TAX RESEARCH BASICS

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OVERVIEW

- INTRODUCTION – WHY IS TAX SO DIFFERENT?
- TYPES OF TAXES & TAXING ENTITIES
- PRIMARY SOURCES OF TAX LAW
- SECONDARY SOURCES
- THE RESEARCH PROCESS
- Q AND A

WHY IS TAX SO DIFFERENT?

- Different jargon, many terms of art
- Many different types of documents unique to tax
- Many different types of tax and taxing entities
- Internal Revenue Code is extremely complex
- Heavily administrative
- Different court structure
- Great deference given by the courts to regulations and IRS pronouncements

TYPES OF TAXES

- Income
- Payroll/Employment
- Inheritance/Estate
- Gift
- Ad Valorem (property)
- Sales
- Consumption
- Excise

TAXING ENTITIES

- Federal government
- States
- Counties
- Municipalities
- Foreign governments

ENFORCEMENT

- Internal Revenue Service collects taxes and enforces tax laws
- "Tax Gap" for 2007 $345 Billion or 14% of federal revenues for the year
- Civil & criminal penalties possible
- No statute of limitations for failure to file
- I.R.S. audit strategy
  - Audit rate is less that 1% so must choose high visibility taxpayers and issues
- Distinguish between avoidance & evasion

TAX AVOIDANCE VS. TAX EVASION

PRIMARY SOURCES OF TAX LAW

STATUTORY

ADMINISTRATIVE

JUDICIAL

PRIMARY SOURCES: STATUTORY

- Internal Revenue Code
- Legislative History
- Laws of State & Local Entities
- Treaties & International Agreements
- Laws of Foreign Nations

THE INTERNAL REVENUE CODE

- Authorized by the U.S. Constitution
- Title 26 of the United States Code
- Major revisions in 1939, 1954, 1986
- The first subdivisions are Subtitles
- Then further division into smaller units: chapter; subchapter; part; subpart; section; subsection; paragraph; subparagraph; clause; and subclause
- Frequent intra-Code cross referencing
- Enactment date, effective date & sunset date

THE INTERNAL REVENUE CODE

Subtitle	Subject
A	Income Taxes
B	Estate & Gift Taxes
C	Employment Taxes/Collection of Income Taxes
D	Miscellaneous Excise Taxes
E	Alcohol, Tobacco & Other Excise Taxes
F	Procedure & Administration
G	The Joint Committee on Taxation
H	Financing of Presidential Election Campaigns
I	Trust Fund Code
J	Coal Industry Health Benefits
K	Group Health Plan Requirements

THE INTERNAL REVENUE CODE

- Title, subtitle, chapter, & section numbers and letters are used only once
- Other subdivision classifications are used multiple times
- Subchapters can cause confusion so practitioners typically refer to 4 subchapters in subtitle A (Income Taxes) by their subchapter designation
  - Subchapter C (Small Business Corporations)
  - Subchapter J (Trusts & Estates)
  - Subchapter K (Partnerships)

THE INTERNAL REVENUE CODE

Code subdivisions for Section 45F(c)(1)(A)(i)(I)

Subdivision	Heading or Text
Title 26	Internal Revenue
Subtitle A	Income taxes
Chapter 1	Normal taxes & surtaxes
Subchapter A	Determination of tax liability
Part IV	Credits against tax
Subpart D	Business related credits
Section 45F	Employer-provided child care credits
Subsection (c)	Definitions
Paragraph (1)	Qualified child care expenditures
Subparagraph (A)	In general. The term “qualified child care expenditure” means any amount paid or incurred -
Clause (i)	to acquire, construct, rehabilitate, or expand property-
Subclause (I)	which is to be used as part of a qualified child care facility of the taxpayer,

LEGISLATIVE HISTORY

LEGISLATIVE PROCESS

- Proposal
- Bill
- Congressional Debate & Vote
- Conference Committee
- Presidential Signature
- Statute

LEGISLATIVE HISTORY

FEDERAL GOVERNMENT ENTITIES INVOLVED IN TAX LEGISLATION

- **Congressional Budget Office**
- **Congressional Research Service**
- **Council of Economic Advisors**
- **Government Accountability Office**
- **House of Representatives**
- **Internal Revenue Service**
- **IRS National Taxpayer Advocate**
- **Joint Economic Committee**
- **Joint Committee on Taxation**
- **Office of Management & Budget**
- **President**
- **Senate**
- **Treasury Department**

LEGISLATIVE HISTORY

TYPES OF LEGISLATIVE HISTORY DOCUMENTS

- Bills
- Committee Reports
- Committee Prints
- Committee Documents
- Committee hearings
- Floor Debates
- Conference Report
- SlipLaw/Session Law

