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Research Guides

FEDERAL TAX

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I. INTRODUCTION TO RESEARCH SOURCES

Tax is a complex and technical area of law with frequent changes. It is common for there to be ten or twelve amendments to the Internal Revenue Code in a single year and more than fifty Revenue Rulings. In addition, there are dozens of regulatory and administrative documents generated by the IRS. Researchers must be aware of the types of documents, how they can be located and updated, and their level of authority.

Because of this complexity and constant change, tax researchers use specialized tools which provide more detailed information and make research more efficient. Tax even has special *Bluebook* citation rules for administrative materials because of its specialized terminology and publication forms (see Table I). This research guide introduces specialized materials for tax research and recommends research sources.

Finding Materials in the Goodson Law Library

Some of the Goodson Law Library's print resources on tax can be found in the Gann Tax Alcove on Level 2 (<http://www.law.duke.edu/lib/about/collections/tax>) and appear in the Libraries' online catalog (and in this guide) with the location code "**Tax Collection**". Titles in the Tax Collection have been identified as titles of current interest to researchers and practitioners; some earlier editions of the same titles are in the general stacks; and some earlier editions are in the "**Superseded Tax**" collection on Level 1. The location of all materials is displayed in the catalog – if you find a title in the general stacks that is no longer up-to-date, check the catalog and the Tax Collection for a more recent edition.

The Library has canceled updating services for some print titles and moved to online access through tax databases for many of these titles. Online titles are identified in the catalog as electronic resources; most are accessible from off-campus with a Duke NetID and password.

Tax Databases

Tax researchers are fortunate to have several comprehensive research databases specifically for tax, along with well-developed resources on both LexisNexis and Westlaw. LexisNexis Academic, a campus-wide database which provides much of the same resources as the Law School's version of LexisNexis, also includes access to basic primary tax sources, and several well-regarded specialized resources. Lexis and Westlaw include the primary sources described here, along with news, pending legislation, analytical materials and other related resources collected and organized together in integrated tax research systems. The databases have sophisticated searching and linking capabilities, including retrieving known documents by citation or name. Throughout this guide, reference to "tax databases" refers to this group of electronic resources.

These tax database services are developed for use primarily by experienced tax professionals and may be overwhelming or frustrating to the novice user at first. Researchers may wish to consult, as an overview, Katherine Pratt et al., *The Virtual Tax Library: A Comparison of Five Electronic Tax Research Platforms*, 8 FLOR. TAX REV. 933 (2008) (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1017925). This article provides a detailed comparison of the primary and secondary resources and features of LexisNexis, Westlaw, BNA Tax

and Accounting Center, CCH IntelliConnect, and RIA Checkpoint. Additional guidance is available by contacting the Law Library Reference Desk.

A. CCH IntelliConnect (formerly CCH Tax Research Network)

CCH IntelliConnect (<http://search.library.duke.edu/search?id=DUKE004195287>) is the electronic equivalent of the *Standard Federal Tax Reporter* print “looseleaf service.” It also includes additional content, such as the former *CCH Federal Estate and Gift Tax Reporter*, state tax codes, tax treaties, Aspen treatises and other analytical material. One strength of this database is the organization by code section, followed by relevant regulations, and annotations for administrative documents and cases, all updated weekly. *Tax Tracker News*, a collection of daily journals, can be customized by subject and jurisdiction, and received as an email alert. (**Note:** This database requires users to create individual User IDs and passwords with a Duke email address to log in.)

B. RIA Checkpoint

RIA Checkpoint (<http://search.library.duke.edu/search?id=DUKE003812967>) includes electronic equivalents of the *Federal Tax Coordinator 2d*, and *United States Tax Reporter* print “looseleaf services.” The Law Library also maintains these two titles in print (Tax Collection). RIA Checkpoint includes selected Warren Gorham & Lamont tax journals and treatises, and other analytical and news materials.

C. LexisNexis and Westlaw

LexisNexis (<http://lawschool.lexis.com>) and **Westlaw** (<http://lawschool.westlaw.com>) both have extensive tax libraries, although LexisNexis is generally considered stronger in tax. Both systems include the Internal Revenue Code, regulations, cases, IRS rulings and pronouncements, and daily and weekly current awareness services, as well as journals and other secondary source material, and, of course, integration of cases. Westlaw includes the full text of treatises published by the Thomson-West family (including the RIA services, and Warren Gorham & Lamont treatise titles). LexisNexis provides the text of Wiley and Matthew Bender treatises; if you know the publisher of a particular book title, you can determine which service has the searchable text.

LexisNexis offers two approaches to researching tax materials: its Tax Library (FEDTAX) and its LexisNexis Tax Center. Adding a **Tax Tab** in Lexis and in Westlaw is recommended for identifying and accessing tax materials.

D. BNA Tax and Accounting Center

The Tax and Accounting Center (<http://search.library.duke.edu/search?id=DUKE003796988>) includes analysis, news, primary sources and practice tools covering federal, state and international tax, as well as financial accounting. **Tax Management Portfolios** are the major resource in the database. The more than 450 Portfolios are issued in three series: U.S. Income; Foreign Income; and Estates, Gifts, and Trusts with each series subdivided into many narrow areas of tax law examined in great depth. This is a highly recommended resource.

