

TAX PRACTICE AND RESEARCH

INTRODUCTION

Tax practice involves much more than just arriving at the correct tax liability for a particular taxpayer. This chapter begins with a description of tax practice and the applicable rules of ethics and professional responsibility.

Then the guidelines for tax research and planning are covered. The U.S. tax system is governed by a body of law that operates based on appropriate authoritative sources. These sources must be consulted any time there is a question as to the current state of the tax law. The applications of Federal tax law involve dealing with the following sources.

1. The *primary* sources of tax law:

- **Statutory Law:** Law as legislated by the U.S. Congress, including treaties as ratified by the U.S. Senate. All other sources interpret the statute.
- **Administrative Interpretations:** Interpretations of statutory law by the U.S. Treasury Department, including the Internal Revenue Service (IRS).
- **Judicial Interpretations:** Interpretations of statutory law by the U.S. courts when disputes arise between taxpayers and IRS over their respective interpretations.

The specific primary sources are described in this chapter along with instructions as to how they are found and used.

2. The *secondary* sources—paper and internet based journals, books, and other publications that report on the activities related to the primary sources—are unofficial interpretations of the statute (and other primary sources). This chapter addresses who uses them, why they are used, and where they are found.

STUDY SUGGESTIONS

Read and study the chapter thoroughly. Pay attention to how practice involves tax compliance, tax planning, tax litigation, and tax research. Most of this career paths involve all of these functions in one way or another.

Understand that the statutory law—generally the *Internal Revenue Code of 1986*—is enacted by Congress and be aware of the process by which amendments pass through Congress. Always remember the fact that the administrative and the judicial rulings are only interpretations of the statutory law and, therefore, do not have the same level of authority.

Note: Understanding the sources of tax law is important; however, when communicating specifics related to the law to others, being able to communicate a conclusion and the specific authority for it to a reader is also essential. Standards for proper “citation” of tax sources are available. Pay close attention to the citations presented in this chapter. They are used throughout the text.

STUDY HIGHLIGHTS

TAX PRACTICE

1. The four basic areas of tax practice are tax compliance, tax planning, tax litigation, and tax research.
2. Tax compliance involves helping clients meet the various information and tax return filing requirements required by statute.

3. Tax planning involves helping clients to organize their affairs to minimize their tax or satisfy some other financial or personal tax objective.
4. Tax litigation involves representing clients in disputes with the IRS, usually in the Federal courts.
5. Tax research is the process of finding answers to particular tax questions encountered in tax compliance, tax planning, and tax litigation. It involves identifying and using the appropriate authoritative sources.
6. Tax professionals are subject to several guidelines for practice in the form of statements of responsibility and government penalties.
 - a. Several accuracy related penalties - i.e., negligence or disregard of the rules, substantial understatement of income, and substantial valuation misstatement - are assessed against the taxpayer.
 - The *negligence* penalty is 20 percent of the understatement in tax liability attributable to negligence or disregard of the rules. The penalty will frequently apply when a taxpayer fails to report income or claims improper deductions. To avoid this penalty, there must be a reasonable basis for positions taken on a return.
 - The *substantial understatement* penalty is 20 percent of the portion of tax due attributable to a substantial understatement of income tax. An understatement is substantial if it exceeds the larger of 10 percent of the correct tax or \$5,000. To avoid this penalty, there must be substantial authority for an undisclosed position or a reasonable basis for a disclosed position.
 - The *substantial valuation misstatement* penalty is 20 percent of the underpayment attributable to a valuation misstatement. It applies if there is an underpayment of tax due to valuing items at more than 200 percent of their actual value. However, it does not apply if the understatement is less than \$5,000 (\$10,000 for a corporation).
 - Most, or all, of these penalties can be avoided if there was reasonable cause for the understatement and the taxpayer acted in good faith.
 - b. Both civil and criminal penalties may be assessed if an understatement is attributed to fraud.
 - Fraud is a willful and deliberate attempt to evade tax. As such, it requires more than negligence and omissions. Criminal fraud must be shown beyond a reasonable doubt.
 - The civil fraud penalty is 75 percent of the understatement attributable to fraud.
 - The criminal fraud penalty can be as high as \$100,000 (\$500,000 for corporations) and imprisonment for up to five years.
 - c. Tax professionals are guided by a number of official statements regarding ethics in their practices.
 - Treasury Circular 230 contains rules for practice before the Internal Revenue Service.
 - The AICPA has its own rules of professional ethics and issues Statements of Responsibility in Tax Practice.
 - The ABA standards of professional behavior deal with tax positions as well as other ethical issues.

