

## CHAPTER 2

### WORKING WITH THE TAX LAW

### LECTURE NOTES

#### TAX SOURCES

#### STATUTORY SOURCES OF THE TAX LAW

1. Relationship Between the Constitution and the Sixteenth Amendment.
  - a. Constitution. The source of the Federal taxing authority is the U.S. Constitution: “The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.” (Art. I, § 8, Cl. 1)
  - b. Sixteenth Amendment. The Sixteenth Amendment is the foundation of our Federal income tax: “The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”
2. Internal Revenue Code. The Code generally is supreme in the Federal tax area, unless a U.S. tax treaty is in direct conflict. In this case, TAMRA of 1988 provides that neither a tax law nor a tax treaty takes general precedence. Instead, the most recent item will take precedence.
  - a. Role of Congress. Unless a *constitutional* issue is involved, Congress can override a U.S. Supreme Court decision by amending the Code.
    - (1) Code supremacy. This Court supremacy is not the case when the Internal Revenue Code is concerned (i.e., Congress can change the law).
  - b. Congressional Committee Reports. Congressional Committee Reports are important in interpreting the Code.
    - (1) Congressional intent. Such reports reflect the intent of Congress.
    - (2) Cumulative Bulletins. The Committee Reports usually are conveniently available in special volumes of the *Cumulative Bulletins*.

- c. Public and closed congressional hearings. Congress holds both public and closed hearings on tax proposals.
  - (1) After public hearings before the House Ways and Means Committee, the public may be excluded in a closed session.
  - (2) Tax bills may be debated under a closed rule before the full House with approval by the Rules Committee.
  - (3) Under this closed rule, amendments are not allowed on the House floor unless approved by the House Ways and Means Committee.
  - (4) The full Senate, however, does not have a closed rule process.
- d. Organization of the Code. The organization of the Code into Subtitles, Chapters, and Subchapters. See **Figure 2-1** in these **Lecture Notes**.
- e. Interrelation of Code provisions. Tying the various Code provisions together to reach the total result is important.
  - (1) For example, consider why there are three separate sections dealing with alimony.
  - (2) Section 71 (in the gross income sequence) makes it taxable to the payee; § 215 (in the deduction sequence) makes it deductible to the payor; while § 62(a)(10) classifies the deduction (as a deduction for AGI) for the payor.
- f. Subpart designations. The designation given to the subparts of a Code section will vary.
  - (1) The usual approach has been to use (a), (b), etc. [e.g., § 162(a)].
  - (2) On occasion, however, the designation is (1), (2), etc. [e.g., § 212(1)].
- g. Code section numbers. Some Code section numbers contain a capital letter (e.g., a numerical designation such as §§ 453A, 453B).
  - (1) The reason is that certain numerical sequences in the Code have no space for expansion.
  - (2) Since there exists a § 453 and a § 454, how else would the two intervening provisions be designated?
- h. Recodification. In connection with the preceding observation, the tax law has been recodified twice.

- (1) Internal Revenue Codes of 1939 and 1954. The first was in 1939 and the second was in 1954.
  - (2) Internal Revenue Code of 1986. Although Congress did not codify and rearrange the law in the Tax Reform Act of 1986, the radical changes did provide some rationale for renaming the entire tax law the Internal Revenue Code of 1986.
- i. General Explanation of the Act. Upon the completion of major tax legislation, the staff of the Joint Committee on Taxation (in consultation with the staffs of the House Ways and Means and Senate Finance Committees) often will prepare a general explanation of the act.
- (1) Bluebook: no legal effect. Commonly known as the “bluebook” because of the color of its cover, the IRS will not accept this detailed explanation as having legal effect (except for purposes of the accuracy-related penalty in § 6662).
  - (2) Bluebook: temporary guidance. The “bluebook,” however, does provide valuable guidance to tax advisers and taxpayers until Regulations are issued, and some letter rulings and general counsel memoranda of the IRS cite such explanations.

