its own decisions, subject to the precedential constraints discussed later in this chapter. Different types of cases—not just tax-related—are adjudicated in this forum. A district court is the only forum in which the taxpayer may have a jury decide questions of fact. Depending on the circumstances, a jury trial might be advantageous for the taxpayer.³⁰

District court decisions are officially reported in the *Federal Supplement* (cited as *F. Supp.*) published by West®. Some decisions are not officially reported and are referred

²⁹ Several ownership changes have occurred for publishers of tax service materials. Thomson Reuters added the former Prentice Hall tax materials to the product line of its RIA tax publishing division. RIA and West® are members of Thomson Reuters, Tax and Accounting Division, and CCH is a member of the Wolters Kluwer Tax, Accounting and Legal Division.

³⁰ Taxpayers might prefer to have a jury trial if they believe a jury will be sympathetic to their case.

to as **unreported decisions**. Decisions by U.S. district courts on the topic of taxation also are published by RIA and CCH in secondary reporters that contain only tax-related opinions. RIA's reporter is *American Federal Tax Reports* (cited as AFTR).³¹ CCH's reporter is *U.S. Tax Cases* (cited as USTC). A case not officially reported nevertheless might be published in the AFTR and USTC. An example of a complete citation to a U.S. district court decision is as follows:

Alfred Abdo, Jr. v. IRS, 234 F. Supp. 2d 533, 90 AFTR 2d 2002-7484, 2003-1 USTC ¶50,107 (DC North Carolina, 2002).

ADDITIONAL COMMENT

A citation, at a minimum, should contain the following information: (1) the name of the case, (2) the reporter that publishes the case along with both a volume and page (or paragraph) number, (3) the year the case was decided, and (4) the court that decided the case.

ADDITIONAL COMMENT

The U.S. Court of Federal Claims adjudicates claims (including suits to recover federal income taxes) against the U.S. Government. This court usually hears cases in Washington, D.C., but will hold sessions in other locations as the court deems necessary.

In the example above, the **primary citation** is to the *Federal Supplement*. The case appears on page 533 of Volume 234 of the second series of this reporter. **Secondary citations** are to *American Federal Tax Reports* and *U.S. Tax Cases*. The same case is found in Volume 90 of the second series of the AFTR, page 2002-7484 (meaning page 7484 in the volume containing 2002 cases) and in Volume 1 of the 2003 USTC at Paragraph 50,107. The parenthetical information indicates that the case was decided in 2002 by the U.S. District Court for North Carolina. Because some judicial decisions have greater precedential weight than others (e.g., a Supreme Court decision versus a district court decision), information relating to the identity of the adjudicating court is useful in evaluating the authoritative value of the decision.

U.S. Court of Federal Claims. The U.S. Court of Federal Claims, another court of first instance that addresses tax matters, has nationwide jurisdiction. Originally, this court was called the U.S. Court of Claims (cited as Ct. Cl.), and its decisions were appealable to the U.S. Supreme Court only. In a reorganization, effective October 1, 1982, the reconstituted court was named the U.S. Claims Court (cited as Cl. Ct.), and its decisions became appealable to the Circuit Court of Appeals for the Federal Circuit. In October 1992, the court's name was again changed to the U.S. Court of Federal Claims (cited as Fed. Cl.).

Beginning in 1982, U.S. Claims Court decisions were reported officially in the *Claims Court Reporter*, published by West® from 1982 to 1992.³² An example of a citation to a U.S. Claims Court decision appears below:

Benjamin Raphan v. U.S., 3 Cl. Ct. 457, 52 AFTR 2d 83-5987, 83-2 USTC ¶9613 (1983).

The *Raphan* case appears on page 457 of Volume 3 of the *Claims Court Reporter*. Secondary citations are to Volume 52, page 83-5987 of the AFTR, Second Series, and to Volume 2 of the 1983 USTC at Paragraph 9613.

Effective with the 1992 reorganization, decisions of the U.S. Court of Federal Claims are now reported in the *Federal Claims Reporter*. An example of a citation to an opinion published in this reporter is presented below:

Jeffrey G. Sharp v. U.S., 27 Fed. Cl. 52, 70 AFTR 2d 92-6040, 92-2 USTC ¶50,561 (1992).

The *Sharp* case appears on page 52 of Volume 27 of the *Federal Claims Reporter*, on page 6040 of the 70th volume of the AFTR, Second Series, and at Paragraph 50,561 of Volume 2 of the 1992 USTC reporter. Note that, even though the name of the reporter published by West® has changed, the volume numbers continue in sequence as if no name change had occurred.

³¹ The *American Federal Tax Reports* (AFTR) is published in two series. The first series, which includes opinions issued up to 1957, is cited as AFTR. The second series, which includes opinions issued after 1957, is cited as AFTR 2d. The *Alfred Abdo, Jr.* decision cited as an illustration of a U.S. district court decision appears in the second *American Federal Tax Reports* series.

³² Before the creation in 1982 of the U.S. Claims Court (and the *Claims Court Reporter*), the opinions of the U.S. Court of Claims were reported in either the *Federal Supplement* (F. Supp.) or the *Federal Reporter, Second Series* (F2d). The *Federal Supplement* is the primary source of U.S. Court of Claims opinions from 1932 through January 19, 1960. Opinions issued from January 20, 1960, to October 1982 are reported in the *Federal Reporter, Second Series*.

Circuit Courts of Appeals. Lower court decisions are appealable by the losing party to the court of appeals for the circuit in which the litigation originated. Generally, if the case began in the Tax Court or a U.S. district court, the case is appealable to the circuit for the individual's residence as of the appeal date. For a corporation, the case is appealable to the circuit for the corporation's principal place of business. The Federal Circuit hears all appeals of cases originating in the U.S. Court of Federal Claims.

As mentioned earlier, there are 11 geographical circuits designated by numbers, the District of Columbia Circuit, and the Federal Circuit. In October 1981, the Eleventh Circuit was created by moving Alabama, Georgia, and Florida from the Fifth to a new geographical circuit. The Eleventh Circuit has adopted the policy of following as precedent all decisions of the Fifth Circuit during the time the states currently constituting the Eleventh Circuit were part of the Fifth Circuit.³³

EXAMPLE C:1-7 ►

In the current year, the Eleventh Circuit first considered an issue in a case involving a Florida taxpayer. In 1980, the Fifth Circuit had ruled on the same issue in a case involving a Louisiana taxpayer. Because Florida was part of the Fifth Circuit in 1980, under the policy adopted by the Eleventh Circuit, it will follow the Fifth Circuit's earlier decision. Had the Fifth Circuit's decision been rendered in 1982—after the creation of the Eleventh Circuit—the Eleventh Circuit would not have been bound by the Fifth Circuit's decision. ◀

As the later discussion of precedent points out, different circuits may reach different conclusions concerning similar facts and issues.

Circuit court decisions—regardless of topic (e.g., civil rights, securities law, and taxation)—are now reported officially in the *Federal Reporter, Third Series* (cited as F.3d), published by West®. The third series was created in October 1993 after the volume number for the second series reached 999. The primary citation to a circuit court opinion should be to the *Federal Reporter*. Tax decisions of the circuit courts also appear in the *American Federal Tax Reports* and *U.S. Tax Cases*. Below is an example of a citation to a 1994 circuit court decision:

Greene v. U.S., 185 F. 3d 67, 84 AFTR 2d 99-5415, 99-2 USTC ¶50,701 (3rd Cir., 1999).

The *Greene* case appears on page 67 of Volume 185 of the *Federal Reporter, Third Series*. It also is published in Volume 84, page 99-5415 of the AFTR, Second Series, and in Volume 2, Paragraph 50,701, of the 1999 USTC. The parenthetical information indicates that the Third Circuit decided the case in 1999. (A *Federal Reporter, Second Series* reference is found in footnote 33 of this chapter.)

ADDITIONAL COMMENT

A judge is not required to follow judicial precedent beyond his or her jurisdiction. Thus, the Tax Court, the U.S. district courts, and the U.S. Court of Federal Claims are not required to follow the others' decisions, nor is a circuit court required to follow the decision of a different circuit court.

U.S. Supreme Court. Whichever party loses at the appellate level can request that the U.S. Supreme Court hear the case. The Supreme Court, however, hears very few tax cases. Unless the circuits are divided on the tax treatment of an item, or the issue is deemed to be of great significance, the Supreme Court probably will not hear the case.³⁴ Supreme Court decisions are the law of the land and take precedence over all other court decisions, including the Supreme Court's earlier decisions. As a practical matter, a Supreme Court interpretation of the IRC is almost as authoritative as an act of Congress. If Congress does not agree with the Court's interpretation, it can amend the IRC to achieve a different result and has in fact done so on a number of occasions. If the Supreme Court declares a tax statute to be unconstitutional, the statute is invalid.