- IRC § 6694(a) provides for a \$1,000 (or, if larger, 50 percent of the fee from the engagement) preparer penalty if part of an understatement of tax is attributable to an undisclosed position unless it is more likely than not that the position will be successfully upheld. The penalty is \$5,000 (or, if larger, 50 percent of the fee from the engagement) if the position is willful or reckless.

AUTHORITATIVE SOURCES OF TAX LAW

7. The primary sources of tax law are conveniently broken down into the three categories: statutory law, administrative interpretations, and judicial interpretations. The statute is legislated by Congress. It is interpreted by the executive branch of the Federal government and the Federal courts.

STATUTORY LAW

8. Congress has the constitutional power to legislate the laws of the United States, including, since 1913, the right to assess a Federal income tax without apportionment among the states.

- a. Laws, once passed, are periodically modified by the Congress to accomplish certain goals.
- b. Changes to the tax law then become part of the *Internal Revenue Code of 1986* as amended.

9. **The Making of a Tax Law.** Generally, tax bills begin the legislative process in the Ways and Means Committee of the House of Representatives and continue through the following steps:

- House Ways and Means Committee
- Floor of the House of Representatives
- Senate Finance Committee
- Floor of the U.S. Senate
- President of the United States for signature or veto

10. The two committees hold hearings, debate proposals, and propose changes in the form of a bill. The bill is accompanied by a committee report that explains the provision and the reason for making it to the respective houses. These committee reports are often useful in tax research in order to determine Congressional intent, especially when the law itself is not clear.

11. More often than not, the law passed by the House is not identical to that passed by the Senate. In such a case, the differences must be resolved and acted upon by both houses of Congress. The legislative process is therefore modified as follows:

First four steps: Same as above

- Joint Committee on Taxation, U.S. Congress
- Return compromise bill to the Senate and the House for action
- President for signature or veto

This process is diagramed and each step in the process is described in the text.

12. **Organization of the Code.** The *Internal Revenue Code of 1986* is a systematic codification of the Federal tax statutes.

- a. This body of law is a part—designated Title 26—of the U.S. Code. It is organized into subtitles, chapters, subchapters, parts, subparts, and sections (§).

- b. Each of the section (§) numbers used in the Internal Revenue Code is unique, and references in the literature (and the text) will refer only to Code § numbers. References will also frequently refer to subsection, paragraph, and subparagraph of a particular section. See, for example, footnote 38 in Chapter 3 for this reference:

Citation: § 151 (d) (1)

This citation refers to (Code) § 151, subsection d, paragraph 1. This is the Code location of a particular provision upon which the authors rely in expressing a position.

13. The Federal tax laws were not codified prior to the *Internal Revenue Code of 1939*. Before then, locating particular provisions could only be accomplished by referring to the actual tax bills. They were recodified one other time prior to the current Code, in the *Internal Revenue Code of 1954*.
14. **Tax Treaties.** Tax treaties are also part of the body of tax law. These agreements between the U.S. government and foreign governments generally take precedence over Code provisions.

ADMINISTRATIVE INTERPRETATIONS

15. Generally, the IRS reviews legislation as soon as possible after passage and issues its official interpretation. As additional, more specific interpretations are needed, either because a particular problem is uncovered or a taxpayer asks for advice, certain pronouncements are released by the IRS as follows:
16. **Treasury Regulations.** Treasury regulations are the official interpretation of the statute issued by the Treasury Department of the U.S. Government. These regulations are usually drafted and issued by the IRS, which is a part of the Treasury Department. The regulations are frequently classified into three groups: interpretive, legislative, and procedural.
- Interpretive regulations explain the Treasury Department interpretation of Congressional action. They are binding on the IRS and are overruled by the courts only if the taxpayer can show that they are contrary to Congressional intent or are unreasonable.
 - Legislative regulations exist when Congress was not specific in the statute, and they direct Treasury to issue Regulations related to a particular question. These legislative regulations are essentially law and will be overturned by the courts only if the discretion allowed Treasury is abused.
 - Procedural regulations deal with the way in which taxpayers interact with the IRS (filing requirements, due dates, etc.) and with internal management matters. These, too, represent significant authority.

