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Research in Federal Income Taxation

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RESEARCH IN FEDERAL INCOME TAXATION

FRANCENE M. AUGUSTYN*

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I. INTRODUCTION**

The complexity of tax law challenges the tax researcher to effectively and efficiently analyze and solve a tax problem. This article sets forth a reference framework for the tax researcher to use in working through a tax problem. Particular emphasis is given to tax resources and methodology utilized in tax research. Tax research requires technical accuracy; the tax researcher must consult statutory, administrative, judicial, legislative, and oftentimes, other authority to achieve such accuracy. Tax research, unlike other legal research,

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** Unless otherwise provided, all Code references herein are to the Internal Revenue Code of 1954, as amended.

requires the researcher to perform tasks in a set pattern. The researcher must exhaust not only the primary sources of law, but also must follow up on tangents that because of the interlocking relationships of tax law provide added and insightful analyses to a tax problem.

II. INTERNAL REVENUE CODE

The source of all federal tax law is the Internal Revenue Code and the Treasury Regulations. The Internal Revenue Code provides the primary authority. The present statute is the Internal Revenue Code of 1986, Title 26 of the United States Code. The Internal Revenue Codes of 1939 and 1954 preceded the Internal Revenue Code of 1986. Prior to 1939, individual revenue acts were usually passed every other year. Congress repeated many provisions from one act to the next; thus, the difference between adopting a new act and amending a code was insignificant. The 1954 Code contained several new provisions, but it did not introduce any radical substantive changes.

The Tax Reform Act of 1986,¹ signed by the President on October 22, 1986, substantively changed the Internal Revenue Code of 1954. This Act revised hundreds of Code sections and added new rules that affect, among other things: the basic rate structure for individuals and corporations, depreciation, amortization, investment tax credit, capital gains and losses, inventory costing methods, pensions and deferred compensation; foreign tax credit, foreign currency exchange gains and losses, tax-exempt financing; trusts and estates; and exempt and nonprofit organizations.² Just two years earlier, Congress enacted the Tax Reform Act of 1984,³ which also made several significant changes to the Internal Revenue Code of 1954. Also enacted in 1984 was the Retirement Equity Act of 1984,⁴ providing for greater equity under private pension plans for workers and their dependents. Federal tax law is constantly changing; it is important that the tax researcher recognize this aspect of tax law and consider any statutory changes (and explanations of statutory changes contained in the legislative history of an act), as well as administrative pronouncements and judicial interpretations of specific provisions.⁵

1. The Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986). The Internal Revenue Code of 1954 was so substantially amended, and so many new sections added, by the Tax Reform Act of 1986, that provision was made to cite the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986. *See id.* § 2. While the Tax Reform Act of 1986 represents a significant change to substantive tax law, research methodology in federal income taxation will remain unaffected.

2. *See* Conference Report to Accompany H.R. 3838, H.R. Rep. No. 841, 99th Cong., 2d Sess., *reprinted in* 1986 U.S. CODE CONG. & ADMIN. NEWS (No. 9B).

3. The Tax Reform Act of 1984 is Division A of the Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (1984). *See generally*, STAFF OF JOINT COMM. ON TAXATION, 98th Cong., 2d Sess., GENERAL EXPLANATION OF THE REVENUE PROVISIONS OF THE DEFICIT REDUCTION ACT OF 1984 (Comm. Print 1984).

4. Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426 (1984). *See generally* S. REP. No. 575, 98th Cong., 2d Sess., *reprinted in* 1984 U.S. CODE CONG. & ADMIN. NEWS 2547.

5. I.R.C. § 7805(a) (1982).

Commerce Clearing House (CCH) and Prentice-Hall (P-H) each publish a federal income tax service in looseleaf form containing the Internal Revenue Code of 1986, as amended, in two volumes. These two tax services also contain the Treasury Regulations and other tax resources. The tax researcher must familiarize herself with one or both of the tax services to perform effective tax research.

III. ADMINISTRATIVE INTERPRETATIONS

A. *Treasury Regulations*

The Treasury Regulations provide formal and authoritative administrative interpretation of tax law. The treasury promulgates all regulations under the general statutory authority conferred by section 7805(a)(5); however, some Code provisions specifically authorize regulations.⁶ The regulations are intended to interpret a Code section, and to instruct taxpayers and the Internal Revenue Service (IRS) concerning the application of the Code section.

A taxpayer may question the validity of a regulation by contesting a deficiency before the United States Tax Court (Tax Court) or suing for a refund in United States District Court. A regulation is not controlling on the courts. However, unless a court finds a regulation contrary to Congressional intent⁷ (i.e., that the Commissioner of Internal Revenue (Commissioner) acted in an "arbitrary or capricious" manner), a tax regulation will stand with the authority of law. Tax researchers will find the regulations helpful in understanding and working through complex statutory provisions.

Each regulation is identified by a prefix number and the particular Code section that it interprets. For example, in Regulation section 1.861-8, the prefix "1." identifies the regulation as interpreting the substantive income tax Code section 861, which is identified by "861." Procedural and administrative Code section regulations are identified by the prefix "301."⁸ Regulations issued under a code or revenue act, prior to the 1954 Code, do not have a substantive or procedural designation. Regulations interpreting provisions of a revenue act enacted prior to 1954 are identified by a set number. Following the regulation number is the Code section number to which the regulation relates. Regulations

6. See, e.g., I.R.C. § 1502 (1982); Treas. Reg. §§ 1.1502-0 to 1.1502-51A (1985).

7. See, e.g., *United States v. Marett*, 325 F.2d 28, 31 (5th Cir. 1963) (concluding that Regulation "1.355-1(a) is invalid to the extent that it provides Section 355 does not apply to the division of a single business").

8. Examples of other regulation prefixes include:

"20." - Estate Tax;

"25." - Gift Tax;

"31." - Employment Tax;

"48." and "49." - Excise Taxes; and

"601." - Statement of Procedural Rules.