## THE LEGISLATIVE PROCESS

### 3. Pertinent Observations.

- a. Evolution of tax law. Some provisions in the tax law took years to become law (e.g., H.R. 10 or Keogh plans).
  - (1) This process means that with each new Congress the measure had to be reintroduced until it finally gained the required support.
  - (2) An example of a provision that currently seems to be going through this laborious process is the proposed credit for certain tuition paid on behalf of dependents attending college and/or private schools. Note that the evolution to date on this issue includes the § 135 savings bond exclusion.
- b. Tax law enactment and election years. Most significant tax legislation is enacted in election years (e.g., the Tax Reform Act of 1976, the Revenue Act of 1978, the Crude Oil Windfall Profit Tax Act of 1980, the Tax Equity and Fiscal Responsibility Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1990, the Unemployment Compensation Amendments of 1992, the Energy Policy Act of 1992, the four pieces of tax legislation enacted in 1996, the IRS Restructuring and Reform Act of 1998, the Job Creation and

Worker Assistance Act of 2002, the Working Families Tax Relief Act of 2004, the American Jobs Creation Act of 2004, the Pension Protection Act of 2006, the Tax Relief and Health Care Act of 2006 and Three Acts in 2008).

- (1) Because the enactment process often involves substantial last minute compromises, the result may not be a polished product.
  - (2) It is not uncommon, therefore, to find that Congress in a later session has to enact clarifying legislation. Examples are the Technical Corrections Act of 1982, the technical corrections included in the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the technical corrections included in the Revenue Reconciliation Act of 1990.
- c. Deadwood bills. On occasion Congress will enact deadwood bills. The purpose of such legislation is to “clean-up” provisions that are obsolete and possess no continuing validity.
- d. Origin of a tax bill. Tax legislation normally originates in the House Ways and Means Committee of the House of Representatives. A tax bill might originate in the Senate when it is attached to other legislative proposals.
- (1) The Tax Equity and Fiscal Responsibility Act of 1982 originated in the Senate, and its constitutionality was unsuccessfully challenged in the courts.
  - (2) The Senate version of the Deficit Reduction Act of 1984 was attached as an amendment to the Federal Boat Safety Act.
- e. Naming tax legislation. Some tax provisions are commonly referred to by the number the bill received in the House when first proposed or by the name of the member of Congress sponsoring the legislation. For example, the Self-Employed Individuals Tax Retirement Act of 1962 is popularly known as H.R. 10 (House of Representatives Bill No. 10) or as the Keogh Act (Keogh being one of the members of Congress sponsoring the bill). The Roth IRA is named after Senator William Roth, an influential sponsor. Coverdell Education Savings Accounts (first called education IRAs) are named after the late Senator Paul Coverdell (R. – GA.).
- f. Beginning in 1997, the President was supposed to be able to cancel provisions from enacted tax legislation under the Line Item Veto Act. President Clinton, on August 11, 1997, did strike two provisions from TRA of 1997 and one non-tax provision from the Balanced Budget Act. Congress did not override these cancellations, but the constitutionality of the Line Item Veto Act was challenged in the court system and the Supreme Court held it unconstitutional.

- g. Tax legislation is referred from the Senate Finance Committee to the entire Senate. If the House and Senate tax bills disagree, the Joint Conference Committee resolves the differences. (See **Figures 2.1 and 2.2 in the text**).

#### ADMINISTRATIVE SOURCES OF THE TAX LAW (see Exhibit 2.1 in the text)

---

### ETHICS & EQUITY

---

**The President and Tax Planning (page 2-6)**. One can argue that the President was doing nothing wrong because the tax shelter he was using was part of the tax law. On the other hand, he had special scorn for the “clever little schemes” developed by tax attorneys, insisting that they were a threat to the tax system.

Based upon his public statements and his other actions that can be found in J.J. Thorndike, “Private Returns, Public Rewards: The Politics of Tax Records,” *Tax Notes*, April 7, 2008, pp. 83-84, he probably was a hypocrite. He dismissed the legalistic arguments in favor of tax shelters as follows:

Methods of escape or intended escape from tax liability are many. Some are instances of avoidance which appear to have the color of legality; others are on the borderline of legality; others are plainly contrary even to the letter of the law.

All are alike in that they are definitely contrary to the spirit of the law. All are alike in that they represent a determined effort on the part of those who use them to dodge the payment of taxes which Congress based on ability to pay. All are alike in that failure to pay results in shifting the tax load to the shoulders of others less able to pay, and in mulcting the Treasury of the Government’s just due.

- 
4. Treasury Department Authority. The Treasury Department under § 7805(a) has a duty to issue rules and regulations to explain and interpret the Code.
- a. Treasury Decisions. Final Regulations are issued as Treasury Decisions (TD’s) in the *Federal Register*. Regulations carry considerable authority as the official interpretation of tax statutes. They are arranged in the same sequence as the Internal Revenue Code and have the force and effect of law.
- b. Types of regulations issued.
- (1) Legislative Regulations.
  - (2) Interpretative Regulations.
  - (3) Procedural Regulations.