The regulations are codified using the numerical Internal Revenue Code § designations. A prefix is used, as well as subsections, paragraphs, etc. See footnote 34 in Chapter 3 for an example:

Citation: Reg. § 1.152-1 (c) (2)

The prefix 1 denotes this as an income tax regulation. This particular citation is the second, designated 2, regulation interpreting Code § 152. Specific reference is made to subsection c.

17. **Revenue Rulings.** Revenue rulings are also official interpretations of the tax law by the IRS. Unlike regulations, they deal with a specific factual situation upon which the IRS expresses a position as to the tax results. In relying on a revenue ruling, a taxpayer must compare the facts in his or her particular situation to those in the ruling to determine whether or not the ruling is applicable. Revenue rulings are published weekly in the *Internal Revenue Bulletin*, the IRS weekly informational publication. An example of a citation follows:

Temporary Citation: Rev. Rul. 2006-58, I.R.B. 2006-46, p. 992 (11/13/2006)

This citation refers to the 58th revenue ruling released in 2006, which is found in the *Internal Revenue Bulletin* for the 46th week of 2006, on page 992. Every six months the IRS republishes all significant pronouncements, including revenue rulings, in the permanently compiled *Cumulative Bulletin*.

Permanent Citation: Rev. Rul. 71-468, 1971-2 C.B. 115

This citation reveals that the specified ruling can be found in the second *Cumulative Bulletin* issued for 1971, "1971-2," beginning on page 115.

- 18. Revenue Procedures.** The revenue procedures are utilized to announce internal management guidelines that are relevant to taxpayers. They, too, are published weekly in the *Internal Revenue Bulletin* and semiannually in the *Cumulative Bulletin*. The citation is essentially the same as that for a revenue ruling.

Temporary Citation: Rev. Proc. 2006-53, 2006-48 IRB 1 (11/09/2006)

- 19. Letter Rulings.** Taxpayers who are uncertain as to the interpretation of the law related to a particular transaction may in many instances request an advanced ruling from the IRS. These *private letter rulings* deal with the specific facts related to the taxpayer and apply only to that taxpayer. These rulings are made available by the IRS, with taxpayer identification removed, and distributed by publishing companies. *Determination letters* are responses by the regional office of IRS to questions of taxpayers who have completed a transaction.
- 20.** Both private letter rulings and determinations letters are published as private *letter rulings*, which are published under unique multidigital numbers. A citation follows:

Citation: P.L.R. 2007 18 028

This particular letter ruling cited was the 28th ruling for the year, issued in the 18th week of 2007.

JUDICIAL INTERPRETATIONS

- 21.** Whereas Congress legislates the statute and the IRS interprets it in order to administer and enforce the tax system, the Federal courts are charged with mediating any unsettled disputes between taxpayers and the IRS. The courts interpret the law and apply it to particular conflicts.
- 22.** The appeals process begins within the IRS, and the courts hear a case only after all possible remedies have been exhausted within the IRS.
- a. An issue is raised at the audit level by an IRS agent. If differences are not resolved at that level, a taxpayer must appeal or pay the tax assessed.
 - b. Appeal is first to the IRS Appeals Office, which is independent of the IRS audit division. Before a case can be litigated in court, a taxpayer must exhaust all administrative remedies (i.e., the IRS must make an assessment and the taxpayer must follow prescribed appellate guidelines.) If settlement is not reached at this level, the Federal courts must settle the issue.
- 23.** The judicial appeals process is summarized as follows:

Courts of Original Jurisdiction or Trial Courts

U.S. Tax Court

U.S. District Courts

U.S. Court of Federal Claims

Appellate Courts
U.S. Circuit Court of Appeals
U.S. Court of Appeals for the Federal Circuit
Supreme Court of the United States

The illustration of the Federal court system in the text is useful in understanding the specifics of the appeals process.