LEGISLATIVE HISTORY

Other major components of a federal legislative history are:

- Introductory statements on a bill
- Earlier or alternative versions of the bill
- Hearings
- Legislative remarks or debate

LAWS OF STATE & LOCAL ENTITIES

- Income Taxes
- Franchise Taxes
- Sales & Use Taxes
- Real Property Taxes
- Transfer Taxes
- Ad Valorem Taxes
- Local Option Taxes
- Severance Taxes
- Miscellaneous taxes for specific industries & businesses

TAX TREATIES

- Authorized by the Constitution
- May be bilateral or multilateral
- Often referred to as Conventions
- Generally amended by Protocols
- Numbering systems
  - State Department (T.I.A.S.)
  - Senate Executive Document or Treaty Number
  - United Nations (UNTS)
- Each treaty partner designates a “Competent Authority” to resolve disputes

TAX TREATIES

Functions of Treaties

- Eliminate double taxation
  - The United States taxes U.S. residents and U.S. corporations on their worldwide income
  - Foreign tax credits for income for income already taxed by other countries
- Promote trade
- Reduce tax evasion through exchange of information

OTHER INTERNATIONAL AGREEMENTS

- United Nations Model Tax Convention
  - Focuses on relationship between developed and developing countries
- Organisation for Economic Co-operation and Development (OECD)
  - U.S. is signatory to Mutual Administrative Assistance in Tax Matters Convention
  - Publishes several model treaties
- World Trade Organization (WTO)
  - Global rules of trade between nations

LAWS OF OTHER NATIONS

- May impact taxpayers with income & assets in multiple countries
- Must consider type of tax regime
- Must take into account possible changes in sovereignty
  - Newly independent or merged countries may no longer be party to existing treaties

PRIMARY SOURCES: ADMINISTRATIVE

- Treasury Regulations
  - Proposed
  - Temporary
  - Final
- Internal Revenue Service Pronouncements
  - Officially published by the I.R.S.
  - Publicly released
  - Unreleased

TREASURY REGULATIONS

- TITLE 26 of the CFR
  - No subtitles and only one chapter
  - Chapter divided into parts
  - Treas. Reg. § 1.106-1
    - Prefix corresponds to part number
    - Middle corresponds to code section
    - Third section corresponds to subdivisions used for code sections
  - Further subdivided into:
    - paragraphs — Treas. Reg. § 1.23-2(a)
    - Subparagraphs — Treas. Reg. § 1.23-2(e)(2)
    - Subdivisions — Treas. Reg. § 1.23-2(d)(4)(iv)

TREASURY REGULATIONS

- Proposed
  - Offer guidance
  - Taxpayers may submit comments or testify
- Temporary
  - Immediate binding guidance once published in the FR
  - No public comment
- Final
  - May differ from proposed due to public input or judicial decisions

IRS PRONOUNCEMENTS

Three categories:

- Officially published by the I.R.S.
  - **Internal Revenue Bulletin**
    - Weekly publication of all official rulings & procedures
  - **Cumulative Bulletin**
    - Consolidation of all permanent items published in the IRB approximately every 6 months
- Publicly released
- Unreleased