E. IRS Website

The **Internal Revenue Service** provides a great deal of current information including forms on its website (<http://www.irs.gov>). Although the browse capability works better than searching, the site offers search options for retrieving tax materials.

Choose the **Tax Professionals** tab, then the Basic Tools for Tax Professionals link in the left column for the best access to research materials, such as the code and regulations, the Internal Revenue Bulletin, and the Internal Revenue Manual.

II. STARTING PLACES

A. Standard Treatises

The following selected titles are useful for topical overviews of tax issues generally, or in specific areas of taxation. Some of the works are very scholarly, some practical, and others provide more general overviews. These materials should be used as a starting point to understand the issues and to collect references for further research.

West's Tax Law Dictionary (Reference KF6287 .S65) is always helpful in a field with technical terms and jargon.

Bittker & Lokken. *Federal Taxation of Income, Estates and Gifts*, 3d ed. 5 vols. (Reserves KF 6335 .B57 1999 and Westlaw, WGL-IEG database). This treatise is the recommended starting point for all types of tax questions. Boris Bittker is also the co-author of several other treatises on more specific areas (see below).

Federal Tax Coordinator (RIA), 2d ed. 28 vols. (Tax Collection KF6285 F435; online in RIA Checkpoint, <http://search.library.duke.edu/search?id=DUKE003812967>)

This comprehensive tax service, which is designed for the non-specialist but with detail and breadth of coverage, is 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. Extensive tables are provided by code section, regulation, and case name.

Federal Taxation (American Jurisprudence 2d)

For treatment of taxation by a legal encyclopedia, *American Jurisprudence 2d* (Practice & Procedure KF154 .A42 and LexisNexis/Westlaw) includes 3 volumes on federal taxation. These sections reprint content from *RIA Tax Guide* and *Estate Planning and Taxation Coordinator* (Tax Collection KF6571.A8 E8)

B. Income Tax

Bittker, McMahon & Zelenak. *Federal Income Taxation of Individuals*, 3d ed. (Tax Collection KF6369 .B572 & Westlaw WGL-INDV database).

Burke & Friel. *Understanding Federal Income Taxation*, 3d ed. (General Collection KF6369 .B87 2008).

McNulty & Lathrope. *Federal Income Taxation of Individuals in a Nutshell*, 7th ed. (Reserves KF6369.3.M3 2004).

Posin & Tobin. *Principles of Federal Income Taxation of Individuals* (Concise Hornbook series), 7th ed. (Tax Collection KF6369 .P67 2005). (Rev. ed. of: *Principles of Federal Income Taxation*, 6th ed. 2003).

Rosenberg & Daher. *The Law of Federal Income Taxation* (Hornbook), 2008 (Reserves KF 6369 .R673 2008).

C. Estate and Gift Tax

Lane. *Federal Income Taxation of Estates and Trusts* (Tax Collection KF6584 .L36 2001)

Peschel and Spurgeon. *Federal Taxation of Trusts, Grantors & Beneficiaries*, 3d ed. (General Collection KF6581.5 .P48 1997).

Westfall. *Estate Planning Law and Taxation*, 4th ed. (Tax Collection KF6584 .W47 2001).

D. Partnership, Corporate, and Securities Taxation

Bittker & Eustice. *Federal Income Taxation of Corporations and Shareholders*, 7th ed. (Tax Collection KF6464 .B57 2000).

Burke. *Federal Income Taxation of Partners and Partnerships in a Nutshell*, 3d ed. (Reserves KF6452 .Z9 887 2005).

Fried. *Taxation of Securities Transactions*, 1971. (Stacks KF1366 .B7 v.11B).

Kahn & Lehman. *Corporate Income Taxation* (Hornbook), 6th ed. 2009. (Tax Collection KF6464 .K28 2009)

McKee, Nelson & Whitmire. *Federal Taxation of Partnerships and Partners*, 4th ed. 2007 (Tax Collection KF1375 .M32)

Other tax treatises can be browsed in the Tax Collection, Level 2 and in the stacks. Warren, Gorham & Lamont is a well-known and respected publisher of tax treatises. A **keyword search** in the online catalog for “warren gorham lamont taxation” will retrieve WG&L books.

E. State Tax

Hellerstein and Hellerstein. *State Taxation*, 3d. ed. vols 1 and 2 (Tax Collection KF6730 .H44 1998). Emphasis in this treatise is on federal constitutional restraints on state taxing, uniformity and equity requirements, as well as, state income, franchise, and sales and use taxes.

All State Tax Guide (Tax Collection KF6759 A6 A44). RIA's 2 volume guide covers all 50 states and the District of Columbia.

North Carolina Tax Reporter (Tax Collection KFN7870 .A6 C65). This 2 volume CCH looseleaf service covers North Carolina state tax law in detail.

F. International Tax

Isenbergh. *International Taxation: U. S. Taxation of Foreign Persons and Foreign Income*, vols 1 – 4 (CCH) (Tax Collection KF6441 .I744).