All Supreme Court decisions, regardless of subject, are published in the *United States Supreme Court Reports* (cited as U.S.) by the U.S. Government Printing Office, the *Supreme Court Reporter* (cited as S. Ct.) by West®, and the *United States Reports, Lawyers' Edition* (cited as L. Ed.) by LexisNexis®. In addition, the AFTR and USTC

³³ *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir., 1981).

³⁴ *Vogel Fertilizer Co. v. U.S.*, 49 AFTR 2d 82-491, 82-1 USTC ¶9134 (USSC, 1982), is an example of a case the Supreme Court heard to settle a split in

judicial authority. The Fifth Circuit, the Tax Court, and the Court of Claims had reached one conclusion on an issue, while the Second, Fourth, and Eighth Circuits had reached another.

reporters published by RIA and CCH, respectively, contain Supreme Court decisions concerned with taxation. An example of a citation to a Supreme Court opinion appears below:

Boeing Company v. U.S., 537 U.S. 437, 91 AFTR 2d 2003-1088, 2003-1 USTC ¶50,273 (USSC, 2003).

According to the primary citation, this case appears in Volume 537, page 437, of the *United States Supreme Court Reports*. According to the secondary citation, it also appears in Volume 91, page 2003-1088, of the AFTR, Second Series, and in Volume 1, Paragraph 50,273, of the 2003 USTC.

SELF-STUDY QUESTION

Is it possible for the Tax Court to intentionally issue conflicting decisions?

ANSWER

Yes. If the Tax Court issues two decisions that are appealable to different circuit courts and these courts have previously reached different conclusions on the issue, the Tax Court follows the respective precedent in each circuit and issues conflicting decisions. This is a result of the *Golsen* Rule.

Table C:1-3 provides a summary of how the IRC, court decisions, revenue rulings, revenue procedures, and other administrative pronouncements should be cited. Primary citations are to the reporters published by West® or the U.S. Government Printing Office, and secondary citations are to the AFTR and USTC.

Precedential Value of Various Decisions.

Tax Court. The Tax Court is a court of national jurisdiction. Consequently, it generally rules uniformly for all taxpayers, regardless of their residence or place of business. It follows U.S. Supreme Court decisions and its own earlier decisions. It is not bound by cases decided by the U.S. Court of Federal Claims or a U.S. district court, even if the district court has jurisdiction over the taxpayer.

In 1970, the Tax Court adopted what is known as the *Golsen* Rule.³⁵ Under this rule, the Tax Court departs from its general policy of adjudicating uniformly for all taxpayers and instead follows the decisions of the court of appeals to which the case in question is appealable. Stated differently, the *Golsen* Rule mandates that the Tax Court rule consistently with decisions of the court for the circuit where the taxpayer resides or does business.

EXAMPLE C:1-8

▶ In the year in which an issue was first litigated, the Tax Court decided that an expenditure was deductible. The government appealed the decision to the Tenth Circuit Court of Appeals and won a reversal. This is the only appellate decision regarding the issue. If and when the Tax Court addresses this issue again, it will hold, with one exception, that the expenditure is deductible. The exception applies to taxpayers in the Tenth Circuit. Under the *Golsen* Rule, these taxpayers will be denied the deduction. ◀

U.S. District Court. Because each U.S. district court is independent of the other district courts, the decisions of each have precedential value only within its own jurisdiction (i.e., only with respect to subsequent cases brought before that court). District courts must follow decisions of the U.S. Supreme Court, the circuit court to which the case is appealable, and the district court's own earlier decisions regarding similar facts and issues.

EXAMPLE C:1-9

▶ The U.S. District Court for Rhode Island, the Tax Court, and the Eleventh Circuit have decided cases involving similar facts and issues. Any U.S. district court within the Eleventh Circuit must follow that circuit's decision in future cases involving similar facts and issues. Likewise, the U.S. District Court for Rhode Island must decide such cases consistently with its previous decision. Tax Court decisions are not binding on the district courts. Thus, all district courts other than the one for Rhode Island and those within the Eleventh Circuit are free to decide such cases independently. ◀

U.S. Court of Federal Claims. In adjudicating a case, the U.S. Court of Federal Claims must rule consistently with U.S. Supreme Court decisions, decisions of the Circuit Court of Appeals for the Federal Circuit, and its own earlier decisions, including those rendered when the court had a different name. It need not follow decisions of other circuit courts, the Tax Court, or U.S. district courts.

³⁵ The *Golsen* Rule is based on the decision in *Jack E. Golsen*, 54 T.C. 742 (1970).

▼ TABLE C:1-3

Summary of Tax-Related Primary Sources—Statutory and Administrative

Source Name	Publisher	Materials Provided	Citation Example
<i>U.S. Code, Title 26</i> <i>Code of Federal Regulations, Title 26</i>	Government Printing Office Government Printing Office	Internal Revenue Code Treasury Regulations (final)	Sec. 441(b) Reg. Sec. 1.461-1(c)
<i>Internal Revenue Bulletin</i>	Government Printing Office	Treasury Regulations (temporary)	Temp. Reg. Sec. 1.62-1T(e)
		Treasury Regulations (proposed)	Prop. Reg. Sec. 1.671-1(h)
		Treasury decisions	T.D. 8756 (January 13, 1998)
		Revenue rulings	Rev. Rul. 2009-33, 2009-40 I.R.B. 447
		Revenue procedures	Rev. Proc. 2009-52, 2009-49 I.R.B. 744
		Committee reports	S.Rept. No. 105-33, 105th Cong., 1st Sess., p. 308 (1997)
		Public laws	P.L. 105-34, Sec. 224(a), enacted August 6, 1997
		Announcements	Announcement 2007-3, 2007-4 I.R.B. 376
		Notices	Notice 2009-21, 2009-13 I.R.B. 724
<i>Cumulative Bulletin</i>	Government Printing Office	Treasury Regulations (proposed)	Prop. Reg. Sec. 1.671-1(h)
		Treasury decisions	T.D. 8756 (January 12, 1998)
		Revenue rulings	Rev. Rul. 84-111, 1984-2 C.B. 88
		Revenue procedures	Rev. Proc. 77-28, 1977-2 C.B. 537
		Committee reports	S.Rept. No. 105-33, 105th Cong., 1st Sess., p. 308 (1997)
		Public laws	P.L. 105-34, Sec. 224(a), enacted August 6, 1997
		Announcements	Announcement 2006-8, 2006-1 C.B. 344
		Notices	Notice 88-74, 1988-2 C.B. 385

Summary of Tax-Related Primary and Secondary Sources—Judicial

Reporter Name	Publisher	Decisions Published	Citation Example
<i>U.S. Supreme Court Reports</i>	Government Printing Office	U.S. Supreme Court	<i>Boeing Company v. U.S.</i> , 537 U.S. 437 (2003)
<i>Supreme Court Reports</i>	Thomson Reuters/West	U.S. Supreme Court	<i>Boeing Company v. U.S.</i> , 123 S. Ct. 1099 (2003)
<i>Federal Reporter (1st–3rd Series)</i>	Thomson Reuters/West	U.S. Court of Appeal Pre-1982 Court of Claims	<i>Leonard Greene v. U.S.</i> , 13 F.3d 577 (2nd Cir., 1994)
<i>Federal Supplement Series</i>	Thomson Reuters/West	U.S. District Court	<i>Alfred Abdo, Jr. v. IRS</i> , 234 F. Supp. 2d 553 (DC North Carolina, 2002)
<i>U.S. Court of Federal Claims</i>	Thomson Reuters/West	Court of Federal Claims	<i>Jeffery G. Sharp v. U.S.</i> , 27 Fed. Cl. 52 (1992)
<i>Tax Court of the U.S. Reports</i>	Government Printing Office	U.S. Tax Court regular	<i>Security State Bank</i> , 111 T.C. 210 (1998), acq. 2001-1 C.B. xix
<i>Tax Court Memorandum Decisions</i>	Wolters Kluwer/CCH	U.S. Tax Court memo	<i>Paul F. Belloff</i> , 63 TCM 3150 (1992)
<i>RIA Tax Court Memorandum Decisions</i>	Thomson Reuters/RIA	U.S. Tax Court memo	<i>Paul F. Belloff</i> , 1992 RIA T.C. Memo ¶192,346 (T.C. Memo 1992-346)
<i>American Federal Tax Reports</i>	Thomson Reuters/RIA	Tax: all federal courts except Tax Court	<i>Boeing Company v. U.S.</i> , 91 AFTR 2d 2003-1088 (USSC, 2003)
<i>U.S. Tax Cases</i>	Wolters Kluwer/CCH	Tax: all federal courts except Tax Court	<i>Ruddick Corp. v. U.S.</i> , 81-1 USTC ¶9221 (Ct. Cls., 1981)

EXAMPLE C:1-10 ▶ Assume the same facts as in Example C:1-9. In a later year, a case involving similar facts and issues is heard by the U.S. Court of Federal Claims. This court is not bound by precedents set by any of the other courts. Thus, it may reach a conclusion independently of the other courts. ◀

Circuit Courts of Appeals. A circuit court is bound by U.S. Supreme Court decisions and its own earlier decisions. If neither the Supreme Court nor the circuit in question has already decided an issue, the circuit court has no precedent that it must follow, regardless of whether other circuits have ruled on the issue. In such circumstances, the circuit court is said to be writing on a clean slate. In rendering a decision, the judges of that court may adopt another circuit's view, which they are likely to regard as relevant.