- (4) Temporary Regulations – may be cited as precedent and are found in the Federal Register, Internal Revenue Bulletin, and Cumulative Bulletin. They are issued as Proposed Regulations and automatically expire within three years after the date of issuance.
  - c. Validity of a Regulation. One way courts assess the validity of a Regulation is by the legislative re-enactment doctrine. Here a Regulation is considered to have received Congressional approval if the regulation was finalized many years earlier and during the interim period Congress has not amended the relevant statutory language.
5. Information in Cumulative Bulletins and Internal Revenue Bulletins. The I.R.B.s for a six-month period are gathered together and published in a bound volume designated as a C.B.
- a. Revenue Rulings and Revenue Procedures. The C.B.s and I.R.B.s include Revenue Rulings and Revenue Procedures.
    - (1) Revenue Rulings are official pronouncements of the National Office of the IRS and provide guidance to both IRS personnel and taxpayers in handling routine tax matters. They usually deal with more restricted problems than Regulations and do not carry the same legal force and effect.
    - (2) Revenue Procedures are issued in the same manner as Revenue Rulings, but they deal with the internal management practices and procedures of the IRS and do not carry the same legal force and effect.
  - b. Other materials included.
    - (1) Announcements of Proposed Regulations as well as the related public hearings.
    - (2) Treasury Decisions.
    - (3) Executive orders.
    - (4) Tax conventions (i.e., international treaties).
    - (5) Legislation (including Committee Reports).
    - (6) Certain court decisions may be reproduced.
    - (7) Announcements of court decisions in which the IRS acquiesces or does not acquiesce.

- (8) Punitive action (e.g., disbarment, suspension) taken against persons (e.g., attorneys, CPAs) practicing before the IRS.
6. Letter Rulings Versus Determination Letters. Letter rulings and determination letters have in common the fact that they apply only to the person who requested the ruling or letter.
- Letter ruling. A letter ruling is a statement issued by the National Office of the IRS in response to a taxpayer's request, which applies the tax law to a proposed transaction. Revenue rulings often results from a specific taxpayer's request for a letter ruling.
  - Determination letter. A determination letter is a statement issued by the Area Director in response to a taxpayer, which applies the tax law to a completed transaction. Determination letters are not published.
7. Technical Memoranda and Technical Advice Memoranda. These sources are not the same.
- Technical Memoranda (TMs) are memoranda from the IRS Commissioner to the Assistant Secretary of the Treasury for Tax Policy. They are drafted by the Legislation and Regulation Division of the Office of Chief Counsel and relate to proposed Treasury Decisions or Regulations.

---



---

### ADDITIONAL LECTURE RESOURCE

---



---

#### Provider of the Tax Source

Internal Revenue Code	Congress/President
Regulations	U.S. Treasury Department
Revenue Ruling	National Office of IRS
Letter Ruling	National Office of IRS
Notices and Announcements	National Office of IRS
Determination Letter	Area Director of IRS
Technical Advice Memorandum	National Office of IRS
Treasury Decision	U.S. Treasury Department
Revenue Procedure	National Office of IRS
General Counsel Memorandum	General Counsel's Office of IRS
Action on Decision	Office of Chief Counsel of IRS
Field Service Advice	Office of Chief Counsel of IRS
Technical Expedited Advice Memorandum	National Office of IRS

- 
- Technical Advice Memoranda (TAMs) are furnished by the National Office of the IRS upon request of an Area Director or an Appeals Officer of the IRS in response to any technical or procedural question (e.g., a completed transaction).