24. Trial Courts. Various differences exist among the trial courts.

- a. The Tax Court specializes in tax matters. It has national jurisdiction and holds scheduled sessions throughout the country. There are only 19 Tax Court Judges, who move from location to location. Three other facts about the Tax Court are notable. First, a taxpayer who appeals to the Tax Court does not pay the tax at issue before appealing. Second, the court issues reported or regular decisions and memorandum decisions. Regular decisions involve a point of law not previously addressed by the Tax Court. Memorandums just involve new facts. Third, the Tax Court has a small claims process for taxpayers with \$50,000 or less at issue for each year. This process is less formal and normally involves less expense to the taxpayer; however, a small claims decision may not be appealed by either the taxpayer or the IRS.
- b. The District Court is the court of general jurisdiction in the Federal judicial system. This court is the only one in which a taxpayer may have a jury trial in a tax matter. The jury only decides questions of fact, with the judge deciding questions of law.
- c. The U.S. Court of Federal Claims may hear any disputed claim against the U.S. government. A taxpayer who appeals to the Court of Federal Claims or the District Court must pay the tax deficiency assessed and sue for a refund. The chart in the text showing the relative positions of taxpayers in these courts is descriptive of these and other differences.

25. Appellate Courts. Appeals from the Tax Court and the District Courts are to the Circuit Courts of Appeals. Appeals from the Court of Federal Claims are to the Court of Appeals for the Federal Circuit. Either a taxpayer or the IRS may appeal a case to these courts. If either party is still dissatisfied, appeal is to the Supreme Court, which will hear a case only if a *writ of certiorari* is granted. Normally, a tax case will not be heard (i.e., *certiorari* will not be granted) unless there is disagreement between the circuits and in certain other rare instances.

26. Case Citations. Proper case citations are an important part of communicating research findings. The citations differ, depending upon the court involved, the reporter used, and so on; however, a citation in good form must always clearly convey the name of the taxpayer, the court rendering the opinion, the year of the case, and the volume and page or paragraph of the reporter. Some examples of citations follow:

- Citation: *Comm. v. Wilcox*, 327 U. S. 404 (1946)
Explanation: Commissioner of IRS appealing the case against Wilcox to the Supreme Court, the decision being reported in volume 327 of the Supreme Court Reports (Government Printing Office), page 404, in 1946.
- Citation: *RCA Corp. v. U.S.*, 664 F. 2d 881 (CA-2, 1981)
Explanation: RCA Corp. appealed a trial court decision to the Second Circuit of the Courts of Appeals; the decision was reported in the Federal Reporter, Second Series (West Publishing), volume 664, page 881, in 1981.
- Citation: Jeffrey R. King and Sabrina M. King, 121 T.C. 12 (2003)
Explanation: Jeffrey R. King and Sabrina M. King petitioned the Tax Court; the regular decision was reported in the Tax Court Reports (Government Printing Office), volume 121, page 12, in 2003. It is acceptable to list only the taxpayer's name since the Commissioner is always the respondent in the Tax Court.

- Citation: *A. V. Johnston*, 23 TCM 2003 (1964)
Explanation: *A. V. Johnston* petitioned the Tax Court; the decision was reported in the Tax Court Memorandum Decisions (Commerce Clearing House), volume 23, page 2003, in 1964. See footnote 45, Chapter 5.

These are only examples of citations, a more complete collection of which are included in the text. It is also important to realize that many cases are reported by more than one publisher. Tax Court regular decisions, for example, are reported by the Government Printing Office, Commerce Clearing House (CCH), and Research Institute of America (RIA). A list of the primary reporters of court decisions in the tax area follows:

REPORTERS OF DECISIONS OTHER THAN TAX COURT

<u>Reporter</u>	<u>Abbr.</u>	<u>Courts Reported</u>	<u>Publisher</u>
Supreme Court Reports	U. S.	Supreme Court	G. P. O.
Supreme Court Reporter	S. Ct.	Supreme Court	West Publishing
Federal Supplement	F. Supp.	District Court	West Publishing
Federal Reporter	F.	Cts. of Appeal and Claims Ct.	West Publishing
American Federal Tax Reports	AFTR AFTR 2d	District Cts. Claims Court, Cts. of Appeal, and Supreme Ct.	RIA
United States Tax Cases	USTC	Same as AFTR	CCH