IRS PRONOUNCEMENTS

Officially published in the IRB & CB

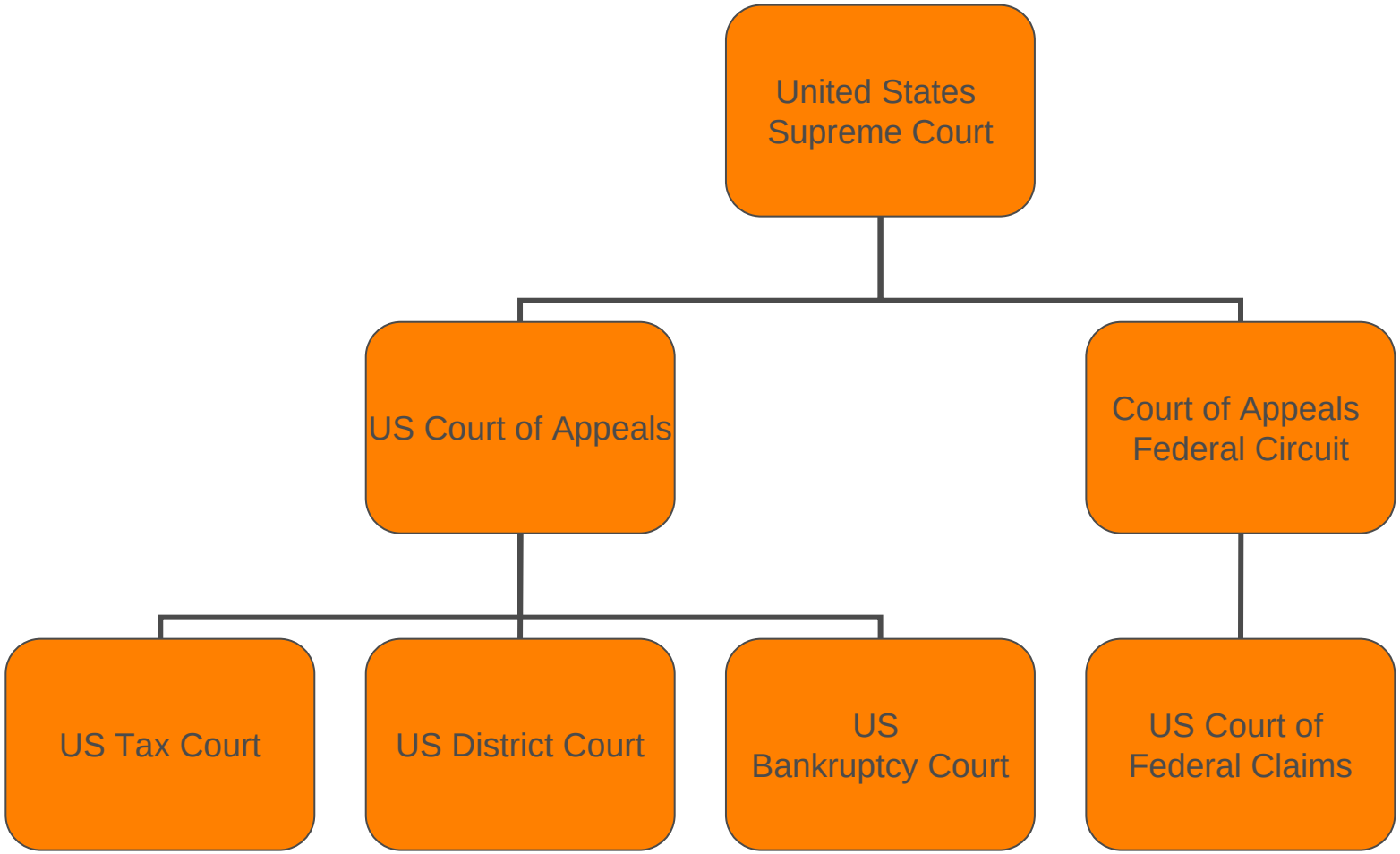
- **Revenue Rulings**
  - Designed to apply the law to particular factual situations
  - Apply to all taxpayers
- **Revenue Procedures**
  - Public statements of I.R.S. practice & procedure
- **Notices**
  - Provide guidance before rulings & regulations are available
  - Acquiescence & non-acquiescence
- **Announcements**
  - Alert taxpayers to a variety of information informally

IRS PRONOUNCEMENTS

Publicly Released Documents

- **Private Letter Rulings**
  - Provide guidance for a specific taxpayer
- **Technical Advice Memoranda**
  - Cover completed transactions
- **Actions on Decisions**
  - Indicates the reasoning behind acquiescence or non acquiescence
- **General Counsel Memoranda**
  - Indicates the reasoning behind rulings & memoranda
- **Internal Revenue Manual**
  - Internal operating policies of the I.R.S.

FEDERAL COURT SYSTEM FOR TAX DISPUTES



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UNITES STATES TAX COURT

- Formerly known as the Board of Tax Appeals (1942)
- Higher level of expertise in tax matters than that of the District Courts
- Taxpayer may sue without paying the disputed amount
- No jury trials
- Appealable to the Federal Court of Appeals for the taxpayer's geographical residence and from there to the US Supreme Court

UNITES STATES TAX COURT

3 Types of decisions

- **Regular**
  - Important new legal issues
  - Published by GPO, West, RIA, CCH
- **Memoranda**
  - Well established legal issues
  - Usually fact based
  - Historically not published by the government but on the Tax Court's website since 1995
- **Summary Opinions**
  - Small cases, disputes of less than $50,000
  - May not be appealed or used as precedent

UNITED STATES DISTRICT COURTS

- Taxpayer must pay and sue for a refund
- Jury trials available
- Low level of expertise in tax matters
- Appealable to the Federal Court of Appeals for the taxpayer's geographical residence and from there to the US Supreme Court

UNITED STATES COURT OF FEDERAL CLAIMS

- Does not hear tax cases exclusively but hears a higher percentage that the average USDC
- Taxpayer must pay and sue for a refund
- Prior to October 1, 1982 United States Court of Claims (Ct.Cl.)
- Between October 1, 1982 and October 28, 1992 was called the United States Claims Court (Cl. Ct.)
- Appealable to the Court of Appeals for the Federal Circuit

SECONDARY SOURCES

WHY USE SECONDARY SOURCES?