## JUDICIAL SOURCES OF THE TAX LAW

8. Precedential Value. American law, following English common law, is frequently “made” by judicial decisions. Under the doctrine of *stare decisis*, each decision has precedential value for future decisions with the same controlling set of facts.
9. Trial Courts (Courts of Original Jurisdiction). A taxpayer chooses the route to pursue a tax conflict from among four alternatives (as illustrated in **Figure 2.3 and Concept Summary 2.1 in the text**).
  - a. U.S. Court of Federal Claims (hears tax and other claims against the Federal government). This court formerly was called the U.S. Claims Court. There is only one U.S. Court of Federal Claims and meets most often in Washington, D.C. Decisions are appealed to the U.S. Court of Appeals (Federal Circuit).
  - b. U.S. Tax Court (hears only tax cases). Taxpayer does not pay the deficiency before trial. Decisions are appealed to the U.S. Court of Appeals (Regional Circuit).
  - c. Small Cases Division of the U.S. Tax Court (hears only tax cases). No appeal available.
  - d. U.S. District Courts (hears tax as well as nontax cases). A jury trial is available. Decisions are appealed to the U.S. Court of Appeals (Regional Circuit). See **Figure 2.4 in the text**.
10. Small Cases Division. The broken line between the U.S. Tax Court and the Small Cases Division in **Figure 2.3 of the text** indicates that there is no appeal from the Small Cases Division.
  - a. \$50,000 or less. This court hears cases involving amounts of \$50,000 or less.
  - b. No written record. The proceedings are informal, and there was no written record of such cases before 2002. Some of the more recent cases can now be found on the U.S. Tax Court Internet Website.
  - c. Informal Proceedings.
    - (1) No necessity for the taxpayer to be represented by a lawyer or other tax adviser.
    - (2) Special trial judges, rather than Tax Court judges, preside over the proceedings.



- (3) Decisions are not precedent for any other court and are not reviewable by any higher court.
11. Court Reporters. They are either “official” or “unofficial.”
- a. Official. The official reporters are published by legislative directive. Official reporters exist for the U.S. Supreme Court and other courts.
  - b. Unofficial. The most comprehensive and well-known unofficial reporter system is the National Reporter System published by West Publishing Company.
12. National Reporter System. The National Reporter System consists of thirteen reporters: nine reporters covering state court decisions and four reporters (see item 15. below) covering opinions of the Federal courts.
13. Federal Court Reporter. The four reporters of the National Reporter System which cover the Federal court system contain tax cases as well as nontax cases decided by the various courts.
- a. *Supreme Court Reporter (S.Ct.)* reports in full every decision of the Supreme Court of the United States.
  - b. *Federal Reporter (F.3d)* reports the decisions of the U.S. Courts of Appeals.
  - c. *Federal Supplement (F.Supp.)* reports the decisions of the United States District Courts.
  - d. *Claims Court Reporter* reports the Claims Court Decisions beginning October, 1982. On October 30, 1992, the name of the reporter was changed to the *Federal Claims Reporter (Fed. Cl.)*.
  - e. Two publishers, Research Institute of America (formerly Prentice-Hall) and Commerce Clearing House (now owned by Wolter Klower), select only the tax cases decided by these Federal courts and publish them respectively, in *American Federal Tax Reports* and *U.S. Tax Cases*. Tax practitioners generally use these reporters since they contain only tax cases.
- As the result of the acquisition of Prentice-Hall Information Services, the AFTRs and other publications discussed subsequently are now published by Research Institute of America (RIA).
14. U. S. Court of Federal Claims. Prior to October 1, 1982, the Claims Court was called the Court of Claims. Beginning October 29, 1992, the Claims Court underwent a further name change. The new designation, U.S. Court of Federal Claims, begins with Volume 27 of the former *Cl.Ct.* (West citation) now abbreviated as *Fed.Cl.* Claims Court and

Court of Federal Claims decisions are now appealable to the Federal Circuit, whereas they were previously appealable only to the Supreme Court.

- a. *Court of Claims Reporter.* The *Court of Claims Reporter* series, published by the United States Government Printing Office, is the primary source of these former Court of Claims cases.
  - b. *Federal Reporter and Claims Court Reporter.* Court of Claims cases from 1929 to 1932 and from 1960 to September, 1982 can be found in the *Federal Reporter*, published by West. Beginning October, 1982, these Claims Court decisions are published in West's *Claims Court Reporter*.
  - c. *Federal Claims Reporter.* Beginning with Volume 27 on October 30, 1992, the name of the reporter is changed to the *Federal Claims Reporter*.
15. U.S. Tax Court. Often called the “poor person’s court,” here a taxpayer does not have to pay the proposed deficiency in order to bring a case before the court.
- a. Organization and authority. The Tax Court is an administrative body with quasi-judicial authority. Nineteen regular judges operating on a divisional basis produce both “regular decisions” and so called “memorandum decisions.”
  - b. Tax Court decisions. Regular Tax Court decisions are published by the United States Government Printing Office as the Tax Court of the United States Reports.
  - c. Memorandum decisions. Memorandum decisions are reproduced by the government in mimeograph form only. However, RIA publishes RIA (formerly Prentice-Hall) T.C. Memorandum Decisions and Commerce Clearing House makes them available as Tax Court Memorandum Decisions.
16. Appellate Courts. The two appellate courts are the Circuit Courts of Appeal (11 geographical circuits, the circuit for the District of Columbia, and the Federal Circuit) and the Supreme Court (see **Figure 2-4 in the text**).
- a. All courts must follow the decisions of the U.S. Supreme Court.
  - b. A particular Court of Appeals need not follow the decisions of another Court of Appeals.
  - c. District Courts, the Tax Court, and the Court of Federal Claims must abide by the precedents set by the Court of Appeals of jurisdiction.