REPORTERS OF TAX COURT DECISIONS

<u>Reporter</u>	<u>Abbr.</u>	<u>Type</u>	<u>Publisher</u>
Tax Court Reports	TC	Regular	G. P. O.
Tax Court Memorandum Decisions	TCM	Memorandum	CCH
Tax Court Memorandum Decisions	PH TC Memo	Memorandum	RIA

27. It is evident from the preceding lists that each case is reported by more than one reporter. Citation of one of the reporters is usually all that is necessary; however, for the convenience of readers who may not have the same reporter, multiple citations are frequently given. See, for example, footnote 8 in Chapter 4. That citation refers to three different publications (USTC, AFTR2d, and F.2d) which report the case as follows:

Citation: *Markarian v. Comm.*, 65-2 USTC Para. 9699, 16 AFTR2d 5785, 352 F.2d 870 (CA-7, 1965)

Each of the reporters provides the exact text of the court's published decision. A short summary, sometimes called *headnotes*, is all that is added by the publisher.

SECONDARY SOURCES OF TAX LAW

28. The primary authorities of tax law are the original source of tax law. Secondary authorities compile, index, interpret, and communicate the contents of these primary authorities. The secondary sources consist of websites, books, periodicals, newsletters, and editorial judgments expressed in tax services. These sources are not relied upon as supporting authority. However, they provide valuable assistance in locating and understanding the appropriate primary authority and in reaching conclusions.

29. **Tax Services.** A tax service is the name assigned to the various sets of books or websites that contain vast information related to tax matters, which are updated regularly. They typically contain reproductions of some primary sources, such as relevant Code provisions, regulations, rulings, etc., as well as the explanations of the tax service's professional editorial staff.
30. **Tax Periodicals.** Websites, tax books and periodicals are other important secondary sources. These resources typically contain detailed discussions of technical topics and give the editors' interpretations and citations to the appropriate primary sources. Newsletters and news reports provide other sources of tax information.
31. Computerized access to tax sources is an increasingly useful tool available to the tax professional. With increasing availability of computer technology, computer access to tax information is becoming more available and more economical.

TAX RESEARCH

32. The tax research process is broken down into six steps as follows:

- Obtain all the facts.
- Diagnose the problem from the facts.
- Locate the authority.
- Evaluate the authority.
- Derive the solution.
- Communicate the answer.

Every step in the process is important. If, during any step in the process, more information is needed or new issues evolve, one must retreat to a prior step. If more facts are needed, they must be gathered, observing whether or not the issues remain unchanged by the new facts.

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STUDY QUESTIONS

True or False

- _____ 1. In order to charge a fee to prepare a tax return, an individual must be a C.P.A., an attorney, or an enrolled agent.
- _____ 2. An individual taxpayer has approximately a one in five chance of being selected for audit by the IRS each year.
- _____ 3. The negligence penalty can be avoided if a position without a reasonable basis is taken (i.e., it has a reasonable basis if it is arguable, but fairly unlikely to prevail in court) so long as the position is disclosed properly in the return.
- _____ 4. The substantial understatement penalty does not apply if there is substantial authority for a position even if it is not disclosed.
- _____ 5. The penalty for civil fraud is 75 percent of the underpayment due to the fraud.
- _____ 6. The criminal tax fraud penalties provide for fines as high as \$100,000 for individual taxpayers and imprisonment for up to 10 years.
- _____ 7. The *Internal Revenue Code of 1986* is amended each time Congress passes tax legislation.
- _____ 8. Generally, all tax bills must start through the legislative process in the Senate Finance Committee.
- _____ 9. Reports of the House Ways and Means and the Senate Finance Committees are generally published in the *Cumulative Bulletin*.
- _____ 10. The *Internal Revenue Code* generally controls when it conflicts with tax treaties.
- _____ 11. Each Treasury (Tax) Regulation citation is preceded by the prefix 1.
- _____ 12. The Treasury Regulations are only interpretations of the *Internal Revenue Code* and therefore carry a lesser level of authority.
- _____ 13. Legislative regulations are those that interpret the laws passed by Congress.
- _____ 14. Proposed Treasury Regulations have no authoritative effect.
- _____ 15. The publication of Letter Rulings is a direct result of the *Freedom of Information Act*.
- _____ 16. Letter rulings may not be used as precedent in a Federal court.
- _____ 17. Letter rulings may not be relied upon by any taxpayers other than those requesting the ruling.
- _____ 18. A taxpayer can appeal an unfavorable private ruling to the Tax Court before entering into a proposed transaction.
- _____ 19. A proper citation of a tax case should include the name of the judge rendering the opinion.