111 and Regulations 118 were the two sets of regulations issued under the 1939 Code.⁹

When a new regulation is initially promulgated, or an amendment to an existing regulation is proposed, it is published as a Treasury Decision (T.D.).¹⁰ The IRS drafts T.D.s subject to the approval of the Secretary of the Treasury. A T.D. must be followed by the IRS; this is not necessarily true of other types of rulings (discussed below). A T.D. ranks above all other rulings appearing in the *Cumulative Bulletin* because as a regulation, it has the force of law.

Treasury Decisions are publicly released when they are filed with the *Federal Register*. A T.D. is published in the *Federal Register* with a designation of the Code section that it interprets.¹¹ Later it is codified in Title 26 of the Code of Federal Regulations (26 CFR). All T.D.s are publicly released.

Following announcement in the *Federal Register*, each new T.D. is reprinted in the income tax services. The *Standard Federal Tax Reporter* (CCH) includes each T.D. in the current year's "Finding Lists" in volume 10, which indicates where all new regulations are printed in the tax service. *Federal Taxes* (P-H) indexes the T.D.s in the Finding List in the "Proposed Regulations" section of Code volume II. The Finding List indicates where all new regulations are printed in *Federal Taxes*. T.D.s are also published in the *Internal Revenue Bulletin*; *Federal Tax Coordinator 2d* (Research Institute of America (RIA)), in "Proposed Regulations" volume; Mertens, *The Law of Federal Income Taxation* ("Regulations" volume); and the *Cumulative Bulletin*.

Before issuing a regulation in final form, the Treasury publishes it in the *Federal Register* as a "Notice of Proposed Rule Making."¹² A minimum thirty-day period for public comment allows taxpayers opportunity to submit views, data, and arguments to the Commissioner. After a review of the taxpayer's comments, the proposed regulation will be revised and repropoed, issued in modified form, issued as proposed, or withdrawn.

The status of all proposed regulations is maintained in the current year's "Finding Lists" in volume 10 of *Standard Federal Tax Reporter* (CCH), and in "Proposed Regulations" in Code volume II of *Federal Taxes* (P-H). *Federal Tax Coordinator 2d* (RIA) contains a periodically revised table of proposed regulations, listing the regulation sections affected, the date published in the *Federal Register*, and the text paragraph where they are discussed ("Proposed Regulations" volume). Mertens, *The Law of Federal Income Taxation*, also publishes a status report on proposed regulations ("Regulations" volume, "Proposed Regulations" section).

B. Rulings and Procedures

The *Internal Revenue Bulletin* (I.R.B.), published weekly, is the Commissioner's authoritative instrument for announcing official rulings and procedures of the

9. See, e.g., Treas. Reg. 118, § 39.23(p)-3 (1953).

10. See, e.g., Treas. Reg. § 1.704-1, T.D. 8065, 1986-5 I.R.B. 4.

11. See, e.g., Treas. Reg. § 1.704-1, T.D. 8065, 50 Fed. Reg. 53,420 (1985) (to be codified at 26 C.F.R. § 1.704-1).

12. See, e.g., Prop. Reg. § 1.704-1, 48 Fed. Reg. 9871 (1983).

IRS. The I.R.B. also publishes T.D.s, Executive Orders, Tax Conventions, legislation, court decisions and other items of general interest.¹³ The I.R.B.s are consolidated semi-annually into *Cumulative Bulletin* (C.B.) volumes.

The C.B. series began in 1919 with volume I, and continued through XXX roman numeral volumes. *Cumulative Bulletins* are now identified by year and part (i.e., 1984-1, 1984-2, and 1984-3, for calendar year 1984). The first part includes rulings, procedures and decisions concerning provisions of the Code. The arrangement is sequential according to Code and regulation sections. The Code section is shown at the top of each page. The second part includes rulings, procedures and decisions supplementing the first part, and then is divided into two subparts: Subpart A, "Tax Conventions"; and Subpart B, "Legislation and Related Committee Reports." Occasionally an additional volume (Part 3) is issued to publish full texts of congressional committee reports on a newly enacted law.¹⁴

The IRS includes in the I.R.B. all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the I.R.B.¹⁵ All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers generally are published.¹⁶ These Revenue Procedures (Rev. Proc.) are published first in the I.R.B. and later in the C.B.¹⁷

Revenue Rulings (Rev. Rul.) represent the conclusions of the IRS on the application of the tax law to a given set of facts.¹⁸ When rulings are based on positions taken by taxpayers or issued as technical advice to IRS field offices, the IRS deletes identifying details and confidential information.¹⁹

Rulings and procedures reported in the I.R.B. lack the force and effect of Treasury Regulations, but they may be used as precedents. Unpublished rulings are not, however, relied on, used, or cited as precedents by the IRS in the disposition of other cases.²⁰ In applying published rulings and procedures, the researcher must consider the effect of subsequent legislation, regulations, court decisions, rulings, and procedures. When relying on a ruling as a basis for a conclusion in a matter tax researchers should be careful that the facts and circumstances of the ruling and the matter are substantially the same, and further that the ruling has not been superseded.

Since 1953, most of the substantive rulings have been designated as "revenue rulings" (Rev. Rul.),²¹ and since 1955, most of the IRS internal practices as

13. Rev. Proc. 86-15, § 4, 1986-11 I.R.B. 26.

14. *See, e.g.*, 1984-3 C.B. Volume 1 contains the text of the Deficit Reduction Act of 1984 and Volume 2 contains the Committee Reports on the Deficit Reduction Act of 1984.

15. Rev. Proc. 86-15, § 5, 1986-11 I.R.B. 26.

16. Rev. Proc. 86-15, § 3.02, 1986-11 I.R.B. 26.

17. *See, e.g.*, Rev. Proc. 86-16, 1986-12 I.R.B. 13.

18. Rev. Proc. 86-15, § 3.01, 1986-11 I.R.B. 26.

19. I.R.C. §§ 6103, 7213 (West Supp. 1985).

20. I.R.C. § 6110(j)(3) (1982).

21. *See, e.g.*, Rev. Rul. 85-87, 1985-1 C.B. 268.