Postlewaite. *International Taxation: Corporate and Individual*, 5th ed. vols 1 and 2, (Tax Collection KF6419 .P66 2010).

Rhoades. *Income Taxation of Foreign Related Transactions* (Tax Collection KF6419 .R474i 1971).

Rhoades & Langer. *U. S. International Taxation & Tax Treaties* (Mathew Bender publication, not available in print in this library) online via LexisNexis (Lexis Identifier: INTXT).

G. IRS Publications

Saltzman. *IRS Practice and Procedure*, rev. 2d ed. (Tax Collection KF6301 .S242).

IRS Publications is a series of Internal Revenue Service documents on common tax issues, which provide explanations and associated forms. Topics range from basic tax questions such as "Selling Your Home," to more complex areas of tax law such as "Passive Activity and At-Risk Rules." IRS Publications are available on the Internal Revenue Service web site (<http://www.irs.gov/formspubs/index.html>), in the major tax databases, and in print in *IRS Publications* (CCH) (Tax Collection KF6285 .C65).

III. SOURCES OF TAX AUTHORITY

A. Internal Revenue Code and Statutory Law

Title 26 of the United States Code contains most federal tax laws and is known as the *Internal Revenue Code* ("IRC" or the "Code"). However, statutes relevant to your research may be outside the IRC when an agency other than the Treasury Department has primary responsibility for that area of law.

Knowing the relevant IRC sections is the best method for using specialized tax services, citators and other resources. The Code is organized fairly logically, with all provisions on a particularly sub-topic usually found together, and with numerous cross-references to related sections. It is useful to scan the table of contents for a chapter to get an idea of the overall structure of a topic. Tax also includes hundreds of "**terms of art**" or seemingly ordinary words, such as "expense" or "compensation," that have special meanings. Always look for definitions that apply in the section or sub-section. Also, IRC § 7701 contains over 50 definitions of commonly used terms.

Following the adoption of the 16th Amendment, the first Revenue Act was passed in 1913. There have been three major tax codifications: the Internal Revenue Codes of 1939, 1954, and 1986. Since 1954, the structure and numbering has remained the same. These landmark dates help in tracing retrospective tax materials and references to them are still common.

The current version of the IRC can be found in the standard U.S. Code publications (U.S.C., U.S.C.A., U.S.C.S.), and in specialized tax databases. Annual editions of the IRC are also published in print, and retained in the Law Library for historical research. Older volumes are in Superseded Tax (Level 1) with more recent years in the Tax Collection:

West (Tax Collection KF6276.526 .A19 I57 1971-)
CCH (Tax Collection KF6276.537 .A19 C65 1985-2006).

CCH IntelliConnect (<http://search.library.duke.edu/search?id=DUKE004195287>) includes an archive of the 1939 Code (as last amended), 1954 Code (as last amended) and annually 1978- .

HeinOnline's *Taxation & Economic Reform in America* library (<http://search.library.duke.edu/search?id=DUKE003131760>) includes the 1939 and 1954 codes, as well as extensive legislative history materials.

1. Tracing the History of Code Sections

Cumulative Changes in Internal Revenue Code of 1954 and Tax Regulations under the Code (RIA) (Tax Collection KF 6277 1954) is a looseleaf service which summarizes changes since 1954 and provides the derivation of Code sections. It also provides the full text of previous versions of code and regulation sections. Citations for legislative history research can be found here as well.

Barton's Federal Tax Laws Correlated (KF6335 .A3 1968) traces income, estate, and gift tax provisions from the Revenue Act of 1913 through 1968. Originally in several editions, this reprinted edition includes information presented and collected in various ways sometimes including case annotations, citations to legislative history, effective dates and cross-reference tables, depending on the time period covered. Barton's is also available in HeinOnline's *Taxation & Economic Reform in America* library (<http://search.library.duke.edu/search?id=DUKE003131760>).

2. Legislative History

Several print sources in the Law Library track legislative history information for retrospective tax legislation. The most comprehensive selection of legislative history materials is in HeinOnline's *Taxation & Economic Reform in America* library (<http://search.library.duke.edu/search?id=DUKE003131760>). Most, if not all, the print titles identified below are online in this collection, where they can be searched using field searching and Boolean connectors.

Legislative History of the Internal Revenue Code of 1954.... (KF6335 .U58I 1967 & HeinOnline). Covers 1954-1965 with references back to the derivation of sections in the 1939 Code.

Internal Revenue Acts, Beginning 1954; Text of Acts and Legislative History, with Tables and Index (Library Service Center 336.202673 U58I). This set includes full reprints of all bill versions, hearings, reports, studies and related materials for a full range of tax legislation. Note that no Code or subject index is included, and the index is by revenue act.

Seidman's Legislative History of Federal Income Tax Laws 1938-1861 (KF6355.8 S44 1938 & in HeinOnline).

Seidman's Legislative History of Federal Income and Excess Profits Tax Laws, 1953-1939 (KF6355.8 .S44 1954 & in HeinOnline). *Seidman's* is not comprehensive; the author omitted items he considered to have little interpretative significance. There is, however, great detail and depth for what is included and many excerpts.