- To find an explanation of an area of the law
- To identify and clarify legal issues & terminology
- To locate citations to relevant primary authority

SECONDARY SOURCES

PROMINENT TAX PUBLISHERS

- Thomson Reuters
  - West
  - Research Institute of America (RIA)
  - Warren Gorham & Lamont
  - Merten's
- Lexis/Nexis
  - Matthew Bender
- Wolters Kluwer
  - Commerce Clearing House (CCH)
  - Klienrock
- Bureau of National Affairs (BNA)
- Tax Analysts

SECONDARY SOURCES

- Looseleaf Services, Encyclopedias & Treatises
  - Arranged by code section
  - Arranged by subject
- Periodicals
- Citators
- Nongovernmental Reports
- Newsletters
- Proceedings of Tax Institutes
- Miscellaneous Online Commentary & Analysis

SECONDARY SOURCES

LOOSELEAF SERVICES: Arranged by code section

- **United States Tax Reporter (RIA)**
  - Code
  - Index
  - Tables
  - Compilation volumes
  - Recent developments
  - Advance Sheets
  - Federal tax regulations
  - Citator
- **Standard Federal Tax Reporter (CCH)**
  - Code
  - Index
  - Compilation volumes
  - New Matters
  - Advance Sheets
  - Citator

SECONDARY SOURCES

LOOSELEAF SERVICES: Arranged by subject

- Federal Tax Coordinator 2d (RIA/Thomson)

- Tax Management Portfolios (BNA)
  - U.S. Income
  - Foreign Income
  - Estates, Gifts, & Trusts
- Merten's, Law of Federal Income Taxation (Thomson)

- Rabkin & Johnson, Federal Income, Gift & Estate Taxation (Lexis)

SECONDARY SOURCES

PERIODICALS

- Law Reviews
- Journals
  - WG&L
  - Bar Association Tax Sections
- Periodical Indexes

SECONDARY SOURCES

LOCATING PERIODICALS

- General Indexes
  - Current Law Index; Legal Resource Index; LegalTrac
  - Index to Legal Periodicals; WilsonWeb
  - Hein Online
- Tax Oriented Indexes
  - Federal Tax Articles (RIA)
  - Index to Federal Tax Articles (RIA)
- Looseleaf Services
  - Tax Management Portfolios (BNA)
  - Merten's, Law of Federal Income Taxation
- Digests
  - WG&L Tax Journal Digest

SECONDARY SOURCES

CITATORS

- KeyCite (Westlaw)
  - Statutes, treaties, regulations, rulings, judicial decisions, law review articles
- Shepard's Federal Tax Citator (Lexis)
  - Statutes, treaties, regulations, rulings, judicial decisions, law review articles
- RIA Tax Citator (Checkpoint & Westlaw)
  - Regulations, judicial decisions & IRS documents
- CCH Standard Federal Tax Reporter Citator
  - Regulations, judicial decisions & IRS documents

SECONDARY SOURCES

NONGOVERNMENTAL REPORTS

- ABA Section of Taxation
- AICPA
- American Law Institute
- Citizens for Tax Justice
- The Heritage Foundation
- National Bureau of Economic Research
- National Taxpayers Union
- Tax Policy Center
- Urban Institute

SECONDARY SOURCES

NEWSLETTERS

- RIA Weekly Alert (RIA USTR)
- Daily Tax Report (BNA)
- Tax Management Weekly Report (BNA)
- Tax Notes (Tax Analysts)
- Taxes on Parade (CCH SFTR)
- Federal Tax Day (CCH)
- Federal Tax Weekly (CCH)
- Daily Tax Bulletin (Kleinrock/Tax Expert Online/Lexis)
- Federal Tax Bulletin (Kleinrock/Tax Expert Online/Lexis)

SECONDARY SOURCES

OTHER

- Tax Institute Proceedings
- Blogs
  - Wall Street Journal Tax Blog
  - TaxProfBlog
- Discussion lists
- SSRN
- Google Scholar

THE RESEARCH PROCESS

THE RESEARCH PROCESS

- Identify and analyze the facts
  - Who is being taxed?
  - Who is doing the taxing?
  - What is the activity being taxed?
  - Has the activity occurred yet?
- Identify legal issues
- Research issues
  - How complicated is the problem in relation to your knowledge of the subject matter?
- Update!

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THE RESEARCH PROCESS

A word about tax reform…

- Flat tax movement
- Consumption tax
- Basic goals of reform
  - Simplification
  - Accountability
  - Fairness
- Consider how this might affect your research

QUESTIONS?

THANK YOU!

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