- _____ 20. *Multiple citation* refers to citation of both the trial court and the appellate court decisions only.
- _____ 21. When the IRS acquiesces in a decision that it has lost, it is announcing that it will follow the court's ruling and not pursue the issue with other taxpayers.
- _____ 22. IRS formally announces acquiescence or nonacquiescence with respect to regular Tax Court decisions.
- _____ 23. A taxpayer who unsuccessfully tries a case in the Tax Court may appeal to the District Court.
- _____ 24. Interpretations expressed in tax services are unofficial, and even though they are useful, they have no legal authority.

Multiple Choice

25. Which of the following is true of the *Internal Revenue Code of 1986*?
- _____ a. It includes statutes and regulations.
_____ b. It has not been changed since 1986.
_____ c. Each Code section has a number that is unique from others.
_____ d. More than one is true.
26. Which of the following is *not* true of the Treasury Regulations?
- _____ a. They are an official interpretation of the statute by the Treasury Department.
_____ b. They are organized by Code Section numbers.
_____ c. They are equal in authority to the statute.
_____ d. They are binding on IRS personnel.
27. Which of the following is *not* true of revenue rulings?
- _____ a. They are published weekly in the *Internal Revenue Bulletin*.
_____ b. They are permanently bound semiannually in the *Cumulative Bulletin*.
_____ c. They normally deal with a stated factual situation.
_____ d. All are true.
28. Which of the following is *not* a primary source of tax law?
- _____ a. The *Internal Revenue Code of 1986*
_____ b. Revenue Rulings issued by the IRS
_____ c. U.S. Tax Court memorandum decisions
_____ d. All of the above are primary sources
29. In which Federal court(s) may a taxpayer request a trial by jury?
- _____ a. District Court
_____ b. Tax Court
_____ c. Court of Federal Claims
_____ d. a. and c.

30. In which court may a taxpayer proceed without paying the deficiency in tax proposed by the IRS?

- _____ a. District Court
- b. Tax Court
- c. Court of Federal Claims
- d. None of these

31. Which of the following is *not* true of the small claims division of the Tax Court?

- _____ a. It is presided over by the chief judge of the Tax Court.
- b. Cases may be assigned to case commissioners.
- c. A taxpayer may appeal to the regular Tax Court in the event of a loss.
- d. The process is less expensive and less formal than regular Tax Court trials.

32. If a taxpayer wishes to appeal his/her unfavorable U.S. District Court decision, the appeal is to which of the following?

- _____ a. The U.S. Tax Court
- b. The appropriate U.S. Circuit Court of Appeals
- c. The U.S. Court of Appeals for the Federal Circuit
- d. Directly to the U.S. Supreme Court

33. Which of the following is *not* considered a secondary tax source?

- _____ a. Books, such as college text books
- b. Tax services, including the editorial opinions expressed
- c. The *Cumulative Bulletin*
- d. Tax journals and other periodicals

34. Which of the following represents a citation to an income tax regulation?

- _____ a. § 351(b)(1)(A)
- b. § 1.704(b)-1(c)
- c. Treas. Reg. 89-36
- d. CCH 23,445

35. You are given this citation:

Millar v. Comm., 78-2 USTC ¶ 9514, 42 AFTR2d 78-4276, 577 F.2d 212 (CA-3, 1978)

Which of the following is *not* true of this citation?

- _____ a. The taxpayer, Millar, lost at the trial court and appealed to the appeals court.
- b. This decision is reported by CCH, RIA, and West.
- c. The decision was rendered by the U.S. Tax Court (USTC).
- d. The decision was rendered in 1978.

36. You are given this citation:

M.G. Anton, 34 T.C. 842 (1960)

Which of the following is known from this citation?