Internal Revenue Acts of the United States, 1909-1950: Legislative Histories, Laws and Administrative Documents (the Carlton Fox Collection). HeinOnline. Carlton Fox was a Justice Department lawyer who compiled this collection of 146 print volumes. Search by document type, bill number, volume number, date of publication, popular name, and more.

In addition to the usual sources for more recent legislative history, documents for tax legislation are in several other sources:

The *Internal Revenue Cumulative Bulletin* (Tax Collection Doc. T 22.25 and Lexis/Westlaw) reprints the public laws from *Statutes at Large* along with congressional reports from the legislative history of major revenue acts since 1919 (with the exception of 1954 Code).

“**Blue Books**” prepared by the staff of the Joint Committee on Taxation are detailed explanations of tax legislation. Although not part of the legislative history per se, Blue Books are most helpful for explaining and tracing the path of the legislation through Congress and giving the researcher an overview of adopted legislation.

Some Blue Books are owned in print by the Duke Libraries and can be found in the online catalog using the **keywords** “general explanation” and “joint committee on taxation.” They are also included in **CCH IntelliConnect**, and on the Joint Committee web site from 1969-present (<http://www.jct.gov/>).

B. Administrative Law

The Department of the Treasury is the executive department responsible for implementing tax laws. The Internal Revenue Service (IRS), a bureau within the Treasury, performs that function, issuing numerous types of documents for both interpreting the Code and enforcing the law. These documents range from regulations to letters commenting on specific transactions. Note that there are special *Bluebook* rules for citing materials published by the Treasury (see Table I).

1. Regulations

Regulations are the highest administrative authority issued by the Treasury Department and are commonly referred to and cited as **Treasury Regulations**, and once finalized, as Treasury Decisions or T.D.'s. Regulations are codified in Title 26 of the *Code of Federal Regulations*, and are

found individually in many other places. *Bluebook* citation does not require reference to the CFR as with other regulations, but notes these as Treas. Reg.

Annual editions of tax regulations are published each year in *Federal Tax Regulations* (West) (Tax Collection KF6276.99 .W47). The set includes tax regulations in force as of January 1 of each year. *Income Tax Regulations* (CCH) (Tax Collection KF6356.99) includes regulations in force as of July 14 of each year. These are especially useful for retrospective research, but are also used for daily reference by practitioners.

Treasury regulations, unlike most regulations, have a specific numbering scheme consisting of three parts: a prefix before the decimal indicating the type of tax (e.g. 1 for income, 20 estate & gift, 30 employment, and 40 excise taxes); numbers following the decimal corresponding to the IRC section; numbers after the dash are the numbering scheme for the regulations. Thus, Treas. Reg. § 1.167(a)-1 is the first regulation on the income tax code section 167(a).

There are two general types of regulations: (1) **legislative regulations**, when the legislation has specific language granting the IRS authority, are authoritative and extremely difficult to challenge; and (2) **interpretive regulations**, which can be attacked by showing that the regulation is contrary to the IRC and was issued under general authority of the Treasury to make rules and regulations. Generally the distinction depends upon the breadth of authority which Congress gave the IRS for rule-making in a particular area.

The process for adopting regulations generally follows administrative law ‘notice and comment’ practice as required under the Administrative Procedures Act. Three stages are used for tax; all three kinds of regulations are officially published in the *Federal Register*:

- i. **Proposed Regulations** are issued as a "Notice of Proposed Rule Making." The IRS may also publish an Advance Notice of Proposed Rulemaking to get input even before a proposed regulation is drafted. Note the "Regulation Identification Number (RIF)" and Project Number for help in tracing future actions.
- ii. **Temporary Regulations** are effective immediately. They are often issued after new IRC sections become law to guide taxpayers more quickly, before the IRS goes through the comment and revision process. A temporary regulation can remain in effect for up to 3 years. Temporary regulations are usually issued simultaneously as Proposed Regulations.
- iii. **Final Regulations** are accompanied by a preamble containing analysis and a summary of comments and changes that provide important background and history for interpretation. After the mandatory comment period, the final regulation, almost always an amended version of the proposed regulation, is adopted as a Treasury Decision (T.D.). The T.D. number is used for access in finding lists and citators, rather than the CFR citation.

The tax databases and looseleaf services note proposed and temporary changes along with current regulations, making it easy to keep up to date. All proposed regulations are also available in the usual electronic research sources and are published together in print in Vol. 18 of *United States Tax Reporter*, and Vol. 27A of *Federal Tax Coordinator 2d*.

More importantly, when there is a change in the Code, the prior regulations for that section may become obsolete and inconsistent with the current Code provisions. The process to write and

adopt revised regulations takes a considerable amount of time. The tax databases do a very good job of alerting the researcher to these inconsistencies with “Caution” notations. If you identify a regulation in some other source, check that it is consistent with the current code provision before relying on it.