“revenue procedures” (Rev. Proc.).²² Revenue rulings and procedures are identified by a prefix designating the year of issuance, followed by the number of the ruling or procedure issued in that year (e.g., Rev. Rul. 86-29 is the twenty-ninth revenue ruling issued in 1986). Prior to 1953, the IRS issued various rulings, designated as Income Tax Unit Rulings (I.T.), Published Mimeographs (Mim.), and General Counsel Memoranda (G.C.M.), to name a few. Tax researchers should recognize that rulings identified by the old designations may still represent the IRS position.

New revenue rulings and procedures are printed in *Standard Federal Tax Reporter* (CCH), in “[current year] Rulings” in volume 10; *Federal Taxes* (P-H), in “Current-Internal Revenue Rulings” in volume 11; I.R.B.; *Federal Tax Coordinator 2d* (RIA), in the “Revenue Rulings Revenue Procedures” volume; Mertens, *The Law of Federal Income Taxation*, in the “[current year’s] Rulings” volume; and C.B.

C. *Acquiescences and Nonacquiescences*

The IRS announces in the I.R.B. at the earliest practicable date the Commissioner’s determination to acquiesce or not to acquiesce in a Tax Court decision disallowing a deficiency determined by the Commissioner. Note that if the Commissioner has acquiesced (acq.) or nonacquiesced (nonacq.) in a Tax Court decision, the acquiescence or nonacquiescence relates only to the issue or issues decided adversely to the IRS. Acquiescence in a decision indicates the IRS’s acceptance of the conclusion reached, and does not necessarily signify approval of the reasons assigned by the Tax Court. The IRS makes no announcements in the I.R.B. regarding memorandum opinions of the Tax Court.

Acquiescences and nonacquiescences are officially published in the I.R.B. and C.B.²³ *Standard Federal Tax Reporter* (CCH) publishes these in “Cumulative Index to [current year] Developments,” “[current year] Case Table,” and “[current year] Rulings,” all in volume 10. *Federal Taxes* (P-H) includes them in “Current-Internal Revenue Rulings,” “[current year] Cases and Rulings,” and “Cross Reference Table to New Developments,” all in volume 11.

D. *Private Letter Rulings*

For many years the IRS has been issuing private letter rulings to taxpayers on a wide range of specific transactions. The law requires that all rulings requested by taxpayers after October 31, 1976, be made public by the IRS, after deleting details identifying the taxpayer and other privileged information.²⁴ A private letter ruling may be cited as precedent only by the taxpayer to whom

22. See, e.g., Rev. Proc. 85-29, 1985-1 C.B. 581.

23. See, e.g., 1986-8 I.R.B. 5, *acquiescing in Gamble v. Commissioner*, 68 T.C. 800 (1977); see also Rev. Rul. 86-24, 1986-8 I.R.B. 7.

24. I.R.C. § 6110(a)-(c) (1982).

it was issued.²⁵ A ruling does, however, show the probable IRS approach to the specific situation.

Digests of private letter rulings issued by the IRS are published weekly in *Standard Federal Tax Reporter* (CCH), in "IRS Letter Rulings" in volume 10; and in *Federal Taxes* (P-H), in "Current-Internal Revenue Rulings" in volume 11. The digests are classified by the Code sections they interpret and by key words. The full texts of private letter rulings are printed in CCH's "IRS Letter Rulings," a looseleaf series. Private letter rulings are identified by a seven-digit number with the first two digits representing the year of publication (e.g., LTR 8608082 was published in 1986).

E. *Internal Memoranda of the IRS*

On January 11, 1982, the I.R.S. began to release the full text of internal IRS memoranda prepared after December 24, 1981. On April 23, 1982, the IRS commenced the release of internal memoranda prepared between July 4, 1967, and December 24, 1981. The memoranda consist of:

1) General Counsel Memoranda (G.C.M.) prepared by the Office of Chief Counsel to the IRS in response to a formal request for legal advice from the Assistant Commissioner of Internal Revenue; 2) Technical Memoranda (T.M.) drafted by the Legislation and Regulation Division of the Office of Chief Counsel concerning proposed Treasury decisions or regulations; and 3) Actions on Decisions (A.O.D.) prepared in the Tax Litigation Division of the Office of Chief Counsel and directed to the Chief Counsel whenever the IRS loses cases involving the same issue in the Tax Court, United States District Court, United States Claims Court, or United States Court of Appeals.

CCH publishes these memoranda in a separate series, entitled *IRS Positions Reports*. P-H publishes the memoranda in a separate series, entitled *Internal Memoranda of the IRS*.

CCH also publishes the *Internal Revenue Manual* (AUDIT — three volumes, ADMINISTRATIVE — six volumes). The manual reports key elements of the operating procedures of the IRS, emphasizing such areas as audit and investigation, delinquent accounts, returns and rulings. The manual also includes topical indexes and a numerical manual supplement list.

F. *Updating Numerical Citations*

Both the *Standard Federal Tax Reporter Cimator* (CCH) and the *Federal Taxes Cimator* (P-H) classify old treasury rulings or releases, treasury decisions, revenue rulings, revenue procedures and private letter rulings by their respective categories and list them in numerical order. Only those rulings that are always publicly released, such as revenue rulings, revenue procedures, and post-1976 private letter rulings, have consecutive numerical citation listings.

25. *Id.* § 6110(j)(3) (1982).

The *Standard Federal Tax Reporter Citator* (CCH) lists the citations of all publicly released rulings, treasury decisions and other IRS releases. These citations are located in the M-Z volume, the annually revised "Finding Lists," and the quarterly current additions to the Finding Lists in the "Current Finding Lists." Under each numerical citation, the C.B. reference is given. The reference is followed by a listing of all authorities, cases as well as other rulings, which have discussed the ruling, decision, or release. In *Federal Taxes Citator* (P-H), numerical citation listings are found in "Treasury Decisions and Rulings," located in the back of each permanently bound citator volume. In the *Federal Taxes* (P-H) looseleaf citator volume, they are found in "Treasury Decisions and Rulings," which is updated by a "Supplementary Compilation." Current listings are found in "Current Monthly Supplement," also in the looseleaf citator volume.

IV. JUDICIAL INTERPRETATIONS

A. *United States Tax Court*

Federal income tax cases are initiated in either the United States Tax Court, a United States District Court, or the United States Claims Court (formerly known as the United States Court of Claims). The majority of tax cases originate in the Tax Court, an administrative body specially charged with the duty to settle taxpayer disputes arising out of the assessment of a deficiency in tax determined by the Commissioner to be due.

