



# Principles of Tax Research

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# Course Agenda

At the end of this session, you will be able to:

- Identify the steps in the Tax Research Process
- Understand the relative levels of authority
- Apply the Tax Research Methodology

# Agenda

| Session              | Time           |
|----------------------|----------------|
| Tax Research Process | 60 mins.       |
| Levels of Authority  | 30 mins.       |
| Methodology          | 30 mins.       |
| <b>Total</b>         | <b>2 Hours</b> |

# Tax Research Process

Tax research can be time-consuming and expensive. In many cases, it is very easy for the tax researcher to spend 10 to 15 hours on an issue and still have no answer to give the client.

Therefore, it is necessary for the tax researcher to learn how to conduct tax research in an orderly, thorough and efficient manner.

# Tax Research Process

## FICA

### Step 1:

- Establish the material **FACTS**

### Step 2:

- Identify the **ISSUES**

### Step 3:

- Develop **CONCLUSIONS**

### Step 4:

- **ANALYZE** the facts and make recommendations

# Tax Research Process – Step 1

## Establish the Material Facts

The most important step in tax research

- Starting research with incorrect or incomplete facts is time consuming and costly.
- Collecting your Facts:
  - Ask focused questions. If the client does not know the answer, confirm a time for follow-up.
  - LISTEN. If it doesn't make sense, you don't have all the facts.
    - Circular 230 requires that a tax advisor make “reasonable inquiries” if taxpayer information appears to be incorrect, inconsistent, or incomplete.
  - Examine important tax documents.
    - Prior year tax returns; corporate documents, etc.

# Tax Research Process – Step 1

## Establish the Material Facts

Every written client communication should begin with a statement of facts.

- Prevents erroneous assumptions and misinterpretations
- Narrows the Scope
- Limits the conclusions and recommendations to the stated facts

# Tax Research Process – Step 2

## Identify the Issues

Tax Research can be divided into two categories:

- **FACTUAL ISSUES**

- Circumstances such as transaction dates, amounts, reasons, intentions, purposes for the transaction
- Factual issues should be resolved prior to commencing the research

- **LEGAL ISSUES**

- Application of the law to a given set of facts
- Conflicting statutory, regulatory or judicial authority, conflicting interpretations

# Tax Research Process – Step 2

## Identify the Issues

- RELEVANT FACTS:
  - XYZ & Associates, LLP, a public accounting firm in McLean VA, wants to hire a new corporate tax accountant from New York. Miranda, the tax accountant, owns a brownstone in Manhattan and will incur a loss if she sells it under existing market conditions. XYZ offers to reimburse Miranda this year for any losses she incurs on the sale. XYZ wants to know how this reimbursement will be treated for federal and state income-tax purposes.
- IDENTIFY ISSUES:
  - ??
  - ??
  - ??
  - ??

# Tax Research Process – Step 3

## Develop Conclusions

Although developing conclusions is the third item in a written tax research communication, it is commonly the last step performed.

- The material facts have been identified
- The relevant authority has been reviewed and evaluated
- Each issue has been addressed
- Competent advice is given based on existing laws
- Any new issues are identified

Often, the analysis will not result in a single, clear solution to every issue. The researcher may inform the client about the “best” conclusion, as well as possible alternatives and other workable solutions.

# Tax Research Process – Step 4

## Analyze the Facts

The heart of the research process

- Locate the Relevant Authority
  - Primary (Slide 14)
    - Statutory
    - Administrative
    - Judicial
  - Secondary (Slide 19)
    - Tax services
    - Journals
    - Textbooks

# Tax Research Process – Step 4

## Analyze the Facts

- Evaluate the Authority
  - Identify Substantial authority and precedents (Slide 21)
  - “Shepardize” all authority to ensure it has not been:
    - Updated
    - Overturned
    - Amended
  - Compare facts to authority that *supports* the recommended tax position
  - Compare facts to authority that *opposes* the recommended tax position
  - Determine if the authority is sufficient to support the conclusions (Slide 20)

# Tax Research Process – Step 4

## Effectively Communicate Recommendations



ARGY, WILTSE & ROBINSON, P.C.



### Memorandum

To: The Files  
From: Partner Name  
Date: Date delivered  
Re: Client Name – Short Description of Issue

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#### Facts:

#### Issue:

#### Conclusion:

#### Discussion:

#### Disclaimer:

IRS Circular 230 Disclosure: Please be advised that the tax advice contained herein (including any attachments) is not intended or written by the practitioner to be used and cannot be used by the taxpayer for the purpose of avoiding any U.S. tax-related penalties that may be imposed on the taxpayer.

- Tax research is useful only when communicated correctly and efficiently to the relevant parties involved.
- Tax Research Memo Template can be found by going to Intranet/Tax/Tax Research Memo Template.