---



---

## ADDITIONAL LECTURE RESOURCE

---



---

### JURISDICTION OF THE COURTS OF APPEALS

**First**

Maine    Maryland  
 Massachusetts  
 New Hampshire  
 Rhode Island  
 Puerto Rico

**Fourth**

Arkansas  
 North Carolina  
 South Carolina  
 Virginia  
 West Virginia

**Eighth**

Colorado  
 Iowa  
 Minnesota  
 Missouri  
 Nebraska  
 North Dakota  
 South Dakota

**Tenth**

Kansas  
 New Mexico  
 Oklahoma  
 Utah  
 Wyoming

**Second**

Connecticut  
 New York  
 Vermont

**Fifth**

Canal Zone  
 Louisiana  
 Mississippi  
 Texas

**Ninth**

Alaska  
 Arizona  
 California  
 Hawaii  
 Idaho  
 Montana  
 Nevada  
 Oregon  
 Washington  
 Guam

**Eleventh**

Alabama  
 Florida  
 Georgia

**Third**

Delaware  
 New Jersey  
 Pennsylvania  
 Virgin Island

**Sixth**

Kentucky  
 Michigan  
 Ohio  
 Tennessee

**Federal**

U.S. Court of Federal  
 Claims

**District of Columbia**

Washington, D.C.

**Seventh**

Illinois  
 Indiana  
 Wisconsin

- 
- 
17. **Bankruptcy Court.** In certain situations, a bankruptcy court may have jurisdiction over tax matters. Since the filing of a bankruptcy petition prevents creditors from filing a claim against a person, a tax dispute may be settled by the bankruptcy court.
  18. **Locating Court Cases.** Where to find tax cases can be confusing in that there may be more than one alternative. In this regard, the instructor can reproduce and distribute (or use as an overlay) **Figure 2-2** of these **Lecture Notes**.

### **TAX RESEARCH TOOLS: TAX SERVICES**

19. **Looseleaf Tax Services.** A number of publishers provide looseleaf (or other currently supplemented) tax services for practitioners. Some of the major services include:
  - a. Research Institute of America's *United States Tax Reporter* (formerly P-H's *Federal Taxes*).
  - b. Commerce Clearing House's *Standard Federal Tax Reporter*.
  - c. Research Institute of America's *Federal Tax Coordinator 2d*.

- d. *Mertens Law of Federal Income Taxation* (Callaghan and Co.).
  - e. *Federal Income, Gift, and Estate Taxation* (Warren, Gorham and Lamont.).
  - f. CCH's *Federal Tax Service* (formerly Matthew Bender).
  - g. Bureau of National Affairs's *Tax Management Portfolios*.
20. Assessing Tax Services. In terms of assessing the major tax services, the following points are relevant:
- a. Except for arrangement of the subject matter, there is not much difference between CCH's *Standard Federal Tax Reporter* and RIA's *United States Tax Reporter*.
  - b. RIA's *Tax Coordinator* is preferred by many over CCH's *Standard Federal Tax Reporter* and RIA's *United States Tax Reporter* due to its editorial commentary and emphasis on tax planning considerations. In many areas, however, rule coverage and case law background is less extensive than in CCH's *Standard Federal Tax Reporter* and RIA's *United States Tax Reporter*.
  - c. Mertens is an excellent source if the emphasis is on background material for in-depth research. Mertens is, however, difficult reading due to its legalistic style. Also, updating is less frequent than most other services and not as accessible.
  - d. The *Tax Management Portfolios* (TMPs) comprise a series of monographs on various subjects. As the treatment of a subject usually is exhaustive, a portfolio can serve as a convenient means of familiarizing the reader with the material. Problems of inconvenience develop, however, when there is no one portfolio squarely on point and the research effort requires reference to many portfolios. Updates are convenient though not extensive.
  - e. The newest tax service, CCH's *Federal Tax Service* (formerly Matthew Bender), is topically-organized, but also contains a detailed code-finding table. The chapters are prepared by over 250 tax practitioners.
  - f. In summary, the day-to-day, all-purpose services are CCH and RIA. Mertens and the TMPs are useful for more extensive research and background. Further, the TMPs may provide a quick means for obtaining a heavy orientation on any one subject.