The Tax Court is located in Washington, D.C., but Tax Court judges also travel to hear cases in various circuits determined by the residency of the taxpayer. The Tax Court allows a taxpayer, after refusing to pay a tax deficiency determined by the IRS, to petition for a discharge or reduction of her assessed tax liability. In the United States District Courts and the United States Claims Court, suits are brought by taxpayers who have paid their assessed tax deficiency and are seeking a refund, arguing against the propriety of the assessment.

The Tax Court issues decisions in two forms: regular and memorandum. Originally, memorandum decisions, which contained full statements of fact and law, rested on factual determinations and previously-settled points of law. Although the difference between the two forms of decisions has been blurred, the precedential value of a regular decision substantially exceeds that of a memorandum decision.

The Tax Court's regular opinions are officially reported in the *United States Tax Court Reports*²⁶ (T.C.) (1942 to date) and in the forty-seven volumes of its predecessor, the *United States Board of Tax Appeals Reports*²⁷ (B.T.A.) (1924-1942). Tax Court Reporter²⁸ (CCH) (1924 to date), and *Tax Court Reported and*

26. See, e.g., *Eli Lilly & Co. v. Commissioner*, 84 T.C. 996 (1985).

27. See, e.g., *Chrysler Corp.*, 42 B.T.A. 795 (1940).

28. See, e.g., *Gordon v. Commissioner*, 85 Tax Ct. Rep. (CCH) No. 42,326 (1985).

*Memorandum Decisions*²⁹ (P-H) (1924 to date), are the two unofficial reporters of the regular decisions. These two looseleaf reporters, published weekly, are the most current sources of Tax Court regular decisions. The official reports are initially published in monthly pamphlets, bearing the same page numbers the decisions will have in the official bound volumes (two each year). A Tax Court regular decision generally does not appear in an official monthly report until several months after it has been handed down. Digests of Tax Court decisions (regular and memorandum) are published weekly in *Standard Federal Tax Reporter* (CCH), in “[current year] Tax Court Decisions” in volume 10; and *Federal Taxes* (P-H), in “Current Cases TC & Other” in volume 11.

Tax Court memorandum decisions are officially published in mimeograph form only. They are unofficially reported by CCH³⁰ and P-H³¹ in looseleaf advance sheets, and then in separately bound volumes. Both permanently bound series are entitled *Tax Court Memorandum Decisions* (T.C.M.), and offer a table of cases and a topical word index in each volume (P-H beginning in 1961). The P-H series began in 1928 with the issuance of the first memorandum decision; the CCH series began in 1942 with the changeover of the Board of Tax Appeals to the Tax Court. The tax researcher should be careful that the citation being checked is located in the particular series being used; CCH and P-H do not have parallel citations to Tax Court memorandum decisions.

B. Other Courts for Federal Tax Cases

All federal tax cases from United States District Courts, the United States Claims Court, United States Courts of Appeals, and the United States Supreme Court (but not the Tax Court), are unofficially reported in P-H's fifty-two volume *American Federal Tax Reports*, First Series³² (A.F.T.R.) (1880-1958) and Second Series³³ (A.F.T.R.2d) (1958 to date), and CCH's *U.S. Tax Cases*³⁴ (U.S.T.C.) (1913 to date). Both series offer case tables containing parallel citations to the official *United States Reports* and to the unofficial West National Reporter System. Both series also offer syllabi (headnotes) at the beginning of each case. A topical word index is presented in each volume of *U.S. Tax Cases* (CCH), and the second volume of each year contains a cumulative topical word index for the year.

The tax researcher should note that some District Court and Court of Appeals cases found in *U.S. Tax Cases* (CCH), and *American Federal Tax Reports*

29. See, e.g., *Snow Mfg. Co. v. Commissioner*, 86-87 Tax Ct. Rep. Dec. (P-H) ¶ 86.18 (1986).

30. See, e.g., *Nelson v. Commissioner*, 50 T.C.M. (CCH) 161 (1985).

31. See, e.g., *Nelson v. Commissioner*, 54 T.C.M. (P-H) ¶ 85,292 (1985).

32. See, e.g., *Broadway Open Air Theatre v. United States*, 208 F.2d 257 (4th Cir. 1953), reprinted in 44 A.F.T.R. (P-H) ¶ 808.

33. See, e.g., *Mobil Oil Corp. v. United States*, 56 A.F.T.R.2d (P-H) 85-5190 (1985).

34. See, e.g., *Mobil Oil Corp. v. United States*, 85-2 U.S.T.C. (CCH) ¶ 9585 (1985).

(P-H) are not reported by West Publishing Company (in the Federal Supplement or Federal Reporter). If a West citation is the only lead to a case, the tax researcher should check the citation cross reference tables in the front of the tax services' volumes for the given year for the page number where the case is reported. Advance sheets for the court decisions reported in *U.S. Tax Cases* (CCH) are published weekly and collected in the loose-leaf "U.S. Tax Cases Advance Sheets" volume of the CCH tax service, *Standard Federal Tax Reporter*. Advance sheets for *American Federal Tax Reports* (P-H) are found in the looseleaf "A.F.T.R.2d Decisions Advance Sheets" volume of the P-H tax service, *Federal Taxes*.

C. Case Citators

A case citator allows the tax researcher to measure quickly the current precedent value of a case. A citator also directs the researcher to later cases or rulings that deal with the same legal principle in the setting of other Code sections or fact patterns. A case citator gives the history of the case;³⁵ it shows whether a previous lower court decision was affirmed, reversed, or modified³⁶ and whether the case was subsequently affirmed, reversed or modified by a higher court decision.³⁷ Related or companion cases are also included in the history of a case.

This article has mentioned two tax citators which are published by CCH and P-H. The more comprehensive and informative *Federal Taxes Citator* (P-H) consists of three permanent volumes for cases in *American Federal Tax Cases*, First Series, and one permanent volume and two loose-leaf volumes for cases in the Second Series. This citator series lists all federal tax cases alphabetically. A complete judicial history is given under each case name, followed by a list of all authorities that cited the case. Precedent value for each headnote is indicated by using the Shepard's citator-style syllabus symbols (e.g., "o" for overruled, "g" for distinguished). Citations are not to the page on which the citing case begins, but instead refer to the specific page where the case is cited, thereby reducing research time.