2. Administrative Publications

Internal Revenue Bulletin (IRB) (Tax Collection Doc. T22.23), published weekly, is used by tax researchers and practitioners to monitor regulations and other Treasury pronouncements. The *IRB* includes Revenue Rulings, Revenue Procedures, Treasury Decisions, IRS notices and News Releases, and acquiescence or non-acquiescence in court decisions (AODs). All stages of activity for regulations are also tracked in the *Federal Register*. The *IRB* is cumulated into the *Cumulative Bulletin (CB)* (Tax Collection Doc. T22.25) twice a year.

As evidence of their significance, the IRS also provides advance notice of some administrative materials, even before publication in the *IRB* and the *Federal Register*. See **Advance Notice for Tax Professionals** (<http://www.irs.gov/taxpros/article/0,,id=98697,00.html>) and the IRS Advance Releases database on LexisNexis (FEDTAX;HOTIRS). The IRS GuideWire service (<http://www.irs.gov/newsroom/article/0,,id=154809,00.html>) provides subscribers with email alerts of these releases.

The *IRB* is included in the tax databases, on the IRS website (<http://www.irs.gov/irb/>), and reprinted as part of the RIA *Federal Tax Coordinator 2d* (Tax Collection KF6285 .F435). Administrative documents and pronouncements included in the *IRB* can also be retrieved as individual documents in the tax databases; LexisNexis and Westlaw also provide access.

Following are descriptions of the most important IRS documents and where to locate them. Although not as authoritative as regulations, these materials provide important additional guidance on what taxpayers can expect the IRS to do.

a. Revenue Rulings

Revenue Rulings are pronouncements about particular factual situations which taxpayers have presented to the IRS, and which the Service determines to be of general interest. They provide analysis of a transaction and relevant Code provisions. Although they do not have the weight of regulations, they can be relied upon by a taxpayer in a similar situation. The IRS is bound by a Revenue Ruling unless it is officially revoked. Status of Revenue Rulings can be determined by using one of the citators (see section IV, below) or by checking the "Finding List of Current Action on Previously Published Rulings" in the *IRB*.

Before 1953, rulings were titled I.T. (income tax) or E.T. (employment tax) rulings or various other names such as O.D. (office decisions). Since 1953 they have been called Revenue Rulings and numbered chronologically preceded by the year of issuance.

Revenue Rulings are published in full in *Tax Notes* (Tax Collection KF6284 .T37) and online in LexisNexis and in the Federal Taxation - Revenue Rulings database on Westlaw (FTX-RR).

b. Revenue Procedures

IRS pronouncements which address internal practice and procedure, such as describing how to request a ruling; listing requirements of how to qualify as a Subchapter S corporation; or what depreciation methods are acceptable.

c. Letter Rulings

Like Revenue rulings, Letter Rulings (LTRs) or Private Letter Rulings (PLRs) are IRS responses to questions from individual taxpayers about proposed transactions. However, they are not considered of general interest, and are not officially published; their application is technically limited to the taxpayer making the request and without precedential authority. They became available in 1976 under the Freedom of Information Act, and are used frequently by tax practitioners as indicators of how the IRS will view a transaction and of IRS policy.

d. Technical Advice Memoranda

TAMs are another type of private ruling and are issued in the same numerical series as PLRs. They are written by the IRS national office in response to a question from a taxpayer or from a field officer auditing a return. Therefore, they are considering completed rather than proposed transactions. More carefully reviewed than Private Letter Rulings, they also technically have no precedential authority. Field Service Advice (FSA) are similar documents. Determination Letters are responses by local IRS district offices on completed transactions.

The full text of PLRs and TAMs are available from 1954 to the present in the tax database services. PLRs and TAMs are digested in *Tax Notes* (Tax Collection KF6284 .T37 & in LexisNexis). The Library has the rulings from 1982 to 1992 in print in *IRS Letter Rulings* (CCH) (Superseded Tax KF6282.A2 C65), which has finding lists and a subject index.

e. Notices and Announcements

Notices and Announcements from the Public Affairs Division of the IRS provide a range of information for general distribution. Examples are to summarize a new law, or to give notice of procedural changes. Notices and Announcements are included in the IRB, but only Notices are included in the CB.

f. General Counsel Memoranda

General (or Chief) Counsel's Memoranda are prepared by the IRS office of Chief Counsel as internal guidance to explain the reasoning behind Revenue Rulings, Private Letter Rulings and Technical Advice Memoranda. Since 2002 few (if any) GCMs have been issued. GCMs are numbered sequentially but without any indication of their year of issue. They are published in *Tax Notes* (Tax Collection KF6284 .T37) and are available on LexisNexis (FEDTAX;GCM) and Westlaw (FTX-GCM).