- a. The taxpayer, Anton, won the decision.
- b. The case was heard by the U.S. Tax Court upon petition by the taxpayer, Anton.
- c. The case was reported by Tax Compositors, Inc. (T.C.).
- d. The case was decided in the 34th Division of the Tax Court.

Matching

Match the primary source in the left column to the reporter that includes it in the right hand column.

- | | |
|--|-------------------------------------|
| 37. Senate Finance Committee Report | a. <i>Internal Revenue Code</i> |
| 38. Dept. of Treasury official interpretation of a provision | b. <i>Tax Court Memorandums</i> |
| 39. Tax statute | c. <i>Congressional Record</i> |
| 40. Revenue Ruling 89-123 | d. <i>Tax Court Reports</i> |
| 41. Tax Court Reported Decision | e. <i>Treasury Regulations</i> |
| 42. Appeals Court Decision | f. Not a primary source |
| 43. Revenue Procedure 95-60 | g. <i>United States Tax Cases</i> |
| 44. <i>Journal of Taxation</i> | h. <i>Cumulative Bulletin</i> |
| 45. House Floor Debate | i. <i>Internal Revenue Bulletin</i> |

Completion

- 46. There are three basic categories of primary sources of tax law: _____, _____, and _____. The one with the highest level of authority is _____.
- 47. The three trial courts, or courts of original jurisdiction, are _____, _____, and _____.
- 48. The final step in the tax research process is to _____.

Problems

- A. Briefly describe the following steps in the tax research process:
 - 1. Obtain all the facts.
 - 2. Evaluate the authority
- B. Prepare a list of the *primary* sources of tax law. List them under categories of (1) statutory, (2) administrative, and (3) judicial sources.
- C. Prepare a second list of several major types of secondary sources of tax law.

SOLUTIONS TO STUDY QUESTIONS

True or False

1. False. No license or credential is required on a national basis in order to prepare a tax return for a fee. (See p. 2-1.)
2. False. The chances of audit have been less than 1 percent in recent years. (See p. 2-4.)
3. False. The safe harbor is no longer available after 1993 and the penalty can be assessed even though the position is disclosed in a return unless there is a *reasonable basis* for the position. (See p. 2-6.)
4. True. The substantial understatement penalty can be avoided for an undisclosed position (i.e., the position is shown on the return) if there is substantial authority or if the position is disclosed and supported by reasonable authority. (See p. 2-7.)
5. True. The minimum penalty is 75 percent of the understatement. (See p. 2-10.)
6. False. The statement is true, except the limit on imprisonment is 5 years. (See p. 2-10.)
7. The *Internal Revenue Code of 1986* is amended each time Congress passes tax legislation. True. Each tax bill amends specific sections of the Code. (See p. 2-19.)
8. False. Tax bills usually originate in the House Ways and Means Committee. (See p. 2-18.)
9. True. Committee reports to each tax bill are generally published in the Bulletin. (See p. 2-18.)
10. False. Tax treaties generally supersede the Code if entered into after the Code provision was passed and after August 16, 1954. (See p. 2-21.)
11. False. Income tax regulations are generally preceded by the prefix 1. Other Treasury Regulations have different prefixes (e.g., estate tax regulations are preceded by "20"). (See p. 2-23.)
12. True. All interpretations have a lower level of authority than the Code. Although the regulations generally have the force and effect of law, they may be overruled if the taxpayer shows that they are contrary to the intent of Congress. (See pp. 2-21 through 2-26.)
13. False. Legislative regulations are issued by the Treasury Department on Congressional order to clarify details in complex areas with which Congress did not specifically deal. In effect, Congress has delegated its authority, but the IRS must stay within Constitutional boundaries and within the intent of Congress as expressed in the law, committee reports, or otherwise. (See p. 2-22.)
14. True. Proposed Treasury regulations are issued to inform taxpayers as to government thinking and to allow taxpayers to comment on the regulations at scheduled hearings. (See p. 2-22.)
15. True. The publication of Letter Rulings is the direct result of the Act. They are texts of Private Letter Rulings issued by the IRS with all taxpayer identifying data removed. (See p. 2-25.)