The tax researcher should begin by checking the permanently bound volumes and the main citation case table in the looseleaf citator volume. Next, the researcher should examine "Supplementary Compilation" in the same volume. This section contains citations compiled since the printing of the main citation case table in the looseleaf volume. Finally, the researcher should consult "Current Monthly Supplement," also in the looseleaf volume.

The *Standard Federal Tax Reporter Citator* (CCH) is a looseleaf two volume compilation alphabetically listing all federal tax cases. For each case it presents

35. See, e.g., *Paulsen v. Commissioner*, 716 F.2d 563 (9th Cir. 1983); 83-2 U.S.T.C. (CCH) ¶ 9537; 52 A.F.T.R.2d (P-H) ¶ 83-5770.

36. See, e.g., *Paulsen v. Commissioner*, 716 F.2d 563 (9th Cir. 1983), *rev'g* 78 T.C. 291 (1982).

37. See, e.g., *Paulsen v. Commissioner*, 716 F.2d 563 (9th Cir. 1983), *aff'd*, 105 S. Ct. 627 (1985); 85-1 U.S.T.C. (CCH) ¶ 9116; 55 A.F.T.R.2d (P-H) ¶ 85-356.

a full judicial history and a list of authorities citing the case. This citator lists *Standard Federal Tax Reporter* (CCH) paragraph numbers that pertain to the case, much like a listing of West Key Numbers in the National Reporter System. Current citations in the *Standard Federal Tax Reporter Citator* (CCH) are found in "Current Citator Table," located immediately preceding the main "Citator Table."

V. LEGISLATIVE INTENT

The House Ways and Means Committee and sometimes the Senate Finance Committee publish reports when they recommend a new tax bill.³⁸ If a House and Senate conference is necessary to iron out differences in proposed tax legislation, the Conference Committee issues a report.³⁹ These reports help the researcher interpret tax law, particularly a new or recently amended tax law. The reports indicate congressional intent at the time the law is enacted. Thus, before any regulations, rulings, or decisions are available, the tax researcher has guidance from Congress on the law's intended purpose.

The official publications that together contain the available legislative intent of all the revenue acts since 1913 include the *Congressional Record*, House Hearings Before the Ways and Means Committee, Senate Hearings Before the Committee on Finance, House Reports, and Senate Reports. Unofficial sources reprint selected portions of the official publications. Committee Reports are published in *Federal Taxes* (P-H), in "New Legislation Committee Reports," in volume 11. The researcher may also find the reports in special supplements to the CCH and P-H tax services. Committee Reports also appear in *Standard Federal Tax Reporter* (CCH) and *Federal Taxes* (P-H) compilation volumes until regulations supplant them. The C.B.s contain the important committee reports on the 1954 Code amendments. A list showing where these reports appear in the C.B.s has been compiled in the Committee Reports index located at the end of "Finding Lists" in the *Standard Federal Tax Reporter Citator* (CCH) M-Z volume.

The leading texts on pre-1954 tax legislative history are Seidman's *Legislative History of Federal Income Tax Laws, 1938-1861*;⁴⁰ *Legislative History of Excess Profits Tax Laws, 1946-1917*;⁴¹ and *Legislative History of Federal Income and Excess Profits Tax Laws, 1953-1939*.⁴² These volumes contain excerpts from congressional speeches, bills, and committee reports. In addition, these volumes provide a thorough analysis of the congressional background of the income tax laws enacted prior to 1954.

38. See, e.g., H.R. REP. NO. 432, 98th Cong., 2d Sess. 1025, reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 711 (concerning the Tax Reform Act of 1984).

39. See, e.g., H.R. REP. NO. 861, 98th Cong., 2d Sess. 757, reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 1445; 1984-3 C.B. (Vol. 2) 1 (concerning the Tax Reform Act of 1984).

40. J.S. SEIDMAN, LEGISLATIVE HISTORY OF FEDERAL INCOME TAX LAWS, 1938-1861 (1938).

41. J.S. SEIDMAN, LEGISLATIVE HISTORY OF EXCESS PROFITS TAX LAWS, 1946-1917 (1947).

42. J.S. SEIDMAN, LEGISLATIVE HISTORY OF FEDERAL INCOME AND EXCESS PROFITS TAX LAWS, 1953-1939 (1954).

Legislative history of the Internal Revenue Code of 1954 is found in volume 3 of the *United States Code Congressional and Administrative News* (1954), and in the C.B.s. The researcher may access this material by references given at the end of "Finding Lists," in *The Standard Federal Tax Reporter Citator* (CCH) M-Z volume. Mertens, *The Law of Federal Income Taxation*, includes a two-volume *Code Commentary*, which integrates the highlights of congressional committee reports on the 1954 Code with a section-by-section explanation of the 1954 Code. The *United States Code Congressional and Administrative News* or *Internal Revenue Code*, which are large bound volumes, also contain the text and selected committee reports of major revenue laws amending the Internal Revenue Code of 1954.⁴³

Proper analysis of a tax problem may require the researcher to explore proposed legislative changes. Current sources of legislative intent include "Pending Legislation," in volume 10 of *Standard Federal Tax Reporter* (CCH); "New Legislation Committee Reports," in volume 11 of *Federal Taxes* (P-H); and the weekly I.R.B.s. The proposed legislation sections of both *Standard Federal Tax Reporter* (CCH) and *Federal Taxes* (P-H) contain tables showing the status of all income tax bills in Congress, lists of Code sections proposed for amendment, and the texts of important presidential messages, tax bills, and committee reports.

VI. ADDITIONAL TAX RESOURCES

A. Tax Services

Tax services assist the tax researcher in locating statutory, administrative, judicial and legislative authority quickly, and give helpful editorial interpretations of these primary authorities. The tax services generally update their information weekly. To use a service effectively, the tax researcher must become familiar with the service and master its index system.