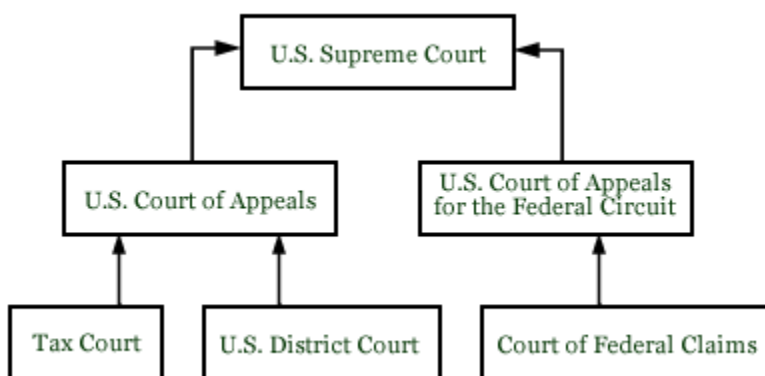
g. Internal Revenue Manual

The IRM is a compilation of operating policies and practices of the IRS. The *Manual* is divided into parts based on IRS department organization (e.g., Taxpayer Service, Audit, and Market

Segment Specialization Program). It includes policies, procedures, instructions and guidelines related to the function and administration of the IRS. The IRS publishes the *Manual* on its website; it's available in print from CCH (*Internal Revenue Manual*, Tax Collection KF6285 .C69), online in CCH's IntelliConnect, and on Westlaw (RIA-IRM) and Lexis (FEDTAX;MANUAL). Changes are published in *Tax Notes* (Tax Collection KF6284 .T37).

C. Judicial Authority

Income tax litigation begins in one of three forums (see chart). If the taxpayer has not paid the tax, the forum is the United States Tax Court. In this forum, there is no right to a jury trial, but the judges have more tax expertise and sophistication due to the specialized nature of the court. If the taxpayer has paid the disputed tax and is then refused a refund, the forum is either the federal district court (where he is entitled to a jury trial) or the Court of Federal Claims.



Appeals from Tax Court and federal district court decisions are to the Circuit Court of Appeals covering the taxpayer's state of residence. Appeals from the Court of Federal Claims are to the United States Court of Appeals for the Federal Circuit (created Oct. 1, 1982).

Locating relevant decisions usually begins in the database services with annotation summaries that follow the code section and regulations in an arrangement similar to that of an annotated code. Annotations in the tax databases include summaries of both cases and IRS pronouncements relevant to the section.

Opinions from the federal courts and the Tax Court are available in official publications as well as commercial publications. The similarity in abbreviations for all these reporters, as well as the changes in publisher names and titles of the reporters, can cause some confusion. Table 1 of the *Bluebook* includes a short list for the Tax Court publications. Note that citations to commercial publications, such as CCH and RIA, should adhere to Rule 19.

1. Tax Court Opinions

There are two kinds of decisions from the Tax Court, which are somewhat parallel to published vs. unpublished decisions from other courts.

Tax Court Regular Opinions are opinions designated by the Chief Judge of the Tax Court as containing novel or important issues, and can be thought of as “published” opinions. The Chief

Judge also decides whether these opinions will be reviewed by all the judges, or will stand as written by the judge who heard the case. They are published officially in the *United States Tax Court Reports* (TC) (some volumes entitled *Tax Court of the United States Reports*) (Tax Doc. Ju11.7/A2:) (Tax Collection). Before 1942, when the Tax Court was called the Board of Tax Appeals, the official reporter was the *Board of Tax Appeal Reports*. These official reporters are also available online through HeinOnline's U.S. Federal Agency Documents, Decisions and Appeals Library (<http://search.library.duke.edu/search?id=DUKE003131760>).

Tax Court Memo Decisions are the opinions not designated as "Regular." For some time, they were not published "officially" and were thought of as unpublished opinions. The precedential value of TC Memo decisions is under change, much the same as other "unpublished" federal court opinions. Since 2001, the Tax Court has also issued Summary Opinions that are designated as without precedential value. Orders issued by the Court are available on the court web site from 2011 to date.

All decisions from the Tax Court are available since September, 1995 with daily update on the Tax Court website at <http://www.ustaxcourt.gov>. The content of TC and Memorandum Opinions published after September 95 and Summary Opinions published after January 2001 can be searched by key words and phrases.

Both Tax Court Regular and Tax Court Memo Decisions are available in **CCH IntelliConnect** (<http://search.library.duke.edu/search?id=DUKE004195287>) and **RIA Checkpoint** (<http://search.library.duke.edu/search?id=DUKE003812967>). For opinions published before 2008 the Law Library also has the unofficial print sources *CCH Tax Court Reporter* (Tax Collection KF6280.A2 .C729 and *Tax Court Reported & Memorandum Decisions* (RIA) (Tax Collection KF6281 .T39). When researching with the print editions, be aware that cases are found in bound volumes or transfer binders. TC Regular decisions are found in *CCH Tax Court Reporter Transfer Binders* (Tax Collection KF6280 .A2 C729) and *RIA Tax Court Reports* (Tax Collection KF6281 .T39). Memo Decisions are in *CCH Tax Court Memorandum Decisions* (T.C.M.) (Tax Collection KF6280.A2 C73), *RIA Tax Court Reports* (T.C. Memo, and earlier volumes by Prentice Hall) (Tax Collection KF6281 .A28), and *P-H B.T.A. Memorandum Decisions* (B.T.A.M. P-H).

Tip: Citations to these unofficial reporters use paragraph numbers for reference to new material and then by the volume and page number for the bound volumes.

2. Federal District Courts

Remember that there is no official reporter for opinions from these courts. Tax opinions are published along with other federal district court opinions, in West's *Federal Supplement* (since 1932) and *Federal Reporter* (before 1932). Westlaw contains PDF images of all cases reported in these sources.