# Levels of Authority - Primary



## Statutory

IRC  
Tax Treaties  
U.S. Constitution

## Administrative

Treasury Regulations  
Revenue Rulings  
Revenue Procedures  
Private Letter Rulings  
Notices  
Announcements  
AODs, GCMs, FSAs

## Judicial

Supreme Court  
Court of Appeals  
Federal District Court  
Court of Federal Claims  
Tax Court  
State Courts

# Levels of Authority - Primary

## The Internal Revenue Code

- Subchapters
  - A. Determination of Tax Liability
  - B. Computation of Taxable Income
  - C. Corporate Distributions and Adjustments
  - D. Deferred Compensation
  - E. Accounting Periods and Methods
  - F. Tax-Exempt Organizations
  - K. Partnerships
  - S. S Corporations
- Sections
  - Sec. 170(b)(1)(A)(vi)
  - Section(Subsection)(Paragraph)(Subparagraph)(Clause)

# Levels of Authority - Primary

## Regulations

- Citation
  - Reg 1.262-1(b)(2)
  - Type.Related IRC Section-Reg Number(Reg Paragraph)(Reg Subparagraph)
- Type
  - 1. Income Tax
  - 20. Estate Tax
  - 25. Gift Tax
  - 31. Employment Tax
  - 301. Procedural Matters

# Levels of Authority - Primary

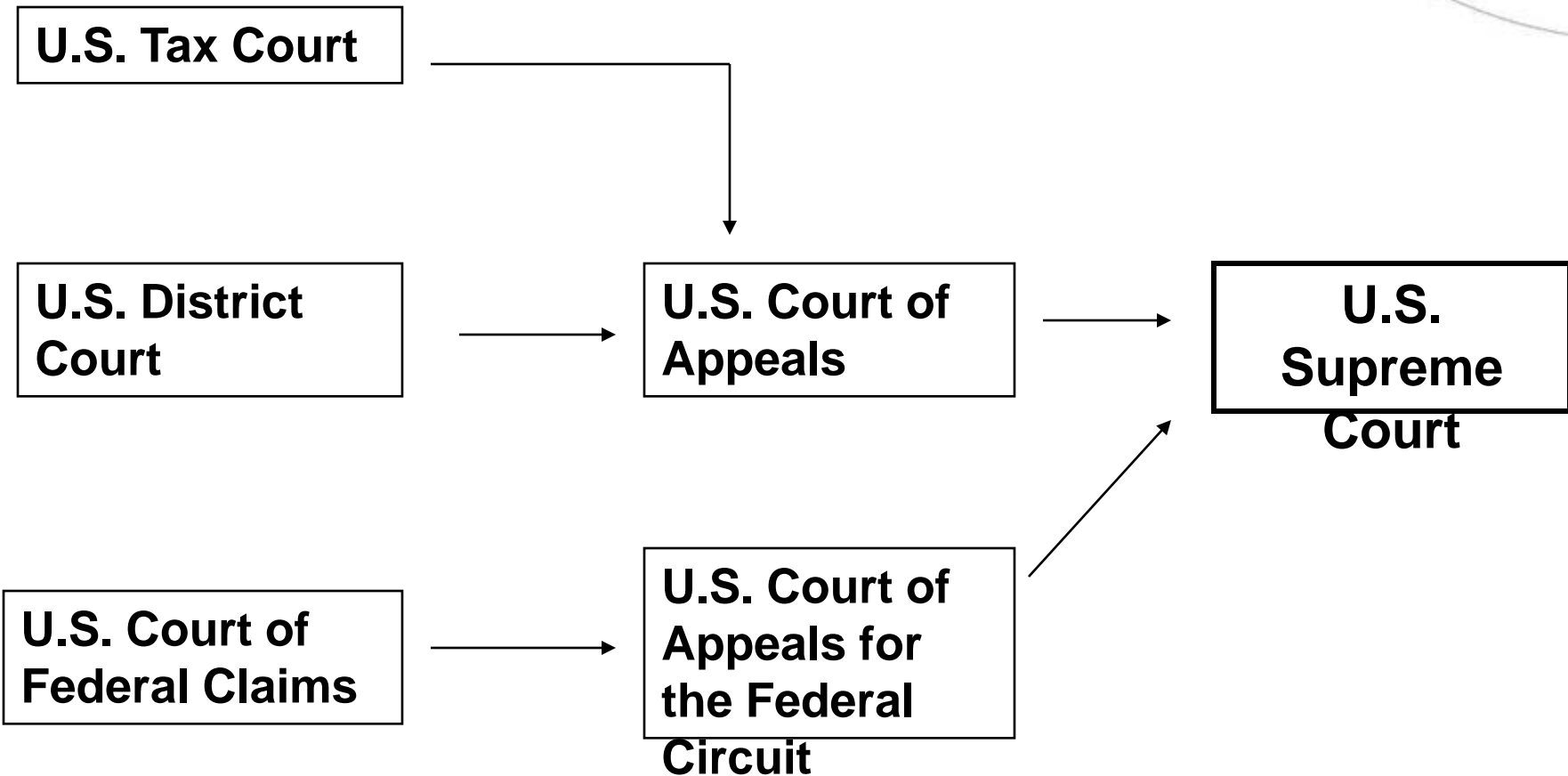
- Revenue Rulings (official pronouncements of the National Office of the IRS, applying the Code and Regs to a specific fact pattern)
  - Rev. Rul 96-58, or 1996-50 IRB 4
  - The 58<sup>th</sup> Revenue Ruling issued in 1996, published on page 4 of the 50<sup>th</sup> weekly issue of the Internal Revenue Bulletin in 1996.
- Revenue Procedures (Internal practice and procedures that the IRS uses to administer the tax laws)
  - Rev. Proc. 94-11, or 1994-1 C.B. 557
  - The 11<sup>th</sup> Revenue Procedure issued in 1994, published on page 557 of the 1994 Cumulative Bulletin
- Letter Rulings
  - PLR (Response to a Taxpayer's request for National Office position)
  - TAM (Response to an Agent's request for National Office position)
  - Determination Letters (Response from an IRS District Director)