16. True. A published Letter Ruling is issued to inform taxpayers as to how the IRS ruled in particular instances; however, such rulings are not binding on the IRS with respect to other taxpayers. (See p. 2-25.)
17. True. They are published just for informational purposes. (See p. 2-25.)
18. False. Before an issue can be pursued in court, the taxpayer must file a return, a deficiency must be assessed, and all administrative remedies must be sought. (See p. 2-25.)
19. False. Only the names of the litigants, the court rendering the opinion, the year, and the volume and page or paragraph designations are required. (See pp. 2-26 through 2-35.)
20. False. Multiple citation refers to the citation of the location in more than one of the reporters that report a particular decision. (See pp. 2-26 through 2-35.)
21. True. The IRS may announce acquiescence or nonacquiescence to any regular Tax Court decisions that it loses. (See p. 2-32.)
22. True. Other devices must be used for announcements related to other cases. (See p. 2-32.)
23. False. Appeal from the Tax Court is to the Circuit Courts of Appeal. A taxpayer appeals to the Circuit in which he/she resides. (See p. 2-29.)
24. True. The interpretations in tax services are unofficial. (See p. 2-35.)

Multiple Choice

25. c. The Code sections are numbered beginning with § 1. They are in order, but not necessarily sequential. Both statements a and b are false. (See p. 2-20.)
26. c. The regulations generally interpret the statute and are of lesser authoritative weight. (See p. 2-21.)
27. d. All of the statements are true. (See p. 2-23.)
28. d. All of the items are official sources. (See p. 2-35.)
29. a. Only in the District Court may a Federal tax case be decided by a jury. The jury only decides questions of fact. Questions of law are decided by a judge. (See p. 2-27.)
30. b. Only in the Tax Court may a taxpayer proceed without paying the deficiency. To try a case in the other courts, one must pay the tax and sue for a tax refund. (See p. 2-27.)
31. c. Small claims cases are not appealable to any court by either the taxpayer or the IRS. (See p. 2-28.)
32. b. Appeal is to the Circuit Court for the circuit in which the District Court is located. (See p. 2-29.)
33. c. The *Cumulative Bulletin* is a volume published semiannually that contains revenue rulings, revenue procedures, and other primary sources. Each of the other choices is a secondary source of tax law. (See p. 2-24.)
34. b. The prefix 1 denotes that this is an income tax regulation. It is appropriately followed by a decimal point and the Internal Revenue Code Section to which it refers. (See p. 2-23.)

35. c. This decision was rendered by the U.S. Court of Appeals for the Third Circuit (CA-3). "USTC" abbreviates United States Tax Cases, a publication of Commerce Clearing House (CCH). (See pp. 2-31 through 2-34.)
36. b. This is a Tax Court decision. Only the taxpayer's name need be listed since the taxpayer always petitions and the Commissioner of IRS is always the defendant. Each of the other statements is false. (See pp. 2-31 through 2-34.)

Matching

37. b. The report is published for each tax bill.
38. e. The Treasury Regulations are the official interpretation.
39. a. Most tax statutes are codified in the *IRC of 1986*.
40. h. The permanent citation is in the *Cumulative Bulletin*.
41. d. Reported decisions are published by the G.P.O.
42. g. This reporter includes any tax case other than Tax Court cases.
43. i. The weekly reporter for IRS is the *IRB*, the temporary citation.
44. f. This journal is a secondary source.
45. c. All proceedings in Congress are published in the *Record*.

Completion

46. legislative; administrative; judicial; legislative
47. District Court; Court of Federal Claims; Tax Court
48. communicate the findings

Problems

- A. 1. A researcher should gather as many facts as possible relevant to the tax issue; however, obtaining all the facts is somewhat difficult before the issues are well developed. Once the issue has evolved further, additional facts should be obtained.
2. Evaluation of authority is a process of comparing and contrasting authorities to determine which are most appropriate. Applicable Code provisions and regulations normally present no problem. Court decisions and revenue rulings, particularly when in conflict, must be "evaluated" in terms of date of issue, level of court, relative similarity of facts to facts present, etc.
- B. Statutory: *Internal Revenue Code*; treaties
 Administrative: Regulations, Revenue Rulings, etc.
 Judicial: Published decisions by the courts
- C. Tax services, treatises, other books, journals, symposia, electronic data bases

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