Introduction to Tax Law Research (Secondary Sources)

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Goals/Objectives

After this session you should:

- Be able to identify resources helpful to developing a contextual understanding of tax law issues
- Be familiar with the structure of the administrative agencies and courts involved in tax law
- Be able to describe the hierarchy of sources of federal tax law
- Be able to articulate how a variety of factors may affect your research strategy for addressing a tax issue
- Be familiar with the secondary sources used by tax practitioners
- Be able to locate secondary sources and know how to access information in these sources
Agenda

• Context
  – Blogs and Websites
  – News Sources
  – Research Guides
  – Reference Sources

• System/Structure
  – Sources of Law
  – Hierarchy of sources
  – Courts

• Research
  – Factors affecting research strategy
  – Primary Sources (Addressed by Karen Kalnins)
  – Secondary Sources
    • Citators
    • Looseleaf Services and Treatises
    • Form books
    • Periodicals
    • Other
**Context**

- Blogs and Websites
  - TaxProf Blog
  - Tax Law Blog

http://www.taxlitigation.net/taxlaw/category/tax-law/
Context

• News Sources
  – Services
  • RIA
  • CCH
  • Westlaw and Lexis
Research Guides

- Use Cornell’s Legal Research Engine to locate research guides
  
  [link]

Harvard Tax Law Research

[link]

- Duke Law Library

  Federal Tax Research Guide

  [link]
Context

- Research Guides
  - Georgetown Law Library
    - Federal Tax Research
      http://www.ll.georgetown.edu/guides/federal_tax.cfm
    - Federal Tax Research Reference Chart
      http://www.ll.georgetown.edu/guides/fedtax_chart.cfm
Context

• Research Guides
  – Oklahoma City University

Lee Peoples, Practice Resources,
http://www.okcu.edu/law/lawlib/pdfs/guide_practiceresources.pdf#nameddest=tax
linked from http://www.okcu.edu/law/lawlib/library_researchguides.php

Practice Resources
Lee Peoples
Asst. Law Librarian
Oklahoma City University Law Library

Creating a Law Firm Library
An essential part of starting and running your own practice is a strong legal library. A well-chosen legal library can be a valuable asset to your practice. Your library should consist of a mix of books, periodicals, and online resources. Some of the most valuable resources are the ones that are current and relevant to your practice. The following are some tips on how to create a strong legal library:

1. Use a combination of print and online resources.
2. Consider purchasing a subscription to a legal research database.
3. Keep your library up-to-date with the latest laws and regulations.
4. Make sure your library is user-friendly and accessible.

Additional Resources
• Research Guides
  – Oklahoma City University

Lee Peoples, Practice Resources,
http://www.okcu.edu/law/lawlib/pdfs/guide_practiceresources.pdf#nameddest=tax
linked from http://www.okcu.edu/law/lawlib/library_researchguides.php
Context

• Reference Sources
  – Dictionaries
• West’s Tax Law Dictionary
Structure – Department of Treasury and the IRS

Fact Sheets: Taxes

WRITING AND ENACTING TAX LEGISLATION

INTRODUCTION

Tax laws greatly affect our economy. This is because the amount of revenue raised through taxes largely decides the amount of services that the government can afford to provide.

The Congress takes steps known as the legislative process to pass a Federal law. This process begins when a Senator or Representative prepares a proposed law, called a “bill.” It ends when Congress approves the bill and sends it to the President. When the President signs the bill, it then becomes law.

The Constitution says that “all bills for raising revenue shall originate in the House of Representatives” and that “Congress shall have the power to lay and collect taxes.” Presidents can, and frequently do, recommend changes to current tax laws, but only Congress can make the changes.

EXECUTIVE BRANCH PREPARATION

Most recommendations for new tax legislation come from the President. Many people are involved in shaping these recommendations. Months of preparation may go into new proposed legislation before the President makes his recommendations to Congress. The Treasury Department has primary responsibility for drafting the President’s tax recommendations. Advice and assistance also come from other government agencies, such as the Internal Revenue Service (IRS) or people in business or professional fields.

http://www.ustreas.gov/education/fact-sheets/taxes/writing.shtml

Structure – Sources of and Hierarchy of Tax Law

Donaldson's Federal Income Taxation of Individuals: Cases, Problems and Materials, 2d (American Casebook Series)
By Samuel A. Donaldson