EXAMPLE C:1-11 ▶ Assume the same facts as in Example C:1-9. Any circuit other than the Eleventh would be writing on a clean slate if it adjudicated a case involving similar facts and issues. After reviewing the Eleventh Circuit's decision, another circuit might find it relevant and rule in the same way. ◀

In such a case of “first impression,” when the court has had no precedent on which to base a decision, a tax practitioner might look at past opinions of the court to see which other judicial authority the court has found to be “persuasive.”

Forum Shopping. Not surprisingly, courts often disagree on the tax treatment of the same item. This disagreement gives rise to differing precedents within the various jurisdictions (what is called a “split in judicial authority”). Because taxpayers have the flexibility of choosing where to file a lawsuit, these circumstances afford them the opportunity to **forum shop**. Forum shopping involves choosing where among the courts to file a lawsuit based on differing precedents.

An example of a split in judicial authority concerned the issue of when it became too late for the IRS to question the tax treatment of items that “flowed through” an S corporation's return to a shareholder's return. The key question was this: if the time for assessing a deficiency (limitations period) with respect to the corporation's, but not the shareholder's, return had expired, was the IRS precluded from collecting additional taxes from the shareholder? In *Kelley*,³⁶ the Ninth Circuit Court of Appeals ruled that the IRS would be barred from collecting additional taxes from the shareholder if the limitations period for the S corporation's return had expired. In *Bufferd*,³⁷ *Fehlhaber*,³⁸ and *Green*,³⁹ three other circuit courts ruled that the IRS would be barred from collecting additional taxes from the shareholder if the limitations period for the shareholder's return had expired. The Supreme Court affirmed the *Bufferd* decision,⁴⁰ establishing that the statute of limitations for the shareholder's return governed. This action brought about certainty and uniformity within the judicial system.

Dictum. At times, a court may comment on an issue or a set of facts not central to the case under review. A court's remark not essential to the determination of a disputed issue, and therefore not binding authority, is called *dictum*. An example of dictum is found in *Central Illinois Public Service Co.*⁴¹ In this case, the U.S. Supreme Court addressed whether lunch reimbursements received by employees constitute wages subject to withholding. Justice Blackman remarked in passing that earnings in the form of interest, rents, and dividends are not wages. This remark is dictum because it is not essential to the determination of whether lunch reimbursements are wages subject to withholding. Although not authoritative, dictum may be cited by taxpayers to bolster an argument in favor of a particular tax result.

³⁶ *Daniel M. Kelley v. CIR*, 64 AFTR 2d 89-5025, 89-1 USTC ¶9360 (9th Cir., 1989).

³⁷ *Sheldon B. Bufferd v. CIR*, 69 AFTR 2d 92-465, 92-1 USTC ¶50,031 (2nd Cir., 1992).

³⁸ *Robert Fehlhaber v. CIR*, 69 AFTR 2d 92-850, 92-1 USTC ¶50,131 (11th Cir., 1992).

³⁹ *Charles T. Green v. CIR*, 70 AFTR 2d 92-5077, 92-2 USTC ¶50,340 (5th Cir., 1992).

⁴⁰ *Sheldon B. Bufferd v. CIR*, 71 AFTR 2d 93-573, 93-1 USTC ¶50,038 (USSC, 1993).

⁴¹ *Central Illinois Public Service Co. v. CIR*, 41 AFTR 2d 78-718, 78-1 USTC ¶9254 (USSC, 1978).

STOP & THINK

Question: You have been researching whether an amount received by your new client can be excluded from her gross income. The IRS is auditing the client's prior year tax return, which another firm prepared. In a similar case decided a few years ago, the Tax Court allowed an exclusion, but the IRS nonacquiesced in the decision. The case involved a taxpayer in the Fourth Circuit. Your client is a resident of Maine, which is in the First Circuit. Twelve years ago, in a case involving another taxpayer, the federal court for the client's district ruled that this type of receipt is not excludable. No other precedent exists. To sustain an exclusion, must your client litigate? Explain. If your client litigates, in which court of first instance should she begin her litigation?

Solution: Because of its nonacquiescence, the IRS is likely to challenge your client's tax treatment. Thus, she may be compelled to litigate. She would not want to litigate in her U.S. district court because it would be bound by its earlier decision, which is unfavorable to taxpayers generally. A good place to begin would be the Tax Court because it is bound by appellate court, but not district court, decisions and because of its earlier pro-taxpayer position. No one can predict how the U.S. Court of Federal Claims would rule because no precedent that it must follow exists.

ADDITIONAL COMMENT

A tax treaty carries the same authoritative weight as a federal statute (IRC). A tax advisor should be aware of provisions in tax treaties that will affect a taxpayer's worldwide tax liability.

KEY POINT

Tax articles can be used to help *find* answers to tax questions. Where possible, the underlying statutory, administrative, or judicial sources referenced in the tax article should be cited as authority and not the author of the article. The courts and the IRS will place little, if any, reliance on mere editorial opinion.

TAX TREATIES

The United States has concluded **tax treaties** with numerous foreign countries. These treaties address the alleviation of double taxation and other matters. A tax advisor exploring the U.S. tax consequences of a U.S. corporation's operations in another country should determine whether a treaty between that country and the United States exists. If one does, the tax advisor should ascertain the applicable provisions of the treaty. (See Chapter C:16 for a more extensive discussion of treaties.)

TAX PERIODICALS

Tax periodicals assist the researcher in tracing the development of, and analyzing tax law. These periodicals are especially useful when they discuss the legislative history of a recently enacted IRC statute that has little or no administrative or judicial authority on point.

Tax experts write articles on landmark court decisions, proposed regulations, new tax legislation, and other matters. Frequently, those who write articles of a highly technical nature are attorneys, accountants, or professors. Among the periodicals that provide in-depth coverage of tax-related matters are the following:

The Journal of Taxation
The Tax Adviser
Practical Tax Strategies
Taxes—The Tax Magazine
Tax Law Review
Tax Notes
The Journal of Corporate Taxation
PPC's Guide to Choice of Business Entity
PPC's Guide to Real Estate Taxation
Estate Planning

The first six journals are generalized; that is, they deal with a variety of topics. As their titles suggest, the next four are specialized; they deal with specific subjects. All these publications (other than *Tax Notes*, which is published weekly) are published monthly, bi-monthly, or quarterly. Daily newsletters, such as the *Daily Tax Report*, published by Bloomberg BNA in print and electronic formats, are used by tax professionals when they need updates more timely than can be provided by monthly or quarterly publications.

Tax periodicals and tax services are secondary authorities. The IRC, Treasury Regulations, IRS pronouncements, and court opinions are primary authorities. In presenting research results, the tax advisor should always cite primary authorities.

TAX SERVICES

OBJECTIVE 5

Consult tax services to research an issue

Various publishers provide multivolume commentaries on the tax law in what are familiarly referred to as **tax services**. Researchers often consult tax services at the beginning of the research process because a tax service helps identify the tax authorities pertaining to a particular tax issue. The actual tax authorities (e.g., IRC, Treasury Regulations, IRS pronouncements, and court cases), and not the tax services, are generally cited as support for a particular tax position. The services are available in print form via the publishers and electronic form via the Internet. (See further discussion at “The Internet as a Research Tool” later in this chapter). Although each major tax service is an outstanding resource, significant differences exist in the content and organizational scheme from one publisher to the next. For example, each service has its own special features and editorial approach to tax issues along with a great deal of proprietary content. The best way to acquaint oneself with the various tax services and the advantages and disadvantages of each is to use them in researching hypothetical or actual problems.

Organizationally, tax services fall into two types: annotated and topical (although this distinction has become somewhat blurred in the Internet version of these services). An **annotated tax service** is organized by IRC section. The IRC-arranged subdivisions of this service are likely to encompass several topics. The annotations accompany editorial commentaries and include digests or summaries of IRS pronouncements and court opinions that interpret a particular IRC section. They are classified by subtopic and cite pertinent primary authorities. A **topical tax service**, on the other hand, is organized by broad topic, including income taxes, estate and gift taxes, and excise taxes. The topically arranged subdivisions of this service are likely to encompass several IRC sections.