3. Court of Federal Claims

The Court of Federal Claims hears a larger percentage of tax cases than other federal district courts. Between Oct. 1, 1982, and Oct. 29, 1992, this court was called the United States Claims Court. Before that, it was known as the United States Court of Claims and only the Supreme Court had jurisdiction over appeals from its decisions.

Court of Federal Claims decisions are published in the *U.S. Court of Claims Reports* (Doc. Ju 3.9), West's *United States Claims Court Reporter* (1982-1991), and West's *Federal Claims Reporter* (1992-).

4. Federal Appellate Courts

Tax opinions from the U.S. Circuit Courts of Appeals and Court of Appeals for the Federal Circuit are published in the *Federal Reporter* series. West's *Federal Claims Reporter* (formerly *United States Claims Court Reporter*) includes opinions from the Court of Appeals for the Federal Circuit and the Supreme Court.

5. Unofficial reporters

The major tax research databases and looseleaf services publish nearly all of these cases, plus additional district court cases not reported in *F. Supp.* These resources are sometimes the only source of some federal district court opinions on taxation. Opinions for all these courts are collected and published in *CCH U.S. Tax Cases* (U.S.T.C.) (Tax Collection KF6280.A2 C63) and *American Federal Tax Reports* (A.F.T.R., A.F.T.R. 2d) (Tax Collection KF6280.A2 A5).

6. Acquiescence Decisions & Actions on Decisions

Only decisions by the U.S. Supreme Court are binding authority on the IRS. For decisions from other courts in which the IRS does not prevail, the Commissioner must decide whether to abandon its position in the litigation (**acquiescence**) or to continue to pursue the IRS's position in subsequent litigation contrary to the court decision (**non-acquiescence**). This stance is obviously very important information, and is unlike deciding whether a case is "good law" for non-tax topics. The tax citators (see section IV below) include information on these decisions. The decision on acquiescence is usually made quickly; however, **if there is no decision, this is not the same as an acquiescence**. Acquiescence or non-acquiescence has the same legal effect as a Revenue Ruling.

Actions on Decisions (AODs) are internal IRS communications that are occasionally written to summarize a court decision which is adverse to the IRS position, and to recommend IRS acquiescence or non-acquiescence. AODs are not written for all decisions. They are intended to provide guidance to IRS staff who are working on similar issues, until an official acquiescence or non-acquiescence is decided. If the decision is by a court other than the Tax Court, the Actions on Decisions indicate whether the IRS will appeal the court's decision. This background information can help the researcher assess future IRS policy.

AODs can be found in *Tax Notes* (Tax Collection KF6284 .T37); online on Westlaw (FTX-AOD) and on LexisNexis (FEDTAX;AOD). The *Internal Revenue Bulletin* lists the Commissioner's decision whether to acquiesce as soon as it becomes available, as a Notice. The *Cumulative Bulletin* consolidates the list semiannually and annually.

IV. CITATORS

Both *Shepard's* (LexisNexis) and **KeyCite** (Westlaw) can be used to update citations for tax materials. However, specialized tax citators do a better job of tracking all of the IRS administrative

pronouncements and covering the specialized citation formats. Citators provide parallel citations, subsequent history, and citations to later cases plus IRS interpretations, such as Revenue Rulings and IRS pronouncements, which cite the case you are researching. The specialized citators now in use are:

RIA Citator 2nd (in RIA Checkpoint, <http://search.library.duke.edu/search?id=DUKE003812967>)

Commentators seem to agree that the RIA citator is the most useful and complete. Citations include citing authority from 1954 forward and editorial treatment; the Constitution, statutes, and treaties are not included. Although RIA covers regulations and IRS documents, it lists cited regulations in T.D. (rather than section number) order. Case name or citation can be used.

CCH Standard Federal Tax Reporter - Citator. (CCH IntelliConnect, <http://search.library.duke.edu/search?id=DUKE004195287>)

The citator includes selected citing authority from 1913- (chosen by editors as important). This selection is considered by many to be a useful screening of citing authority. CCH does not use treatment symbols or headnote numbers for citing authorities.

V. SECONDARY SOURCES

A. Current Awareness

These current awareness publications contain information on news items on tax issues, pending legislation in Congress, digests or full-text of all IRS pronouncements, and summaries or full text of opinions in current tax cases. They are necessary reading for practicing tax attorneys and researchers who need to stay current.

Tax Analysts

Tax Notes (a weekly publication) (Tax Collection KF6284 .T37 and in LexisNexis FEDTAX;TXNMAG, with a daily version called *Tax Notes Today*, in LexisNexis FEDTAX;TNT); generally considered *the* major resources for tax news. This non-profit publisher maintains a subscription web site full of information about tax news and issues, some of which is freely available (<http://www.taxanalysts.org>); and a free website (<http://www.tax.com/>) where their writers provide views on current tax issues in a more informal manner. *Tax Notes*, *Tax Notes Daily*, *Tax Notes International* and tax treaties are available on **LexisNexis Academic** in the ALLTA file from 1984 to the present.