Book - hardcover
Copyright: 2007
Last Updated: 2/16/2007
Availability: In Stock
Product Details

List Price: $128.00
Shipping: FREE Ground Shipping

Chapter 1

Applicable Tax Rates

Effective more quickly, it will often issue a proposed regulation simultaneously as a temporary regulation. Temporary regulations (identified by the use of a “T,” as in “Treasury Reg. § 1.1991-5T”) are effective immediately upon publication in the Federal Register. After publication, temporary regulations undergo the same notice and comment procedures applicable to proposed regulations, and may be published as final regulations (in the same or in a different form, depending upon comments received and intervening changes in the law).

One final preliminary point about Treasury regulations: those regulations promulgated pursuant to the general grant of authority under § 7801(a) are referred to as interpretive regulations. In some cases, Congress specifically grants authority to Treasury to write the rules for more technical issues. Regulations issued under such a specific grant of authority are referred to as legislative regulations. As a general rule of thumb, when a Code provision contains language along the lines of “under regulations prescribed by the Secretary,” the corresponding regulations are most likely legislative regulations. Because legislative regulations are issued under an express grant of authority from Congress, courts tend to give them more weight than they do interpretive regulations. See Fie v. Commissioner, 82 T.C. 1 (1984).

Beyond the Code and Treasury regulations, there are still other sources of tax law. Of course, court cases help interpret, supplement, and shape the federal tax laws. In addition, the United States is a party to 50-bilateral income tax treaties with other nations. Administrators of the Internal Revenue Service, in the internal revenue manuals and pronouncements of the Internal Revenue Service, are binding on taxpayers (as you will see from the text), and the legislative history documenting congressional intent has often been used to answer difficult interpretive issues.

With all of these sources, perhaps it is not surprising to learn that they sometimes conflict. When that happens, one must resort to the “last-in-time rule.” It states that if two authorities of equal weight contradict, the later issued later in time is controlling. Thus, the provisions of a 2006 tax treaty generally prevail over contradictory provisions of a Code section enacted in 1986. But what authorities of equal weight? Very generally, sources of tax laws can be grouped into three tiers:

Tier 1: Internal Revenue Code
Legislative Regulations
Cases

Tier 2: Interpretive Regulations
Public Administrative
Rulings (binding on all taxpayers)

Tier 3: Legislative History
Private Administrative
Rulings (binding on requesting taxpayers)

Any authority in Tier 1 outweighs any authority in Tiers 2 and 3, regardless of which is last in time. Likewise, any Tier 2 authority outweighs any Tier 3 authority. The last-in-time rule is applied only where the conflict exists between two authorities in the same tier.

If all of this has you ready to drop the course (after only these few pages, no less), fear not. You will get the hang of it as you work through the
United States income tax law comes from a number of sources. These sources have been divided into three tiers as follows:

**Tier 1**
- United States Constitution
- Internal Revenue Code (IRC) (legislative authority, written by the United States Congress through legislation)
- Treasury regulations
- Federal court opinions (judicial authority, written by courts as interpretation of legislation)
- Treaties (executive authority, written in conjunction with other countries)

**Tier 2**
- Agency interpretative regulations (executive authority, written by the Internal Revenue Service (IRS) and Department of the Treasury), including:
  - Final, Temporary and Proposed Regulations promulgated under IRC § 7805;
  - Treasury Notices and Announcements;
- Public Administrative Rulings (IRS Revenue Rulings, which provide informal guidance on specific questions and are binding on all taxpayers)
Structure – Sources of and Hierarchy of Tax Law

- **Tier 3**
  - Legislative History
  - Private Administrative Rulings (private parties may approach the IRS directly and ask for a Private Letter Ruling on a specific issue - these rulings are binding only on the requesting taxpayer).

- Where conflicts exist between various sources of tax authority, an authority in Tier 1 outweighs an authority in Tier 2 or 3. Similarly, an authority in Tier 2 outweighs an authority in Tier 3. Where conflicts exist between two authorities in the same tier, the "last-in-time rule" is applied. As the name implies, the "last-in-time rule" states that the authority that was issued later in time is controlling.
Assessing the Validity of Judicial Sources

In this topic, we'll look at the hierarchy of how decisions flow through the Federal Judicial Court System, and where the various judicial sources may be found on Checkpoint.