Annotated tax services include the *United States Tax Reporter* and the *Standard Federal Income Tax Reporter* services, both of which are organized by IRC section. Many tax advisors find these reporters easy to use because of their extensive indexing system. Topical tax services include RIA's *Federal Tax Coordinator 2d* and Bloomberg BNA's *Tax Management Portfolios*. *Tax Management Portfolios* are popular with many tax advisors because they are very readable yet still provide a comprehensive discussion of a broad range of tax issues. Each portfolio (e.g., Passive Loss Rules, Portfolio 549) covers a particular topic in great detail. However, because the published portfolios do not cover all areas of the tax law, another service may be necessary to supplement the gaps in a portfolio's coverage. Table C:1-4 summarizes the organization and key features of the major tax services.

▼ **TABLE C:1-4**
Summary of Key Features of Tax Services

Name	Publisher	Organization	Key Features
United States Tax Reporter	Thomson Reuters/RIA	IRC section number	<ul style="list-style-type: none"> • Editorial commentary • Index and findings list • Annotations
Standard Federal Income Tax Reporter	Wolters Kluwer/CCH	IRC section number	<ul style="list-style-type: none"> • Editorial commentary • Index and findings list • Annotations
Federal Tax Coordinator 2d	Thomson Reuters/RIA	Tax topic (income tax by topic, estate and gift taxes, excise taxes)	<ul style="list-style-type: none"> • Commentary organized by topic with references to primary authority and tabbed access to IRC and Treasury Regulations.
Tax Management Portfolios	Bloomberg BNA	U.S. income, foreign income, state tax, estate and gift tax	<ul style="list-style-type: none"> • Over 400 specialized booklets with extensive commentary by topic, heavily footnoted and referenced to primary authority.

THE INTERNET AS A RESEARCH TOOL

OBJECTIVE 6

Apply the basics of Internet-based tax research

Internet databases are rapidly replacing print-based services as the principal source of tax related information. These databases encompass not only the IRC, Treasury Regulations, court cases, state laws, and other primary authorities, but also citators and secondary sources such as tax service reporters, treatises, journals, and newsletters. The principal advantages of using Internet-based tax services are ease and speed of access. These services eliminate the need for searching through several volumes of text, the need for consulting numerous cumulative supplements, and the time required to regularly update a print-based library. In addition, Internet based research tools put a vast amount of information in the hands of a tax practitioner without the cost and space requirements of a well equipped print-based tax library.

ADDITIONAL COMMENT

To apply the online research tools discussed in this chapter, users must have access to the described Internet-based tax services at their institution.

Because of these advantages, the Internet has become the principal medium for conveying tax related information to professionals. The most widely used Internet-based research services are RIA's CheckpointTM (hereafter CHECKPOINT) and CCH IntelliConnectTM. Westlaw^{®42} and LexisNexus are online legal research services that are predominately used by legal professionals.⁴³ This chapter discusses the use of internet-based tax services in general and uses CHECKPOINT for illustrative purposes. Similar features will exist for other major tax services.

The tax services include a variety of libraries that will vary by vendor (e.g., CCH or RIA) and by subscription type (limited or comprehensive). The core of any tax service covers federal taxes but also can cover state and local taxes, estate planning, payroll taxes, pensions, international tax, and financial planning. The federal libraries will include text of the IRC, Treasury Regulations, IRS pronouncements, court opinions, and other primary sources. In addition, the Internet services will include a section containing daily updates for important tax developments in the subscribed practice areas as well as the annotated and/or topical tax services discussed previously, such as the *United States Tax Reporter* (CCH) and the *Federal Tax Coordinator 2d* (RIA). State and local libraries will include tax reporters for all 50 states as well as various multi-state tax guides that provide useful state-by-state comparisons for selected state tax topics (e.g., combined reporting and apportionment methods). Other libraries, such as those covering estate and gift taxes, pensions, and payroll taxes, provide detailed information for professionals heavily engaged in these specialized areas of tax practice.

Libraries and databases in Internet services can be searched in three basic ways:

- By keyword
- By citation
- By index

EXAMPLE C:1-12 ►

Rhonda Researcher's client is a real estate developer and wants to exchange an office building for a residential condominium in the same town. The client wants to know if he can structure the transaction in a tax advantaged way. Rhonda immediately recognizes the situation as a potential like-kind exchange of real property. Therefore, she undertakes a keyword search using the term *like-kind exchange* to quickly uncover potentially applicable documents. She also knows that Sec. 1031 is the relevant IRC section and can search the IRC or Treasury Regulations by citation. On the other hand, if she were unfamiliar with the topic, she could employ several other options. For example, she may browse the index, which is arranged alphabetically by topic. The index entries under "like-kind exchange" direct Rhonda to a number of entries potentially applicable to the transaction. ◀

Most tax professionals conduct tax research using the keyword and citation methods. We discuss these two methods in more detail below.

⁴² Westlaw[®] is owned by Thomson Reuters.

⁴³ The research products discussed in this section (e.g., RIA Checkpoint, CCH IntelliConnectTM, Westlaw[®], and LexisNexus) generally are available only to paid subscribers.

KEYWORD SEARCHES

Searching tax services by keyword is relatively simple, particularly if the researcher is familiar with the Internet. The first step is to select which source (e.g., IRC or editorial materials) to search, perform an initial keyword search, and refine the results after the initial query. The researcher can choose to search across any combination of the available databases. The CHECKPOINT Federal databases include primary sources such as the Internal Revenue Code, Treasury Regulations, and Federal Tax Cases along with editorial databases such as RIA's *Federal Tax Coordinator 2d*. Deciding which database to include in the search depends partly on the expected complexity of the research question and on the researcher's familiarity with the topic.

The search engines within the services look for the terms selected and many variations of the terms. For example, the search for *auto* will return documents with *auto*, *car*, *automobile*, *motor vehicle*, *passenger vehicle*, *sedan*, and others.⁴⁴ Searches will include both singular and plural variations. Any document with the term or terms is returned and ranked by best match according to the search. If two terms are used, the best matches generally are documents where the terms are close together. Choosing effective search terms is critical to success. The search must be broad enough to include relevant documents but not so broad to include hundreds or thousands of documents unlikely to be on point.

For example, if the researcher selects the database containing court cases, the term *property exchange* returns thousands of results that have both the words *property* and *exchange* somewhere in the document. Clearly, this outcome is too broad for a researcher just beginning his or her research. Fortunately, several methods of narrowing the search exist. For example, the keyword search "property exchange" that uses quotation marks around the search phrase will return documents only with that exact phrase. Thus, quotation marks should be used sparingly and only when the researcher knows the precise phrase. Using Boolean connectors is helpful as well. These connectors force the search engine to narrow the search based on the parameters set. Table C:1-5 provides a partial list of connectors available in CHECKPOINT.

Another way to narrow a search is to focus on terms unique to the research question at hand. The goal is to identify tax related terms likely to appear only in relevant tax

▼ **TABLE C:1-5**
Connectors Used in CHECKPOINT

Connector	Description	Examples
&, and	Retrieves documents with both terms.	property & exchange
, or	Retrieves documents with either term.	property exchange
^, not	Retrieves documents with one term but not the other.	property ^ exchange
/n	Retrieves documents in which the first term is separated from the second term by no more than n number of words.	property /5 exchange Locates property within 5 words of exchange
/s	Retrieves documents that contain the first term within 20 words of the second term (or within the same sentence for RIA).	property /s exchange
/p	Retrieves documents that contain the first term within 80 words of the second term (or within the same paragraph for RIA).	property /p exchange
" "	Exact phrase.	"property exchange"
*	Keyword variation.	Deprecia* returns depreciation, depreciate, depreciated, depreciating
?	Keyword variation.	Advis?r returns advisor and adviser

⁴⁴ Tax services provide a thesaurus tool, which can identify synonyms and suggest alternative terms related to search terms used by the researcher. The search engine automatically searches for synonyms unless the researcher

restricts the search to specific terms using Boolean connectors or quotation marks. For example, a search for the specific phrase "automobile depreciation" will not return documents that refer to *auto*, *car*, or *vehicle*.

authorities. For example, stamps are a type of collectible, but the term also will appear in documents discussing taxation of distilled spirits, food stamps, and store stamps and coupons. The researcher should begin the search with limiting terms such as *collectible* rather than the broader term *stamps*. Also, researchers with a good working knowledge of the IRC quickly learn that using IRC sections in search terms is a great way to obtain relevant documents. Browsing the index containing editorial content can identify helpful keywords.