## ELECTRONIC SERVICES

- 21. See **Exhibit 2.2 in the text.**
- 22. Online Systems. See **Exhibit 2.3 in the text.**

23. Internet. See pages 2-21 and 2-22 in the text.

### **WORKING WITH THE TAX LAW - TAX RESEARCH**

24. Definition of Research. Tax research is the method whereby one determines the best available solution to a situation that possesses tax consequences.
- a. In other words, it is the process of finding a professional conclusion to a tax problem.
  - b. The problem might originate either from completed or proposed transactions.

---

### **ETHICS & EQUITY**

---

**Who Did Not Pay His Income Taxes Properly? (page 2-32).** The answer probably depends upon the political party you favor. Charles Rangel said as he was paying these back taxes that “I’ve never violated the public trust, so I’m not worried.” He can argue errors, and, that the tax laws are very complex.

However, it does seem that the Chairman of the House Ways and Means Committee should pay the proper amount of Federal income taxes. Certainly he should be required to pay penalties and interest like any other ordinary taxpayer.

- 
25. Tax Procedures. Tax research involves the following procedures (see **Figure 2.5 in the text**):
- a. Identifying and refining the problem.
  - b. Locating the appropriate tax law sources.
  - c. Assessing the validity of the tax law sources.
  - d. Arriving at the solution or at alternative solutions with due consideration given to nontax factors.
  - e. Effectively communicating the solution to the taxpayer or the taxpayer’s representative. See **Figure 2.6, Figure 2.7, and Figure 2.8 in the text.**
    - (1) A clear statement of the issue.
    - (2) In more complex situations, a short review of the fact pattern that raises the issue.
    - (3) A review of the pertinent tax law sources (e.g., Code, Regulations, Revenue Rulings, judicial authority).

- (4) Any assumptions made in arriving at the solution.
  - (5) The solution recommended and the logic or reasoning supporting it.
  - (6) The references consulted in the research process.
- f. Following up on the solution (where appropriate) in the light of new developments.
26. Avoidance Versus Evasion. There is a fine line between legal tax planning and illegal tax planning--tax avoidance versus tax evasion. However, the consequences of the two are as vast as the difference between a lightning bug and lightning.
- a. Tax avoidance. Tax avoidance is merely tax minimization through legal techniques. In this sense, tax avoidance becomes the proper objective of all tax planning.
  - b. Evasion. Evasion, while also aimed at the elimination or reduction of taxes, connotes the use of subterfuge and fraud as a means to an end.

## Primary and Secondary Tax Sources

	<u>Primary</u>	<u>Secondary</u>
16th Amendment to Constitution	X	
Tax Treaty	X	
Internal Revenue Code Section	X	
U.S. Supreme Court Decision	X	
U.S. Circuit Court of Appeals Decision	X	
Tax Court Memorandum Decision	X	
Tax Court Regular Decision	X	
U.S. District Court Decision	X	
U.S. Court of Federal Claims Decision	X	
Small Cases Division of U.S. Tax Court		X
Final Regulation	X	
Temporary Regulation	X *	
Proposed Regulation		X
Revenue Ruling	X	
Revenue Procedure	X	
Senate Finance Committee Report	X	
Bluebook		X
Letter Ruling		X
Technical Advice Memorandum		X
Actions on Decisions		X
Determination Letter		X
<i>Harvard Law Review</i> article		X
Field Service Advice		X
General Counsel Memorandum		X

\* For three years.