CCH and P-H publish similar major tax services annually in looseleaf volumes under the titles *Standard Federal Tax Reporter* and *Federal Taxes*, respectively. The Internal Revenue Code of 1986 (as amended) is contained in two separate volumes (Code volumes I and II) in each service. The Code is set forth in uninterrupted numerical sequence. In addition, the Code text is interspersed throughout the income tax compilation of both services.

Both tax services follow the order of the Internal Revenue Code in their compilation. Each major division begins with a brief discussion introducing the subject in general terms, and subdivisions include exact quotations of the Code sections and related Treasury Regulations. In addition, each subdivision contains interpretive explanations by editorial staff and brief synopses of related court decisions, revenue rulings, revenue procedures and private letter rulings. Each

43. See, e.g., INTERNAL REVENUE ACTS 1983-1984 (West 1985).

service also has a separate volume(s) containing the most recent developments regarding statutory, administrative, judicial, and legislative authority.

Both services begin their series with an index volume (volume 1), which contains a comprehensive subject matter index. Volumes 2 through 9 of *Standard Federal Tax Reporter* (CCH), and volumes 2 through 10 of *Federal Taxes* (P-H), contain the income tax compilation with procedures and administration. Volume 10 and the *U.S. Tax Cases Advance Sheets* volume (CCH), and volume 11 and the *A.F.T.R. 2d Decisions Advance Sheets* volume (P-H), are the current matters volumes of the respective services. Weekly reports containing full texts of federal tax cases and IRS rulings are filed in these volumes. The researcher will also find aids in these volumes for linking the current matter with the compilation.

Another tax service, Mertens, *The Law of Federal Income Taxation*,⁴⁴ is organized on a topical index basis and, therefore, does not follow the sequence of the Code. The separate volumes of the Mertens service can be divided into two groupings: (1) treatise volumes, each volume containing scholarly discussions of various topics (statutory, administrative, judicial and legislative authorities are cited in footnote form); and (2) volumes containing the Internal Revenue Code, a Code commentary, Treasury Regulations, and various revenue rulings and procedures. Although the Code commentary volumes do not contain complete texts of the congressional committee reports, editorial summaries provide some historical background and suggest the congressional intent for many sections.

Mertens' *Rulings* volumes contain revenue rulings, revenue procedures, and miscellaneous announcements beginning in 1954. These volumes also contain an index system that provides the current status of revenue rulings, and assists in identifying all rulings connected with a particular Code section. Because of its encyclopedic approach to the subject matter, Mertens is especially helpful to the novice tax researcher. Due to its scholarly excellence, Mertens has been cited as an authority in court opinions.

Federal Income, Gift and Estate Taxation,⁴⁵ by Rabkin and Johnson, is a loose-leaf tax service organized by subject rather than by Code section. For example, all material dealing with "dividends" is found in one cumulative discussion. The Internal Revenue Code and Treasury Regulations are published in separate volumes. The Rabkin and Johnson service also includes legislative committee reports interspersed in the Internal Revenue Code volumes.

The Research Institute of America publishes *Federal Tax Coordinator 2d*, a compilation of professional tax research. The service is divided into twenty-four lettered chapters, each generally set forth in a separate volume(s). Each division begins with an explanation of the problems in an area, supported by citations to appropriate authorities. This is followed by the text of the applicable Code section and Treasury Regulation. Explanations of latest developments appear immediately following the verbatim reprints of the Code and Treasury Regu-

44. J. MERTENS, *THE LAW OF FEDERAL INCOME TAXATION* (1942).

45. J. RABKIN & M. JOHNSON, *FEDERAL INCOME, GIFT AND ESTATE TAXATION* (1942).

lations. Editorial explanations include illustrations, observations, cautions and recommendations. In addition to a few practice aids, such as tax savings opportunities checklists, tax tables, and IRS audit manuals, the *Federal Tax Coordinator 2d* contains a parallel reference table. The reference table directs the researcher to court decisions published in the *United States Reports*, the *Federal Reporter* and the *Federal Supplement* to the *American Federal Tax Reports* (P-H) and the *U.S. Tax Case* (CCH). Since RIA does not publish its own judicial reporter series, the parallel reference table allows the tax researcher to use the *Federal Tax Coordinator 2d* in conjunction with either the *U.S. Tax Cases* (CCH) or *American Federal Tax Reports* (P-H).

The Bureau of National Affairs (BNA) publishes a portfolio tax service entitled *Tax Management*. At present the total service contains portfolios numbered in excess of 500, ranging from 50 to 200 pages. Each portfolio deals with a specific tax topic. The organization of the material within each portfolio follows a standard pattern. Part A contains a detailed analysis of the subject matter. This analysis is written in narrative form with footnotes to statutory, administrative, judicial and legislative authority. The format of discussion allows the tax researcher to proceed from general background information to specific issues within the topic under consideration. Part B provides helpful working papers, appropriate forms, and illustrations. Part C sets forth a bibliography of related source material.

B. Tax Treatises

A few of the more often cited treatises are *Federal Income Taxation of Corporations and Shareholders*, by Bittker and Eustice;⁴⁶ *Partnership Taxation*, by Willis, Pennell and Postlewaite;⁴⁷ *Federal Taxation of Partnerships and Partners*, by McKee, Nelson and Whitmire;⁴⁸ *Income Taxation of Foreign Related Transactions*, by Rhoades and Langer;⁴⁹ and *Federal Income Taxation of Corporations Filing Consolidated Returns*, by Lerner, Antes, Rosen and Finkelstein.⁵⁰ These treatises contain thorough and thoughtful discussions and summaries of specific areas of tax law. As a result, they are accorded special status and are often cited as authority.