Searching using key words is a skill that improves with practice. Researchers becoming familiar with using the databases will learn to craft search terms that include the most relevant elements of the question at hand. Once the researcher finds a document on point, the information within that document often can be used to narrow future searches. The search can be repeated by adding terms, or the documents returned originally can be searched using a new set of terms. Also, the “search within results” feature offered by major tax services is helpful when the search returns too many documents. However, if searches by keyword search do not return the desired results, other options exist.

SEARCH BY CITATION

Often the desired document is a specific IRC section, Treasury Regulation, court case, IRS pronouncement, or other document. If so, tax services offer searches by specific citation. Researchers must be careful to use exact citations using this tool because close matches will not return the desired document.

Within tax services, the citation search tools provide dedicated boxes in which to type the specific type of document requested. For example, to search for IRC Sec. 267, the researcher simply types 267 in the box labeled Current Code in CHECKPOINT under the “Find by Citation” link. Specific boxes also exist for various Treasury Regulations, court decisions, revenue rulings, revenue procedures, and other IRS pronouncements.

NONCOMMERCIAL INTERNET SERVICES

Many noncommercial institutions, such as governments and universities, allow access to their tax-related databases via the Internet. In “tax-surfing” the Internet, the researcher might first visit the IRS site located at www.irs.gov. Although oriented to the layman, this site contains a wealth of information useful to the tax professional. Such information includes guidelines for electronic filing, IRS forms and instructions, the full text of Treasury Regulations, and recent issues of the *Internal Revenue Bulletin*. Other useful sites include those maintained by the Library of Congress at www.loc.gov and the U.S. Government Publishing Office Federal Digital System at www.govinfo.gov. From these sites, the researcher can retrieve the text of recent court opinions, tax legislation, committee reports, state and federal tax laws, and much more.

An excellent gateway for starting tax related research is the Tax, Accounting, and Payroll Sites Directory at www.taxsites.com, maintained by AccountantsWorld, LLC. This site provides hundreds of hyperlinks to federal, state, and international tax law and tax form databases. Instrumental in financial accounting searches is the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) site at www.sec.gov/edgar.shtml. EDGAR is a document filing and retrieval service sponsored by the U.S. Securities and Exchange Commission (SEC). It provides access to the full text of documents filed with the SEC by publicly traded companies. These documents include annual financial statements on Form 10-K, quarterly financial statements on Form 10-Q, proxy statements, and prospectuses. The EDGAR database extends from January 1994 to the present and is accessible by company name, central index key, document file number, and keyword.

CITATORS

OBJECTIVE 7

Use a citator to assess tax authorities

Citators serve two functions. First, they trace the judicial history of a particular case (e.g., if the case under analysis is an appeals court decision, the citator indicates the lower court that heard the case and whether the Supreme Court reviewed the case). Second, they list

other authorities (e.g., cases and IRS pronouncements) that cite the case or authority in question. These listed authorities are called *citing cases* or *citing rulings*. The judicial history also indicates whether the case is affirmed, reversed or remanded.⁴⁵

Because tax law relies heavily on precedent, the citator provides an index of citing cases and rulings that help the researcher determine the strength of the case or ruling he or she is evaluating. The citator gives full citations for the citing case and lists where the citing cases can be found. It is important to note that the same case may have as many as three decisions (i.e., lower court, court of appeals, and Supreme Court) with each listing having its own list of citing cases. Therefore, if a citing case cites only the Supreme Court decision, the citator will list it only under the Supreme Court cite. The citator allows the researcher to enter case names or case citations. The discussion in this section focuses on the electronic version of the citators, although print versions also exist.

The basic function of a citator is to provide the history of each authority and list cases and pronouncements that have cited the authority. Also, the citator often provides additional information about the citing case, showing whether the citing authorities comment favorably or unfavorably on the cited case or whether they can be distinguished from the cited case.⁴⁶

In addition to tax cases, the citator evaluates revenue rulings and other IRS pronouncements and lists any status changes. Before relying on a revenue ruling or pronouncement, a researcher must confirm that the pronouncement reflects the current position of the IRS. For example, a revoked ruling is one in which the ruling is no longer correct and the correct position is being stated in the new ruling. The IRS does not remove the old ruling from the *Internal Revenue Bulletin* or *Cumulative Bulletin*, but the old ruling does not have authority regarding a transaction occurring after the revocation. Thus, failure to confirm its status could result in an incorrect conclusion. Table C:1-6 provides a list of terms the IRS uses to describe changes in the status of a ruling.

▼ **TABLE C:1-6**

Terms to Describe Status Changes to IRS Rulings

Term	Description of Term
Amplified	No change in the prior published position has occurred, but the prior position is extended to cover a variation of the fact situation previously addressed.
Clarified	Language used in a prior published position is being made clear because the previous language has caused or could cause confusion.
Distinguished	The ruling mentions a prior ruling but points out an essential difference between the two rulings.
Modified	The substance of a previously published ruling is being changed, but the prior ruling remains in effect.
Obsoleted	A previously published ruling is no longer determinative with respect to future transactions, e.g., because laws or regulations have changed, or the substance of the ruling has been adopted into regulations.
Revoked	A previously published ruling has been determined to be incorrect, and the correct position is being stated in the new ruling.
Superseded	The new ruling merely restates the substance of a previously published ruling or series of rulings.
Supplemented	The ruling expands a previous ruling, e.g., by adding items to a list.
Suspended	The previously published ruling will not be applied pending some future action, such as the issuance of new or amended regulations.

Source: Appendices in IRS Internal Revenue Bulletins.

⁴⁵ If a case is *affirmed*, the decision of the lower court is upheld. *Reversed* means the higher court invalidated the decision of the lower court because it reached a conclusion different from that derived by the lower court. *Remanded* signifies that the higher court sent the case back to the lower court with instructions to address matters consistent with the higher court's ruling.

⁴⁶ When a court distinguishes the facts of one case from those of an earlier case, it suggests that its departure from the earlier decision is justified because the facts of the two cases are different.

USING THE CITATOR

Internet-based versions of the citators are easier to use than print-based citators. For example, assume the researcher is currently reading *Leonarda C. Diaz v. Commissioner of Internal Revenue*, 70 TC 1067 (1978). The researcher can click on the citator, and the service opens up a new tab with a summary of activity of the case. The information provided indicates that the *Diaz* case was first decided by the Tax Court (i.e., TC), and then by the Second Circuit Court of Appeals (i.e., CA-2). It shows that the Second Circuit affirmed (upheld) the Tax Court's decision. Cases underneath the Second Circuit decision cite the *Diaz* decision and might be useful for the researcher to better understand the impact of the case. Cases listed beneath the Tax Court decision cite the Tax Court's opinion.

PROFESSIONAL GUIDELINES FOR TAX SERVICES

OBJECTIVE 8

Describe the professional guidelines that CPAs in tax practice should follow

Professional guidelines for tax services are contained in both government-imposed and professional-imposed tax standards. The following sections briefly describe two types of guidelines—Treasury Department **Circular 230** (Rev. 6-2014) and the American Institute of Certified Public Accountants (AICPA) *Statements on Standards for Tax Services* (SSTs). A fuller discussion of these standards appears in Chapter C:15.

TREASURY DEPARTMENT CIRCULAR 230

Circular 230 sets forth rules to practice before the Internal Revenue Service and pertains to certified public accountants, attorneys, enrolled agents, and other persons representing taxpayers before the IRS. It presents the duties and restrictions relating to such practice and prescribes sanctions and disciplinary proceedings for violating these regulations.

Circular 230 rules, however, are not ethical standards. Instead, the document focuses on the right to represent clients before the IRS. These standards differ from the AICPA's SSTs in the following ways:

- They apply only to federal tax issues and not state authorities.
- They generally apply only to federal income tax practice.
- They do not provide the depth of guidance found in the SSTs.
- They give the government the authority to impose monetary penalties for violations of the rules.

Circular 230 provides guidelines for written advice to taxpayers. In June 2014, the IRS substantially revised and simplified the rules and eliminated the distinction between covered opinions and other written advice. Under the new rules, all written advice is held to a “reasonable practitioner standard” that will vary based on the nature and extent of the advice. An email to a client answering a routine tax question will be held to a different standard than will an opinion on the tax effects of a complex transaction. The written advice rules do not apply to training or educational presentations but do apply to marketing and sales presentations.

For all written advice, the practitioner is expected to base the advice on reasonable assumptions, consider relevant facts and circumstances, identify the facts relevant to the advice, be properly skeptical of representations by the taxpayer and others, relate applicable law and authority to the facts, and not base an opinion on the chances that a transaction will or will not be identified by IRS and subject to audit. The revised Section 10.37 of *Circular 230* does note that the IRS representative will consider the “additional risk” associated with opinions related to tax shelters.