# Levels of Authority – Primary Federal Court System for Tax Cases

TRIAL COURTS

APPELLATE COURTS

HIGHEST COURT



# Levels of Authority - Secondary



## Annotated

**CCH Standard Federal  
Tax Reports**

**RIA United States  
Tax Reporter**

## Topical

**BNA Tax  
Management Portfolios**

**West Group  
Mertens Law of Federal  
Income Taxation**

## Other

**Journal of Taxation**

**The Tax Adviser**

**The Exempt Organization  
Tax Review**

**EO Tax Journal**

**CCH Tax Day**

**BNA Daily Tax Report**

**Tax Analyst's  
Tax Notes**

# Levels of Authority - Accuracy

100%

- 70% Will
- 60% Should
- >50% More Likely Than Not, Reg 1.6662-4(d)(2)
- 40% Substantial Authority, Reg 1.6662-4(d)(3)
- 33.3% Realistic Possibility of Success, obsolete
- 20% Reasonable Basis, Reg 1.6694-2(d)
- 10% Not patently improper
- 5% Frivolous

0%

# Levels of Authority - Substantial

Reg. 1.6662 -4(d)(3)(iii)

Internal Revenue Code; Proposed, Temporary and Final Regulations; Revenue Rulings; Revenue Procedures; Tax Treaties; Court Cases; Congressional Intent; PLRs; TAMs; AODs; GCMs; the Internal Revenue Bulletin.

## Threshold for Substantial Authority

Conclusions reached in treatises, legal periodicals, legal opinions or opinions rendered by tax professionals

# Tax Research Methodology – State the Issue

- The under-does-when style
  - Under [this law] does [this outcome result] when [these facts happen]?
  - Under [this law] when [these facts happen] does [this outcome result]?
- The “whether” style
  - The issue is whether .....[state desired outcome]
  - The whether style is usually not grammatically correct because it produces very long sentences. However, it is an acceptable method of stating an issue statement.
- Example: Under I.R.C. § 162(a)(2) and Energy Policy Act of 1992, Pub. L. No. 102-486, does the taxpayer have a deductible travel expense when he/she is on a 12 month or more work assignment and receives lodging, travel and cost of living allowances?

# Tax Research Methodology – Identify the Key Words

- Tax research involves attempting to understand the actual meaning of words used in the Code when considering a given set of facts.
  - The hurdle to locating the relevant tax authority is to be able to Identify the Key Words that apply to the specific tax question.
- Example Key Words:
  - Ordinary and necessary
  - Travel
  - Meals and Entertainment
  - Deductible
  - Assignment
  - In-Kind

# Tax Research Methodology – Construct a Query

- Use of Connectors
  - “and” is a conjunctive used to connect two phrases
  - “or” is disjunctive, only one of the phrases must be true
- Boolean Connectors
  - Deduct! w/10 travel expens!
  - Travel expense and 162
  - 162 w/10 one year
- Plain English Search
  - Any Term
  - All Terms
  - Exact phrase
  - Near

# Tax Research Methodology – Select a Database

- CCH Tax Research Network
  - Federal and State Tax Reporters
  - Primary Sources (IRC, Cases, Rulings, IRS Publications...)
  - Journals, Briefings, Explanations, Analysis, Practice Aids
- Checkpoint
  - Primary Sources (IRC, Cases, Rulings, IRS Publications...)
  - PPC Deskbook
  - Form/ Line Finders
  - Calculators
- BNA Tax and Accounting Center
  - Portfolios (US Income Portfolios, State Portfolios, Foreign Income Portfolios etc)
  - Primary Sources (IRC, Cases, Rulings, IRS Publications...)
  - Practice Tools, Analysis, News, Commentary

# Tax Research Methodology – Refine the Search

- After executing the computer search:
  - May need to expand the search terms
  - May need to narrow the search terms
- BNA “Search Tips”
  - Helps you expand or narrow your search by providing you with suggested terms
- CCH Tax Research Network
  - Provides you with a thesaurus search to help you expand your search
  - “exact term” helps limit your search
  - “Sort by” function will prioritize your search results by order of importance/relevance



# Questions

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