Hierarchy of Federal Courts

The following chart shows the hierarchy of the Federal judicial system.

Judicial Sources

The following chart shows the various judicial sources, where they may be found, and their authority.

<table>
<thead>
<tr>
<th>Source</th>
<th>Location</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Supreme Court</td>
<td>AFTR</td>
<td>Highest authority</td>
</tr>
<tr>
<td>U.S. Court of Appeal</td>
<td>AFTR</td>
<td>Next highest appellate court</td>
</tr>
<tr>
<td>Tax Court (regular decisions)</td>
<td></td>
<td>Highest trial court</td>
</tr>
</tbody>
</table>
Examination of Returns, Appeal Rights, and Claims for Refund

Appeals to the Courts
The IRS still does not hear the case. You may be entitled to take your case to the United States Tax Court. The United States Court of Federal Claims, or the United States District Court. These courts are independent of the IRS.

If you select to bring an IRS appeals system, you may be able to take your case to one of the courts listed above. However, a correspondence to the United States Tax Court will notify you of your entitlement to an Appeals Office hearing. The Tax Court hearing is the case.

If you unreasonably fail to pursue the IRS appeals system, you may not bring a case to either the United States Tax Court or the United States District Court. These courts cannot hear the case.

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Structure – Courts

- United States Tax Court
- United States District Courts


http://www.ustaxcourt.gov/about.htm
Structure – Courts

• United States Court of Federal Claims

In favor of citizens, as it is to administer the same between private individuals."

In 1887, Congress passed the Tucker Act, which significantly expanded the Court’s jurisdiction to include all claims against the government except tort, equitable and admiralty claims. The Court thus today has nationwide jurisdiction over most suits for monetary claims against the government and its agencies, without a jury, to determine issues of law and fact. The general jurisdiction of the Court, described in 28 U.S.C. § 1491, is over claims for just compensation for the taking of private property, refund of federal taxes, military and civilian pay and allowances, and damages for breaches of contracts with the government. The Court also possesses jurisdiction over claims for patent and copyright infringement against the United States, as well as over certain

http://www.uscfc.uscourts.gov/sites/default/files/court_info/Court_History_Brochure.pdf
Research

• Strategies
  – Factors affecting
    • Level of knowledge in relationship to complexity of the problem
    • Specific tools available in your library
    • Cost-effectiveness of each service
    • Frequency with which services are updated
    • Personal preferences developed through research experience
Primary Sources Presentation by Karen Kalnins
Research

- Secondary Sources
  - Citators
    - Standard Federal Tax Reporter Citator
      OCU Call No. KF 6365 .S71 (also on CCH Tax Research Network)
      - Includes only select citing authority
      - Does not use treatment symbols
Research

• Secondary Sources
  – Citators
  • Standard Federal Tax Reporter - Citator
    OCU Call No. KF 6280.5 .S46
    – OCU Law Library no longer updates print
Research

• Secondary Sources
  – Citators
    • RIA Citator OCU Call No. KF 6282.5 .P72
Research

- Secondary Sources
  - Citators
- Keycite
Research

- Secondary Sources
  - Introductory Sources
Research

- Secondary Sources
  - Looseleaf Services
    - BNA Tax Management Portfolio
      - Series of more than 450 portfolios containing detailed analysis, forms, and references on very specific topics
      - Separate series for US Income, Estates, Gifts & Trust, and Foreign Income
      - Recommended and used by OCU tax professors
      - Only available in print at OCU (OCU Call No. KF 6289 .A1 T35)
      - Access using topical Index (currently each individual portfolio is not cataloged)
Research

• Secondary Sources
  – Looseleaf Services
  • Federal Tax Coordinator 2d
    OCU Call No. KF6285 .R44

“A detailed subject-oriented federal tax service which provides in-depth analysis of federal tax questions as they arise in practice … The service provides expert analysis of the rules governing specific issues, with citations to controlling authorities. Features expert commentary by RIA’s professional tax editors, including observations, cautions, illustrations, and recommendations. It includes the full text of the Internal Revenue Code, final, temporary and proposed regulations, tax treaties, tax court rules, as well as statements, filled-in forms, and blank forms. The lucid organization of the service makes it particularly useful to the non-tax specialist.”