AICPA'S STATEMENTS ON TAX STANDARDS

Tax advisors confronted with ethical issues frequently turn to a professional organization for guidance. Although the guidelines set forth by such organizations are not *legally* enforceable, they carry significant moral weight, and may be cited in a negligence lawsuit as the proper “standard of care” for tax practitioners. They also may provide grounds for the termination or suspension of one’s professional license. One such set of guidelines is the *Statements on Standards for Tax Services* (SSTSs),⁴⁷ issued by the American Institute of Certified Public Accountants (AICPA) and reproduced in Appendix E.

The SSTSs provide an ethical framework to govern the normative relationship between a tax advisor and his or her client, where, unlike an auditor, a tax advisor acts as the client’s advocate. Thus, his or her primary duty is to the client, not the IRS. In fulfilling this duty, the advisor is bound by the highest standards of care. The most recent version of the SSTSs includes seven standards that provide guidance for AICPA members in their professional tax practice.

ADDITIONAL COMMENT

SSTS No. 1 states that tax advisors have both the “right and responsibility” to be an advocate for the taxpayer with respect to any position that otherwise meets the standard.

SSTS No. 1—Tax Return Positions. Tax professionals often provide tax advice in situations where the authority is unclear or evolving. Frequently this advice involves recommending positions that could be reversed upon audit. This statement describes the minimum level of confidence a CPA must achieve to recommend a tax return position to a taxpayer. Members first must determine and comply with all standards imposed by the various taxing authorities. Regardless of those standards, a member should not recommend a position unless he or she has a good faith belief that the position has a “realistic possibility” of being sustained administratively or judicially on its merits if challenged. Members are not permitted to take the probability of audit into account.

If the position does not meet the realistic probability standard, a member still may recommend a tax return position if he or she concludes that the position has a “reasonable basis” and the position is properly disclosed. When recommending a tax return position and when preparing or signing a return on which a tax return position is taken, a member should, when relevant, advise the taxpayer regarding potential penalty consequences of such tax return position and the opportunity, if any, to avoid such penalties through disclosure. The member also may consider any GAAP requirements to disclose aggressive tax positions under the portion of Accounting Standards Codification 740 formerly known as FIN 48.

The standard highlights the dual responsibility of the member. The U.S. tax system can function only when taxpayers file “true, correct, and complete” returns, but taxpayers also have no obligation to pay more in tax than they legally owe. The tax professional’s duty is to meet his or her responsibilities to both the tax system and the taxpayer client.

SSTS No. 2—Answers to Questions on Returns. Return preparers often must sign a declaration that the return is “true, correct, and complete.” A member should make a reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a tax return before signing as preparer. However, in certain circumstances, questions or information applicable to the taxpayer may be omitted. Reasonable grounds include the following situations:

- ▶ The omitted information is not readily available or is immaterial and has little effect on taxable income or loss or the tax liability.
- ▶ The meaning of the question as it relates to the taxpayer is uncertain.
- ▶ The requested information is voluminous, in which case the taxpayer can attach a statement indicating that the requested information will be supplied upon request.

⁴⁷ AICPA, *Statements on Standards for Tax Services*, 2009, effective January 1, 2010.

SSTS No. 3—*Certain Procedural Aspects of Preparing Returns.* Tax returns are based on information provided by the client. This statement sets forth the applicable standards for members concerning this information. Specifically, in preparing or signing a return, members are not required to examine or verify a client's supporting data. A member may rely on information supplied by the taxpayer unless the information appears to be incorrect, incomplete, inconsistent, or unreasonable under the circumstances. However, if the applicable law or regulations impose a specific record keeping requirement to claim a deduction, the member should inquire and satisfy himself or herself that the required records do exist.

Members are specifically encouraged to make use of a taxpayer's returns for one or more prior years in preparing the current return, whenever feasible. The practice should help avoid the omission or duplication of items and provide a basis for the treatment of similar or related transactions.

SSTS No. 4—*Use of Estimates.* For various reasons, precise information about an amount required on a tax return might not be available at the time the tax return is prepared. For example, the taxpayer might not have a record of small transactions or might be missing certain records. In such cases, a member may advise on estimates used in the preparation of the tax return, but the taxpayer has the responsibility to provide the estimated data. Appraisals and valuations are not considered estimates.

If estimates are used, they generally need not be labeled as estimates, but they should not be presented in a manner that provides a misleading impression about the degree of factual accuracy. However, disclosure that estimates were used should be made in some unusual situations, including:

- A taxpayer has died or is ill at the time the return is prepared.
- A taxpayer has not received a schedule K-1 at the time the tax return is to be filed.
- Litigation is pending that affects the return.
- Fire, computer failure, or a natural disaster has destroyed the relevant records.

Notwithstanding this statement, the tax practitioner may not use estimates when such use is implicitly prohibited by the IRC. For example, Sec. 274(d) disallows deductions for certain expenses (e.g., meals and entertainment) unless the taxpayer can substantiate the expenses with adequate records or sufficient corroborating information. The documentation requirement effectively precludes the taxpayer from estimating such expenses and the practitioner from using such estimates.

SSTS No. 5—*Departure from a Position Previously Concluded in an Administrative Proceeding or Court Decisions.* Members can take positions that differ from a position determined in an administrative proceeding with respect to the taxpayer's prior return (such as an IRS audit, IRS appeals conference, or a court decision.) Departure might be warranted because of a change in the law or regulations, or favorable court decisions. In any event, if the member can otherwise meet the standards of SSTs No. 1, departure from previous positions is permissible.

SSTS No. 6—*Knowledge of Error: Return Preparation and Administrative Proceedings.* For purposes of this standard, the definition of an error has the common meaning, including a mathematical error, but the definition also encompasses any position that does not meet the standards of SSTs No. 1. A position also qualifies as an error if it met the standard when a return was originally filed but no longer does because of a retroactive legislative or legal proceeding. An error for this purpose does not include immaterial items.

A member should inform the taxpayer promptly upon becoming aware of (1) an error in a previously filed return, (2) an error in a return that is the subject of an administrative proceeding (e.g., an IRS audit or appeals conference), or (3) a taxpayer's failure to file a required return. A member should advise the taxpayer of the potential consequences of the error and recommend corrective measures to be taken. This advice can be given orally.

The member is not obligated to inform the taxing authority of an error and, in fact, may not do so without the taxpayer's permission except when required by law.

However, if the taxpayer requests that a member prepare the current year's return and the taxpayer has not taken appropriate action to correct an error in a prior year's return, the member should consider whether to withdraw from preparing the return and whether to continue a professional or employment relationship with the taxpayer.

The standard recognizes that conflicts can arise between the member's interests and those of the client. For example, withdrawal from an engagement could have an adverse impact on the taxpayer. In some situations, the member should consult his or her own legal counsel before deciding on recommendations to the taxpayer and whether to continue the engagement. In situations involving potential fraud or criminal charges, the member should advise the client to consult with an attorney before taking any action.

SSTS No. 7—Form and Content of Advice to Taxpayers. A member should use professional judgment to ensure that tax advice provided to a taxpayer reflects competence and appropriately serves the taxpayer's needs. The advice can be communicated in writing or orally. When communicating tax advice to a taxpayer in writing, a member should comply with relevant taxing authorities' standards applicable to written tax advice. A member should use professional judgment about any need to document oral advice.

In deciding on the form of advice provided to a taxpayer, a member should consider factors such as:

- ▶ The importance of the transaction and the amounts involved
- ▶ The technical complexity involved
- ▶ The existence of authorities and precedents
- ▶ The tax sophistication of the taxpayer
- ▶ The need to seek other professional advice
- ▶ The potential penalty consequences of a tax return position and whether any penalties can be avoided through disclosure

This statement implies that practitioner-taxpayer dealings should not be casual, non-consensual, or open ended. Rather, they should be professional, contractual, and definite. Oral advice may be appropriate in routine matters, but written communications are recommended in important, complicated, or significant dollar value transactions.

In addition to these obligations, the tax advisor has a strict duty of confidentiality to the client. Although not encompassed under the SSTs, this duty is implied in the accountant client privilege. (For a discussion of this privilege, see Chapter C:15.)

STOP & THINK

Question: As described in the Stop & Think box on pages C:1-10 and C:1-11, you are researching the manner in which a deduction is calculated. The IRC states that the calculation is to be made "in a manner prescribed by the Secretary." After studying the IRC, Treasury Regulations, and committee reports, you conclude that another way of doing the calculation is arguably correct under an intuitive approach. This approach would result in a lower tax liability for the client. According to the *Statements on Standards for Tax Services*, may you take a position contrary to final Treasury Regulations based on the argument that the regulations are not valid?