Several tax institutes and seminars are held annually throughout the United States. At such institutes, tax topics are discussed and papers are presented that usually deal with significant current issues. Two of the more popular tax institutes are the New York University Tax Institute and the University of Southern California Tax Institute, which publish their proceedings in annual volumes. The tax researcher may find these materials to be a valuable reference

46. B. BITTKER & J. EUSTICE, *FEDERAL INCOME TAXATION OF CORPORATIONS AND SHAREHOLDERS* (4th ed. 1979).

47. A. WILLIS, J. PENNELL & P. POSTLEWAITE, *PARTNERSHIP TAXATION* (3d ed. 1971).

48. W. MCKEE, W. NELSON & R. WHITMIRE, *FEDERAL TAXATION OF PARTNERSHIPS AND PARTNERS* (1977).

49. R. RHOADES & M. LANGER, *INCOME TAXATION OF FOREIGN RELATED TRANSACTIONS* (1971).

50. H. LERNER, R. ANTES, R. ROSEN & B. FINKELSTEIN, *FEDERAL INCOME TAXATION OF CORPORATIONS FILING CONSOLIDATED RETURNS* (1975).

given their emphasis on current and complex topics. They are, however, written on very specific tax topics.

C. *Tax Journals*

Several journals deal exclusively with taxation and provide valuable assistance to the tax researcher. Set forth below is a list of some of the more popular tax journals:

- **National Tax Journal*⁵¹
- **Oil and Gas Tax Quarterly*⁵²
- **The Tax Adviser*⁵³
- **The Tax Executive*⁵⁴
- **The Tax Lawyer*⁵⁵
- **Taxes — The Tax Magazine*⁵⁶
- **Tax Law Review*⁵⁷
- **The Journal of Corporate Taxation*⁵⁸
- **The Journal of Real Estate Taxation*⁵⁹
- **Journal of Taxation*⁶⁰
- **Taxation for Accountants*⁶¹
- **Taxation for Lawyers*⁶²

51. NAT'L TAX J., published by National Tax Association — Tax Institute of America, Columbus, Ohio 43215.

52. OIL & GAS TAX Q., published by Matthew Bender & Co., New York, N.Y. 10017.

53. TAX ADVISER, published by American Institute of CPAs, New York, N.Y. 10036.

54. TAX EXEC., published by Tax Executives Institute, Arlington, Va. 22209.

55. TAX LAW., published by American Bar Association — Section of Taxation, with the assistance of Georgetown University Law Center, Washington, D.C. 20036.

56. TAXES, published by Commerce Clearing House, Chicago, Ill. 60646.

57. TAX L. REV., published by Warren, Gorham & Lamont, with the assistance of New York University School of Law, New York, N.Y. 10012.

58. J. CORP. TAX'N, published by Warren, Gorham & Lamont, Boston, Mass. 02111.

59. J. REAL EST. TAX'N, published by Warren, Gorham & Lamont, Boston, Mass. 02111.

60. J. TAX'N, published by Warren, Gorham & Lamont, Boston, Mass. 02111.

61. TAX'N ACCT., published by Warren Gorham & Lamont, Boston, Mass. 02111.

62. TAX'N LAW., published by Warren Gorham & Lamont, Boston, Mass. 02111.

To locate pertinent articles in the tax journals, the tax researcher should consult the cumulative indexes provided in the various issues. However, a more efficient means of locating journal material is through CCH's *Federal Tax Articles*, a multi-volume service including a topical index, Code section index, and an author index. P-H's *Federal Taxes Index* (volume 1) contains an "Index to Tax Articles" that is organized by topic using the P-H paragraph index system. In 1975, Warren, Gorham & Lamont published an *Index to Federal Tax Articles*, compiled by Gersham Goldstein. The initial three-volume publication has been updated periodically with additional volumes. The service features both a topical and an author index.

D. Computerized Tax Research

Mead Data Central first developed a computer storage and retrieval system for legal and tax research, which it marketed under the trade name LEXIS. LEXIS contains all primary source materials needed in tax research. Next, West Publishing Company entered computerized legal and tax research with its WESTLAW/System II. Recently, P-H introduced the PHINet ("Prentice-Hall Information Network") service, a computerized, online research and retrieval system created especially for tax research. The systems are useful when authority is scarce and a manual search may overlook appropriate authority. The inherent speed of the computer also makes computer research invaluable when authority is voluminous and access must be obtained quickly.

The tax researcher accesses LEXIS, WESTLAW, or PHINet through a terminal connected via telephone lines to the system's central computer. Use of certain "key words" generates information stored in the computer memory. The tax researcher must select words or phrases likely to be found in the original text of any authority that may be pertinent to the research issue. The computer scans all of the documents in its file and indicates on the monitor screen the number of documents it has found that include the selected words. The tax researcher may then view the documents in various ways.

The tax researcher is cautioned that complete reliance on a computer system for tax research, to the exclusion of manual research, is risky. Successful retrieval in a computer system depends on the correct identification of key words actually used in the authority. The English language does not, however, lend itself to such a finite identification of key words. Computerized tax research is most effectively used as a complement to manual tax research, or when time constraints prevent a more thorough manual search of tax resources.

VII. TAX RESEARCH

The tax researcher must become well acquainted with the *Standard Federal Tax Reporter* (CCH) and/or *Federal Taxes* (P-H) tax services. Of course, the more resources utilized, the more comprehensive the tax research will be. The researcher can approach the tax services in many ways, e.g., by Code section, Treasury Regulation, case name, IRS ruling, and/or subject matter. Each service sets forth Code sections and Treasury Regulations within the income tax

compilation and offers case tables and numerical finding lists to locate the exact text paragraph wherein specific authorities are cited. The subject matter approach begins with the main topical index, located in volume 1 of both services, where listings of thousands of key words are indexed into general and specific subdivisions. By checking all logical points of entry, the topical index will refer the tax researcher to the applicable text paragraph numbers.⁶³

Comprehensive research within the *Standard Federal Tax Reporter* (CCH) or *Federal Taxes* (P-H) tax service requires the examination of all new developments related to the points under consideration. A current matters index listing all new and proposed Code amendments and Treasury Regulations, tax cases, and IRS rulings is found in the weekly revised "Cumulative Index to [current year] Developments" in volume 10 of *Standard Federal Tax Reporter* (CCH), and in the cumulative "Cross Reference Table to New Developments" and the weekly revised "Supplementary Cross Reference Table" in volume 11 of *Federal Taxes* (P-H). By scanning the left column numerical lists of text (compilation) paragraph numbers that have new developments, the tax researcher can determine what and where current information may be found. Across from each such text paragraph number is a cross reference to a text paragraph number where new material is set forth. The following examples illustrate the use of cited materials in federal income tax research:

EXAMPLE ONE: Taxpayer corporation manufactures various types of machinery. It conducted research and experimental activities to develop new machinery. As part of its research and development activities, taxpayer constructed a pilot model of a machine for use in further research and development. Taxpayer claimed and was allowed a current deduction under section 174(a) for the entire cost incurred on the pilot model. Six months after the pilot model was placed in service, it was destroyed by an explosion and fire at taxpayer's plant. Taxpayer was reimbursed by its insurance carrier for the loss suffered. Are insurance proceeds received following the destruction of the pilot model recaptured and taxable as ordinary income to the taxpayer?