**Figure 2-2****LOCATION OF JUDICIAL SOURCES**

	<u>USTC Series</u>	<u>AFTR Series</u>	<u>F.Supp. Series</u>	<u>F.3d Series</u>	<u>Cls.Ct. Series</u>	<u>S.Ct. Series</u> <sup>a</sup>
U.S. District Courts (tax cases)	Yes	Yes	Yes	No	No	No
U.S. Tax Court <sup>b</sup>	No <sup>c</sup>	No <sup>c</sup>	No	No	No	No
U.S. Court of Federal Claims <sup>d</sup> (tax cases)	Yes	Yes	No <sup>e</sup>	Yes <sup>e</sup>	Yes <sup>e</sup>	No
U.S. Courts of Appeal (tax cases)	Yes	Yes	No	Yes	No	No
U.S. Supreme Ct. (tax cases)	Yes	Yes	No	No	No	Yes
U.S. District Courts <sup>f</sup> (all cases)	No	No	Yes	No	No	No
U.S. Courts of Appeal (all cases)	No	No	No	Yes	No	No
U.S. Supreme Court (all cases)	No	No	No	No	No	Yes

---

**Notes:**

- a** Answers also apply to the *United States Supreme Court Reports* (abbreviated U.S.) and to the *United States Reports, Lawyers Edition* (abbreviated L.Ed.).
- b** Regular (not Memorandum) decisions are published by the U.S. Government Printing Office in *Tax Court of the United States Reports*.
- c** Both CCH and RIA (formerly P-H) have separate services for reporting the decisions (both Regular and Memorandum) of the U.S. Tax Court.
- d** All decisions (both tax and non-tax) of the U.S. Court of Federal Claims are published by the U.S. Government Printing Office in the *Claims Court Reporter Series*. From 1960 to October 1, 1982, Court of Claims decisions were published in the *Court of Claims Reporter Series*.
- e** From 1932 to 1960, the Court of Claims decisions were published in the *F.Supp. Series*. Beginning October 1982, the Claims Court decisions are published in the *Claims Court Reporter*. Beginning October 30, 1992, the Claims Court underwent a further name change. The new designation, U.S. Court of Federal Claims, begins with Volume 27 of the former *Cl.Ct.* (West citation) now abbreviated as Fed.Cl.
- f** “All cases” has reference to non-tax as well as tax decisions. Thus, it would include such varied issues as interstate transportation of stolen goods, civil rights violations, and anti-trust suits.

**SOLUTIONS TO RESEARCH PROBLEMS**

1. For the Oprah car giveaway, the 234 audience recipients who received keys to a car were taxed on the value of the car which was in the \$30,000 range. Since they were merely present in the audience, the fair market value was included in gross income under § 61.

As for the World Furniture Mall promotion, the discount or rebate could be tax free since a rebate of all or a portion of the purchase price of property generally does not result in gross income. The customer would have a zero basis in the furniture. Rev. Rul. 76-96, 1976-1 C.B. 23 and Rev. Rul. 88-95, 1988-2 C.B. 28. See “Furniture for Nothing and It’s all Tax-Free,” *Journal of Taxation*, December 2006, pp. 382 and 383.

2. There does not appear to be a clear-cut answer to this question. Section 104 allows exclusion from gross income for damages paid on account of physical injuries and physical sickness. However, the IRS requires observable bodily harm for an exclusion to be available. Ltr. 200041022.

So is false imprisonment physical? In CCA 200809001, the IRS allowed an exclusion for a settlement with an institution for sexual abuse. However, the Tax Court in *Daniel and Brenda Stadnyk*, T.C. Memo. 2008-289 would not allow an exclusion for \$49,000 received for about one day in a jail.

Brenda Stadnyk was dissatisfied with an automobile purchase, so she placed a stop payment order on the check she tendered to the dealership. Bank One listed the reason for not paying the dealership as a “NSF check.” The dealership then filed a criminal complaint against her for passing a worthless check. She spent about one day in a holding area and a county jail.

Robert Wood in “Why False Imprisonment Recoveries Should Not Be Taxable,” *Tax Notes*, June 8, 2009, pp. 1217-1220 provides a lengthy discussion of this problem.

3. **INTERNET ACTIVITY COMMENT**

The Internet Activity research problems require that the student access various sites on the Internet. Thus, each student’s solution likely will vary from that of the others. You should determine the skill and experience levels of the students before making the assignment, coaching them where necessary so as to broaden the scope of the exercise to the entire available electronic world. Make certain that you encourage students to explore all parts of the World Wide Web in this process, including the key tax sites, but also information found through the web sites of newspapers, magazines, businesses, tax professionals, government agencies, political outlets, and so on. They should work with Internet resources other than the Web as well, including newsgroups and other interest-oriented lists. Build interaction into the exercise wherever possible, asking the student to send and receive e-mail in a professional and responsible manner.

**NOTES**