Solution: You should not take a position contrary to the Treasury Regulations unless you have a "good-faith belief that the position has a realistic possibility of being sustained administratively or judicially on its merits." However, you can take a position that does not meet the above standard, provided you adequately disclose the position, and the position has a reasonable basis. Whether or not you have met the standard depends on all the facts and circumstances. Chapter C:15 discusses tax return preparer positions contrary to Treasury Regulations.

WHAT WOULD YOU DO IN THIS SITUATION?

Regal Enterprises and Macon Industries, unaffiliated corporations, have hired you to prepare their respective income tax returns. In preparing Regal's return, you notice that Regal has claimed a depreciation deduction for equipment purchased from Macon on February 22 at a cost of

\$2 million. In preparing Macon's return, you notice that Macon has reported sales proceeds of \$1.5 million from the sale of equipment to Regal on February 22. One of the two figures must be incorrect. How do you proceed to correct it? Hint: See SSTS No. 3 in Appendix E.

SAMPLE WORK PAPERS AND CLIENT LETTER

OBJECTIVE 9

Prepare work papers and communicate to clients

Appendix A presents a set of sample work papers, including a draft of a client letter and a memo to the file. The work papers indicate the issues to be researched, the authorities addressing the issues, and the researcher's conclusions concerning the appropriate tax treatment, with rationale therefor.

The format and other details of work papers differ from firm to firm. The sample in this text offers general guidance concerning the content of work papers. In practice, work papers may include less detail.

PROBLEM MATERIALS

Note: To complete the online research problems for this chapter, users must have access to an Internet-based service.

DISCUSSION QUESTIONS

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| <p>C:1-1 Explain the difference between closed-fact and open-fact situations.</p> <p>C:1-2 According to the AICPA's <i>Statements on Standards for Tax Services</i>, what duties does the tax practitioner owe the client?</p> <p>C:1-3 Explain what is encompassed by the term tax law as used by tax advisors.</p> <p>C:1-4 The U.S. Government Printing Office publishes both hearings on proposed legislation and committee reports. Distinguish between the two.</p> <p>C:1-5 Explain how committee reports can be used in tax research. What do they indicate?</p> <p>C:1-6 A friend notices that you are reading the Internal Revenue Code of 1986. Your friend inquires why you are consulting a 1986 publication, especially when tax laws change so frequently. What is your response?</p> <p>C:1-7 Does Title 26 contain statutory provisions dealing only with income taxation? Explain.</p> | <p>C:1-8 Refer to IRC Sec. 301.</p> <ol style="list-style-type: none"> a. Which subsection discusses the general rule for the tax treatment of a property distribution? b. Where should one look for exceptions to the general rule? c. What type of Treasury Regulations would relate to subsection (e)? <p>C:1-9 Why should tax researchers note the date on which a Treasury Regulation was adopted?</p> <p>C:1-10</p> <ol style="list-style-type: none"> a. Distinguish between proposed, temporary, and final Treasury Regulations. b. Distinguish between interpretative and legislative Treasury Regulations. <p>C:1-11 In 2011, there was a change in the authoritative weight of interpretive versus legislative regulations. Briefly explain what changed and why.</p> <p>C:1-12 Explain the legislative reenactment doctrine.</p> <p>C:1-13</p> <ol style="list-style-type: none"> a. Discuss the authoritative weight of revenue rulings. |
|--|---|

- b. As a practical matter, what consequences are likely to ensue if a taxpayer does not follow a revenue ruling and the IRS audits his or her return?
- C:1-14** a. In which courts may litigation dealing with tax matters begin?
b. Discuss the factors that might be considered in deciding where to litigate.
c. Describe the appeals process in tax litigation.
- C:1-15** May a taxpayer appeal a case litigated under the Small Cases Procedure of the Tax Court?
- C:1-16** Explain whether the following decisions are of the same precedential value: (1) Tax Court regular decisions, (2) Tax Court memo decisions, and (3) decisions under the Small Cases Procedures of the Tax Court.
- C:1-17** Does the IRS acquiesce in decisions of U.S. district courts?
- C:1-18** The decisions of which courts are reported in the AFTR? In the USTC?
- C:1-19** Why do some revenue ruling citations refer to the *Internal Revenue Bulletin* (I.R.B.) and others to a *Cumulative Bulletin* (C.B.)?
- C:1-20** Explain the *Golsen* Rule. Give an example of its application.
- C:1-21** Assume that the only precedents relating to a particular issue are as follows:
- Tax Court—decided for the taxpayer
Eighth Circuit Court of Appeals—decided for the taxpayer (affirming the Tax Court)
U.S. District Court for Eastern Louisiana—decided for the taxpayer
Fifth Circuit Court of Appeals—decided for the government (reversing the U.S. District Court of Eastern Louisiana)
- a. Discuss the precedential value of the foregoing decisions for your client, who is a California resident.
- b. If your client, a Texas resident, litigates in the Tax Court, how will the court rule? Explain.
- C:1-22** Which official publication(s) contain(s) the following:
a. Transcripts of Senate floor debates
b. IRS announcements
c. Tax Court regular opinions
d. Treasury decisions
e. U.S. district court opinions
f. Technical advice memoranda
- C:1-23** Under what circumstances might a tax advisor find the provisions of a tax treaty useful?
- C:1-24** What two functions does a citator serve?
- C:1-25** Name three primary sources of authority that tax professionals should check against the citator before relying on those sources for important matters.
- C:1-26** List three methods of searching the major tax service databases.
- C:1-27** Use any major tax service to answer the following questions:
a. What are the principal primary sources?
b. What are the principal secondary sources?
- C:1-28** Compare the features of the computerized tax services with those of Internet sites maintained by noncommercial institutions. What are the relative advantages and disadvantages of each? Could the latter sites serve as a substitute for a commercial tax service?
- C:1-29** According to the *Statements on Standards for Tax Services*, what belief should a CPA have before taking a pro-taxpayer position on a tax return?
- C:1-30** List an advisor's duties that are excluded under the AICPA's *Statements on Standards for Tax Services*.
- C:1-31** List three requirements that apply to written advice under Treasury Department *Circular 230*.
- C:1-32** Explain how Treasury Department *Circular 230* differs from the AICPA's *Statements on Standards for Tax Services*.

PROBLEMS

- C:1-33** *Interpreting the IRC.* Under a divorce agreement executed in 2017, an ex-wife receives from her former husband cash of \$25,000 per year for eight years. The agreement does not explicitly state that the payments are excludable from gross income.
a. Does the ex-wife have gross income? If so, how much?
b. Is the former husband entitled to a deduction? If so, is it for or from AGI?
Refer only to the IRC in answering this question. Start with Sec. 71.
c. How did the Tax Cuts and Jobs Act of 2017 change the alimony rules?
- C:1-34** *Interpreting the IRC.* Refer to Sec. 385 and answer the questions below.
a. Whenever Treasury Regulations are issued under this section, what type are they likely to be: legislative or interpretative? Explain.
b. Assume Treasury Regulations under Sec. 385 have been finalized. Will they be relevant to estate tax matters? Explain.