The tax researcher can approach this problem in a number of different ways, two of which are as follows:

(1) Under the facts, the taxpayer had property (the pilot model) involuntarily converted as a result of an explosion and fire. The tax researcher begins by looking in the *Standard Federal Tax Reporter* (CCH) *Index* (volume 1) under "involuntary conversions." Review of the subdivisions discloses an entry for "pilot model," referring to paragraph number 4729.0808. Selecting the appropriate income tax compilation volume and turning to paragraph number 4729.0808, Revenue Ruling 72-528, 1972-2 C.B. 481, is cited. Revenue Ruling 72-528

63. The text paragraph system is the only reference device employed in the various indices and finding lists of the tax services. The tax researcher must distinguish between paragraph numbers and page numbers. The latter are not used in the text as reference sources; they are used merely to indicate the consecutive sequence of the sheets in the looseleaf volumes.

holds that the tax benefit rule applies to receipt of insurance proceeds and requires recognition of ordinary income to the extent of prior deductions taken under section 174(a) for the cost of the pilot model. This is not the end of research.

The tax researcher must always remember to update the citation (revenue ruling). In the *Standard Federal Tax Reporter Citator* (CCH), M-Z volume, the Finding Lists and Current Finding Lists indicate whether a revenue ruling has been affected by a subsequent case or ruling. A review of these lists discloses that Revenue Ruling 72-528 has been revoked by Revenue Ruling 85-186. A further review of the Finding Lists indicates Revenue Ruling 85-186, revoking Revenue Ruling 72-528, is officially published at 1985-2 C.B. 84 and can be found in the tax service at paragraph number 1972.17. Revenue Ruling 85-186 holds that research and experimental costs previously deducted pursuant to section 174(a) are not subject to recapture under the tax benefit rule upon disposition of the technology. Because the holding of Revenue Ruling 72-528 is inconsistent with the holding of Revenue Ruling 85-186, Revenue Ruling 72-528 is revoked. Thus, our taxpayer will not recognize ordinary income on receipt of insurance proceeds for the destruction of its pilot model to the extent of its prior related deductions under section 174(a).

(2) The tax researcher may recognize that the above problem involves the tax benefit rule, codified at section 111. Section 111 is set forth in the *Standard Federal Tax Reporter* (CCH) income tax compilation at paragraph number 1124. Turning to paragraph number 1124, the tax researcher looks to the Treasury Regulations interpreting this section. Treasury Regulation 1.111-1 discusses the recovery of certain items previously deducted or credited, and is printed in the compilation at paragraph number 1127. A review of the Annotations by Topic immediately following the regulation indicates a topic heading of "Previously Expensed Items," at paragraph number 1131.28. Paragraph number 1131.28 cites Revenue Ruling 85-186, revoking Revenue Ruling 72-528. If only Revenue Ruling 72-528 had been cited at paragraph number 1131.28, the tax researcher could update Revenue Ruling 72-528 by checking the Cumulative Index to [current year] Developments in volume 10, which would lead the tax researcher to Revenue Ruling 85-186 and the correct determination of whether the insurance proceeds are taxable.

EXAMPLE TWO: Taxpayer manages a self-service laundromat. On the average, she spends an hour a day at the laundromat and two hours a day in an office in a specific room in her home, doing the laundromat's bookkeeping. Can taxpayer deduct expenses incurred in maintaining an office in her home?

The tax researcher begins by looking up "home office expenses" in the Index of *Federal Taxes* (P-H) contained in volume 1. There is no such listing, but the tax researcher is referred to "residential property, business use in part." Upon turning to this entry in the Index, the tax researcher discovers a subdivision entitled "regular use, defined," at paragraph number 16,982(5). Paragraph number 16,982(5) cites a Tax Court memorandum decision, *John & Sally Meiers v. Commissioner*, par. 84,607 P-H T.C. Memo (1984). Upon checking this case, the tax researcher learns that the Tax Court affirmed the IRS dis-

allowance of any home office deduction by the taxpayer for expenses incurred in maintaining an office in her home to perform bookkeeping and other managerial tasks for the laundromat business, because the focal point of taxpayer's laundromat business was the laundry. Of course, this is not the end of the research. The tax researcher still needs to check the *Federal Taxes Cimator* loose-leaf volume. A review of the main citation case table, Supplementary Compilation, and Current Monthly Supplement, discloses that *John Meiers v. Commissioner* (same case) has been reversed by the Seventh Circuit. Upon checking that decision, *John Meiers v. Commissioner*, 57 A.F.T.R.2d (P-H) ¶ 86-420 (7th Cir. 1986), the tax researcher finds that our taxpayer can deduct her home office expenses.

VIII. CONCLUSION

Researching a tax issue is rarely an easy task. However, the tax researcher should not be overwhelmed by the exercise if she remembers the essential resources (statutory, administrative, judicial, legislative and other authorities) and proceeds in a logical, comprehensive manner to review these resources. Tax research is an ordered process, often involving a substantial commitment of the researcher's time. Shortcuts are not available in tax research, and ignoring possible sources of tax information/interpretation can result in an incomplete, embarrassing and costly response by the tax researcher.

Tax research skill can be mastered only by extensive practice. Becoming familiar with the tax resources available and their effective use is an essential beginning, but the efficient tax researcher further seeks to understand the structure of tax law. The framework for tax research provided in this article is meant to serve merely as a guide to the tax researcher. A true appreciation of the tax law and its efficient utilization will take time and much practice by the tax researcher.