Tax Management Weekly (<http://www.law.duke.edu/lib/lresources/bna>)

This current awareness publication in the BNA Publications database includes an “Uncertain Tax Position Reporting” section, as well as editorial hot topics and tax news generally.

Legislative News and Policy

Information about emerging tax legislation and policymaking can be found on various congressional web sites, including the **House Committee on Ways & Means** (<http://waysandmeans.house.gov>), which has jurisdiction over revenue laws; and the **Joint Committee on Taxation** (<http://www.house.gov/jct>). However, *Tax Notes* and *Tax Notes Daily*, from Tax Analysts, are generally considered the major resources for tax news.

Statistics

The IRS collects, analyzes and publishes a wide range of tax statistics at <http://www.irs.gov/taxstats/index.html>. *Statistics of Income Bulletin* (SOI Bulletin) (Doc. T 22.35/4 and on IRS web) is the annual publication most often used.

B. Other Websites and Blogs

- **Jurist Tax Research Links** (http://jurist.law.pitt.edu/sg_tax.htm)
Particularly helpful is a list of links to tax policy think tanks with a variety of viewpoints, such as Brookings Institution and Cato Institute.
- **National Tax Association** (<http://www.ntanet.org/>)
- **Tax Foundation** (<http://www.taxfoundation.org/>)
Most famous for originating “tax freedom day,” the foundation produces research, reports, newsletters and information to support their goal of educating taxpayers about sound tax policy. The **Center on Budget and Policy Priorities** (<http://www.cbpp.org/>) represents the contrary viewpoint on its site.
- **Tax Professors Blog** (<http://taxprof.typepad.com/>) is maintained by Paul Caron, a professor of tax law at the University of Cincinnati.

C. Journals and Indexes

Articles on tax issues are scattered across a wide range of law reviews, legal journals, and other non-law publications. They can be located using the standard journal indexes (e.g., LegalTrac) and full-text sources (e.g., HeinOnline).

There are several specialized indexes for tax articles. CCH’s *Federal Tax Articles* (Tax Collection KF6285 .F4 and in CCH IntelliConnect) contains an index by Code section, along with the usual author and topic indexes. *The Monthly Digest of Tax Articles* (Periodicals) summarizes recent journal articles. For older articles, the *Index to Federal Tax Articles*, published by Warren, Gorham & Lamont, indexes articles on federal income, estate and gift taxation. It has a key word index that uses the IRS thesaurus, as well as an author index. The initial 1975 volume covers material back to 1913. The Library owns the supplements through 1990 (KF 6282.7 .I53).

There are also many journals, both published by law schools and commercially, devoted exclusively to taxation that may be particularly useful for regular review. Some frequently used materials include: *Journal of Taxation*, *Virginia Tax Review*, *Major Tax Planning* (annual tax conference), *Taxes: the Tax Magazine*, *Tax Law Review*, and the *Annual Institute on Federal Taxation* (NYU). Selected Warren, Gorham & Lamont (WG&L) journals are online in **RIA Checkpoint** (<http://search.library.duke.edu/search?id=DUKE003812967>).

To locate more tax journals in the Duke Libraries, use a subject search in the catalog for: *Taxation -- Law and Legislation -- United States -- Periodicals*.

D. Treatises

Tax treatises are shelved in the classified collection and the Tax Collection on Level 2; additional materials may be available on Reserve (inquire at the Circulation Desk), at the Reference Desk, or in the Reference Collection on Level 3. Many fall within the call number range for KF6300. Not all tax treatises are in the tax section, however; many are books that address revenue issues on subjects such as litigation or public finance, or include analysis of related tax issues. You should be able to find those tax-related treatises with a subject search in the online catalog.

E. Form Books

Form books and checklists can provide valuable drafting resources for tax planning purposes, Form books may be arranged by topic or code section, and often include an analysis and citations to authorities. Using these subject searches in the library's catalog will retrieve a list of relevant titles: *Tax planning – United States—Forms; Forms (Law) -- United States*.

Forms are also online in the major tax databases, and a few official forms are posted on the IRS website. Respected titles include: Rabkin & Johnson, *Current Legal Forms with Tax Analysis* (KF170 .R33 & online in Lexis).

VI. TAX RESEARCH GUIDES

Kathryn Fitzhugh. Federal Income Taxation, in *Specialized Legal Research* 3-1 (Leah F. Chanin ed., 1987-) (Ref. Desk KF 240 .S64 1987).

Joni Larson & Dan Sheaffer. *Federal Tax Research*, 2d ed. (KF241. T38 L37 2011).

Gail Levin Richmond. *Federal Tax Research: Guide to Materials and Techniques*, 8th ed. (KF241 .T38 R5 2010). Richmond has also written an extensive chapter on tax research in, Barkan, Mersky & Dunn, *Fundamentals of Legal Research*, chapter 25 (9th ed. 2009) (Reserves KF240 .P65 2009).

Taxcite: A Federal Tax Citation and Reference Manual (ABA Section of Taxation with Virginia Tax Association) (Superseded Ref. KF245 .T39 1995).

rev. Marguerite Most
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