- C:1-35** *Using IRS Rulings.* Locate PLR 8733007 and Rev. Rul. 81-219.
 a. Briefly summarize the tax issue and conclusion of each ruling.
 b. Under what circumstances can a researcher rely on the private letter ruling?
 c. Under what circumstances can a researcher rely on the revenue ruling?
- C:1-36** *Using Treasury pronouncements.* Which IRC section(s) does Rev. Rul. 2001-29 interpret? Hint: consult the official pronouncement of the IRS.
- C:1-37** *Using a Major Tax Service for a Keyword Search.* The objective is to locate a general overview of available home office deductions. On the main research tab, select the *United States Tax Reporter—Explanations database*. How many results does the search return for each search term if the terms and connectors option is selected?
 a. Search term: home office deduction.
 b. Search term: “home office” deduction.
 c. Search term: “home office” /5 deduction.
- C:1-38** *Using a Major Tax Service for a Citation Search.* The objective is to locate a general overview of available home office deductions. You have previously researched the issue and know that Sec. 280A is the primary authority for this issue. In the Keyword Search box, enter 280A and check the IRS Rulings and Releases database and answer the following questions.
 a. How many results for Revenue Rulings does the search return for the search term: 280A?
 b. Using the search within results function, use the new term: home office. How many results does the search return?
 c. Does using the search within results function improve your results? Explain why.
- C:1-39** *Determining Acquiescence.*
 a. What official action (acquiescence or nonacquiescence) did the IRS Commissioner take regarding the 1985 Tax Court decision in *John McIntosh*, 85 T.C. 31 (1985)? Hint: Consult Actions on Decisions (AOD).
 b. Did this action concern *all* issues in the case? If not, explain. (Before answering this question, consult the headnote to the court opinion.)
- C:1-40** *Determining Acquiescence.*
 a. What 2015 action (acquiescence or nonacquiescence) did the IRS Commissioner take regarding the 9th Circuit decision in *Voss v. Commissioner*, 116 AFTR 2d 2015-5529? Hint: Consult Actions on Decisions (AOD).
 b. What issue did the AOD address?
- C:1-41** *Determining Acquiescence.*
 a. What original action (acquiescence or nonacquiescence) did the IRS Commissioner take regarding the 1982 Tax Court decision in *Doyle, Dane, Bernbach, Inc.*, 79 T.C. 101 (1982)? Hint: Consult Actions on Decisions (AOD).
 b. Did the IRS Commissioner subsequently change his mind? If so, when?
- C:1-42** *Evaluating a Case.* Look up *James E. Threlkeld*, 87 T.C. 1294 (1988) and answer the questions below.
 a. Was the case reviewed by the court? If so, was the decision unanimous? Explain.
 b. Was the decision entered under Rule 155?
 c. Consult a citator. Was the case reviewed by an appellate court? If so, which one?
- C:1-43** *Evaluating a Case.* Look up *Bush Brothers & Co.*, 73 T.C. 424 (1979) and answer the questions below.
 a. Was the case reviewed by the court? If so, was the decision unanimous? Explain.
 b. Was the decision entered under Rule 155?
 c. Consult a citator. Was the case reviewed by an appellate court? If so, which one?
- C:1-44** *Writing Citations.* Provide the proper citations (including both primary and secondary citations where applicable) for the authorities listed below. (For secondary citations, reference both the AFTR and USTC.)
 a. *National Cash Register Co.*, a 6th Circuit Court decision
 b. *Thomas M. Dragoun v. CIR*, a Tax Court memo decision
 c. *John M. Grabinski v. U.S.*, a U.S. district court decision
 d. *John M. Grabinski v. U.S.*, an Eighth Circuit Court decision
 e. *Rebekah Harkness*, a 1972 Court of Claims decision
 f. *Hillsboro National Bank v. CIR*, a Supreme Court decision
 g. Rev. Rul. 78-129

- C:1-45** *Writing Citations.* Provide the proper citations (including both primary and secondary citations where applicable) for the authorities listed below. (For secondary citations, reference both the AFTR and USTC.)
- Rev. Rul. 99-7
 - Frank H. Sullivan*, a Board of Tax Appeals decision
 - Tate & Lyle, Inc.*, a 1994 Tax Court decision
 - Ralph L. Rogers v. U.S.*, a U.S. district court decision
 - Norman Rodman v. CIR*, a Second Circuit Court decision
- C:1-46** *Interpreting Citations.* Indicate which courts decided the cases cited below. Also indicate on which pages and in which publications the authority is reported.
- Lloyd M. Shumaker v. CIR*, 648 F.2d 1198, 48 AFTR 2d 81-5353 (9th Cir., 1981)
 - Xerox Corp. v. U.S.*, 14 Cl. Ct. 455, 88-1 USTC ¶9231 (1988)
 - Real Estate Land Title & Trust Co. v. U.S.*, 309 U.S. 13, 23 AFTR 816 (USSC, 1940)
 - J. B. Morris v. U.S.*, 441 F. Supp. 76, 41 AFTR 2d 78-335 (DC TX, 1977)
 - Rev. Rul. 83-3, 1983-1 C.B. 72
 - Malone & Hyde, Inc. v. U.S.*, 568 F.2d 474, 78-1 USTC ¶9199 (6th Cir., 1978)
- C:1-47** *Using a Tax Service.* Use the index of any tax service to locate authorities dealing with the deductibility of the cost of a facelift.
- Cite the authority you find.
 - List the primary IRC section cited as authority.
 - May a taxpayer deduct the cost of a facelift paid in the current year? Explain.
- C:1-48** *Using a Tax Service.* Using any tax service, locate Reg. Sec. 1.302-1. Does this Treasury Regulation reflect recent amendments to the IRC? Explain.
- C:1-49** *Using a Tax Service.* Using the index of any tax service, search the editorial materials to locate authorities addressing whether termite damage constitutes a casualty loss.
- Cite the authority you found.
 - Cite at least two primary authorities.
- C:1-50** *Using a Tax Service.*
- Using any tax service, locate Sec. 303. This section states that Sec. 303(a) applies only if the stock in question meets a certain percentage test. What is the applicable percentage?
 - Locate Reg. Sec. 1.303-2(a) in the same service. Does this Treasury Regulation reflect recent amendments to the IRC with respect to the percentage test addressed in Part a? Explain.
- C:1-51** *Using a Tax Service.* Using the BNA tax service, identify the number of the BNA portfolio for the following subjects.
- Innocent spouse relief.
 - Accounting methods.
 - Involuntary conversions.
 - IRAs.
 - Deductibility of legal and accounting fees, bribes, and illegal payments.
- C:1-52** *Using a Keyword Search.* Using a keyword search of editorial materials in any tax service, locate authorities dealing with the deductibility of the cost of work clothing by a firefighter. List a revenue ruling addressing this question.
- C:1-53** *Using a Citator.* Trace *Biltmore Homes, Inc.*, a 1960 Tax Court memo decision, in the citator.
- According to the citator, how many times has the Tax Court decision been cited by other courts?
 - How many issues did the lower court address in its opinion? Hint: Refer to the case headnote numbers.
 - Did an appellate court review the case? If so, which one?
- C:1-54** *Using a Citator.* Trace *Stephen Bolaris*, 776 F.2d 1428, in the citator.
- According to the citator, how many times has the Ninth Circuit's decision been cited?
 - Did the decision address more than one issue? Explain.
 - Was the decision ever cited unfavorably? Explain.

- C:1-55** *Interpreting a Case.* Using any tax service, refer to the *Holden Fuel Oil Company*, RIA T.C. Memo ¶72,045 (T.C. Memo 1972-45), 31 TCM 184.
- In which year was the case decided?
 - What controversy was litigated?
 - Who won the case?
 - Was the decision reviewed at the lower court level?
 - Was the decision appealed?
 - Has the decision been cited in other cases?
- C:1-56** *Internet Research.* Access the IRS Internet site at www.irs.gov and answer the following questions:
- How does one file a tax return electronically?
 - How can the taxpayer transmit funds electronically?
 - What are the advantages of electronic filing?
- C:1-57** *Internet Research.* Access the IRS Internet site at www.irs.gov and indicate the titles of the following IRS forms:
- Form 4506
 - Form 973
 - Form 8725
- C:1-58** *Internet Research.* Access the Federation of Tax Administrators Internet site at www.taxadmin.org/state-tax-forms and indicate the titles of the following state tax forms and publications:
- Minnesota Form M-100
 - Oklahoma Form 512
 - North Carolina Form D-403
- C:1-59** *Internet Research.* Access the Urban Institute and Brookings Institution Tax Policy Center at taxpolicycenter.org. On the home page, search for *state individual income tax rates* and locate the Tax Policy Center's latest summary of each state's rates. Researchers also can locate the file by looking under the TAX FACTS tab and then the *State* tab, *Main Features of State Tax Systems*.
- How many states do not have a state individual income tax?
 - How many states tax only interest and dividends for individuals?
 - What is the top marginal individual income tax rate in Oregon?
 - Of those that do impose an income tax, which state's top marginal rate is lowest?

COMPREHENSIVE PROBLEM

- C:1-60** Your client, a physician, recently purchased a yacht on which he flies a pennant with a medical emblem on it. He recently informed you that he purchased the yacht and flies the pennant to advertise his occupation and thus attract new patients. He has asked you if he may deduct as ordinary and necessary business expenses the costs of insuring and maintaining the yacht. In search of an answer, consult the editorial materials in any tax service. Explain the steps taken to find your answer.

TAX STRATEGY AND CRITICAL THINKING PROBLEM

- C:1-61** Your client, Home Products Universal (HPU), distributes home improvement products to independent retailers throughout the country. Its management wants to explore the possibility of opening its own home improvement centers. Accordingly, it commissions a consulting firm to conduct a feasibility study, which ultimately persuades HPU to expand into retail sales. The consulting firm bills HPU \$150,000, which HPU deducts on its current year tax return. The IRS disputes the deduction, contending that, because the cost relates to entering a new business, it should be capitalized. HPU's management, on the other hand, firmly believes that, because the cost relates to expanding HPU's existing business, it should be deducted. In contemplating legal action against the IRS, HPU's management considers the state of judicial precedent: The federal court for HPU's district has ruled that the cost of expanding from distribution into retail sales should be capitalized. The appellate court for HPU's circuit has stated in *dictum* that, although in some circumstances switching from product distribution to product sales entails entering a new trade or business, improving customer access to one's existing products generally does not. The