“A comprehensive tax service designed for the non-specialist but with detail and breadth of coverage; organized by topic (rather than Code section) and reads more like a treatise. This is a good resource if you do not know where to start, or if you suspect that more than one Code section applies to your problem because it discusses the interrelationship of sections in more depth. Extensive tables are provided by Code section, regulation, and case name.”
Research

• Secondary Sources
  – Looseleaf Services

• Standard Federal Tax Reporter

OCU Call No. KF6365 .S71 – Currently being updated

The SFTR is a looseleaf service arranged by IRC section. All the entries also have assigned paragraph numbers. An entry in a compilation volume contains the full text of an IRC section and the corresponding regulations, annotations to IRS documents and judicial decisions, and editorial explanations for the IRC section. The SFTR also contains stand alone IRC volumes which contain the full text of the IRC as well as brief explanations of amendments to individual sections.

The easiest way to use the SFTR is to look up a code section in the compilation volumes or find a paragraph number reference in the index, and then look up the corresponding entry … You must update your research by looking in the New Matters Volume, which includes new rulings, annotations concerning newly decided cases, and the legislative status of bills.

http://www.law.harvard.edu/library/services/research/guides/grfs/specialized/tax_02.php
The USTR looseleaf tax service arranged by IRC section, which is accessed in similar ways to the SFTR. Each entry is assigned a paragraph number, with the relevant code number corresponding to the first portion of the paragraph number. For example, IRC § 401 is discussed in paragraph numbers 4010, 4011, etc. An entry in the compilation contains the full text of the IRC section, followed by excerpts from relevant committee reports, related regulations, editorial explanations, and annotations of decisions and rulings. The USTR also contains stand-alone IRC volumes which contain the full text of the IRC as well as the complete history of every amendment to a section since 1954. The IRC volume also has a topical index to the code sections.
Research

- Secondary Sources
  - Treatises


  Originally written by Jacob Mertens and published in 1942, this work has been cited by the courts more often than all other tax treatises. The chief value of this set lies in the extensive analytical commentaries of each section of the federal income tax code, including the relevant legislative history and the interpretations rendered by the Internal Revenue Service in its Revenue Rulings and Revenue Procedures. The most extensive analytical reference on federal income tax law.
Research

• Secondary Sources
  – Treatises
  • Boris Bittker & Lawrence Lokken, Federal Taxation of Income, Estates and Gifts
    OCU Call No. KF6335 .B48 1999
    (Available electronically on Westlaw)

“This massive five-volume treatise ranks among the leading works on taxation …”
Svengalis, Legal Information Buyer’s Guide 2008
Research

- Secondary Sources
  - Forms

- Rabkin & Johnson
  Current Legal Forms
  with Tax Analysis
  OCU Call No. KF 170 .R3

“This is one of the most respected collections of non-litigation legal forms on the market ... The forms themselves are accompanied by practical legal advice regarding the nature of the transactions, tax ramifications ... Addresses the tax advantages and disadvantages and cites to relevant cases, statutes, and regulations.”

Svengalis, Legal Information Buyer’s Guide 2008
Research

- Secondary Sources
  - Forms
    - West Legal Forms
      OCU Call No. KF 170 .W3
Research

- Secondary Sources
  - Forms
    - AMJUR Legal Forms 2d
      OCU Call No. KF 170 .A542
Research

- Secondary Sources
  - Forms

McGaffey Legal Forms with Tax Analysis
OCU Call No. KF 6450 A65 M33
Research

- Secondary Sources
  - Forms
    - Nichols Cyclopedia of Legal Forms Annotated
      OCU Call No. KF 170 .R3
Research

• Secondary Sources
  – Periodicals
  • Indexes/Digests
    – General – LegalTrac or Wilson’s Index to Legal Periodicals
    – Topic Specific
      » Monthly Digest of Tax Articles
      » Index to Federal Tax Articles
  • Full Text Searching/Browsing
    – Westlaw, Lexis, HeinOnline, RIA Checkpoint
Research

Statistics

Summary

• Context
  – Blogs and Websites
  – News Sources
  – Research Guides
  – Reference Sources

• System/Structure
  – Sources of Law
  – Hierarchy of sources
  – Courts

• Research
  – Factors affecting research strategy
  – Primary Sources (Addressed by Karen Kalnins)
  – Secondary Sources
    • Citators
    • Looseleaf Services and Treatises
    • Form books
    • Periodicals
    • Other
Questions

The End