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Instructor's Guide

Young/Nellen/Raabe/Persellin/Lassar/Cuccia/Cripe, SWFT 2023 Volume 1: Individual Income Taxes, 9780357719824; Chapter 2: Working with the Tax Law

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Chapter Objectives

The following objectives are addressed in this chapter:

2.1 Distinguish between the statutory, administrative, and judicial sources of the tax law and understand the purpose of each source.

2.2 Locate and work with the appropriate tax law sources.

2.3 Develop an awareness of tax research tools.

2.4 Describe the tax research process.

2.5 Communicate the results of the tax research process in a client letter and a tax file memorandum.

2.6 Apply tax research techniques and planning procedures.

2.7 Be aware of taxation on the CPA examination.

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Chapter Outline

In the outline below, each element includes references (in parentheses) to related content. "CO CH.##" refers to the chapter objective; "PPT Slide #" refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center); and, as applicable for each discipline, accreditation or certification standards ("BL 1.3.3"). Introduce the chapter and use the Ice Breaker in the PPT if desired, and if one is provided for this chapter. Review learning objectives for Chapter 2. (PPT Slides 2–3).

I. Tax Law Sources (2.1, PPT Slides 6–35)

a. Statutory Sources of the Tax Law

i. Statutory sources of law include the Constitution (Article I, Sections 7, 8, and 10), the Internal Revenue Code, and tax treaties (agreements between countries to mitigate the double taxation of taxpayers subject to the tax laws of those countries).

ii. Origin of the Internal Revenue Code.

1. Known as the Internal Revenue Code of 1939, the codification arranged all Federal tax provisions in a logical sequence and placed them in a separate part of the Federal statutes.
2. A further rearrangement took place in 1954 and resulted in the Internal Revenue Code of 1954, which continued in effect until 1986, when it was replaced by the Internal Revenue Code of 1986.
3. Although Congress did not recodify the law in the Tax Reform Act (TRA) of 1986, the magnitude of the changes made by TRA of 1986 did provide some rationale for renaming the Federal tax law the Internal Revenue Code of 1986.

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iii. The Legislative Process.
1. Exhibit 2.1 in the text illustrates the legislative process for enacting changes to the Internal Revenue Code of 1986.
2. Tax legislation normally originates in the House Ways and Means Committee of the House of Representatives because the U.S. Constitution mandates that revenue raising bills begin in the House. A tax bill might originate in the Senate when it is attached to other legislative proposals.
3. 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 Exhibit 2.2 in the text.)
4. The Committee Reports explain the provisions of the proposed legislation and are a valuable source for ascertaining the intent of Congress. What Congress had in mind when it considered and enacted tax legislation is, of course, the key to interpreting the legislation by taxpayers, the IRS, and the courts.

iv. Arrangement of the Internal Revenue Code. The Internal Revenue Code of 1986 is found in Title 26 of the U.S. Code. In working with the Code, it helps to understand the format. The key is usually the section number. For example, in citing Section 2(a), it is unnecessary to include Subtitle A, Chapter 1, Subchapter A, Part I. Mentioning Section 2(a) is sufficient.

v. Citing the Code. See the description in the text for the form used to reference Code Sections.

b. Administrative Sources of the Tax Law (See Exhibit 2.3 in the text.)
i. Treasury Department Regulations. The Treasury Department under § 7805(a) has a duty to issue rules and regulations to explain and interpret the Code.
1. Regulations, which carry considerable authority as the official interpretation of tax law, may be issued in proposed, temporary, or final form.
(a) New Regulations and changes to existing Regulations are usually issued in proposed form before they are finalized. The interval between the proposal of a Regulation and its finalization permits taxpayers and other interested parties to comment on the propriety of the proposal. Proposed Regulations carry little weight in the litigation process.
(b) Final Regulations have the force and effect of law. Final Regulations are issued as Treasury Decisions (TDs).
(c) Temporary Regulations are issued where immediate guidance is important.

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2. Proposed, Temporary, and Final Regulations are published in the *Federal Register*, in the *Internal Revenue Bulletin*, and by major tax services.
3. Regulations may also be classified as legislative, interpretive, or procedural.

ii. Revenue Rulings, Revenue Procedures, and Notices.
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 as Regulations.
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.
3. Notices are issued when immediate guidance is needed by taxpayers and tax practitioners. Typically, this guidance is transitional while the IRS works on permanent guidance on the particular topic. Notice 2021–49 provides guidance to employers claiming the employee retention credit during the last six months of 2021; the guidance reflects changes made by the American Rescue Plan Act of 2021.
4. Revenue Rulings, Revenue Procedures, and Notices serve an important function by providing guidance to IRS personnel and taxpayers in handling routine tax matters.
   (a) They generally apply retroactively and are binding on the IRS until revoked or modified by subsequent rulings or procedures, Regulations, legislation, or court decisions.
   (b) They are published weekly by the U.S. Government in the *Internal Revenue Bulletin* (I.R.B.). *Internal Revenue Bulletins* can be found at the IRS website: irs.gov/irb.

iii. Letter Rulings. 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 can result from a taxpayer request for a letter ruling if the holding affects many taxpayers. The IRS issues more than 2,500 letter rulings each year.

iv. Other Administrative Pronouncements.
1. *Treasury Decisions* (TDs) are issued by the Treasury Department to announce new Regulations, amend or change existing Regulations, or announce the position of the Government on selected court decisions. TDs are published in the *Internal Revenue Bulletin*.
2. The IRS also publishes other administrative communications on its website, including Announcements, IRs (News Releases), Internal

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Legal Memoranda (ILMs), Chief Counsel Advice (CCA), and Chief Counsel Notices (CCN).

3. A determination letter is a statement issued by the Area Director in response to a taxpayer and provides guidance on the application of the tax law.
4. A variety of internal memoranda that constitute the working law of the IRS also are released. These Chief Counsel Advice (CCAs), Technical Advice Memoranda (TAMs), Internal Legal Memoranda (ILMs) are not officially published, and the IRS indicates that they may not be cited as precedents by taxpayers.
   (a) Technical Advice Memoranda (TAMs) are furnished by the National Office on a weekly basis. TAMs deal with completed (rather than proposed) transactions. TAMs are issued by the National Office of the IRS in response to questions raised by taxpayers or IRS field personnel during audits.
   (b) The Office of Chief Counsel prepares Chief Counsel Advice (CCAs) and Chief Counsel Notices (CCNs) to help IRS employees. These are issued in response to requests for advice, guidance, and analysis on difficult or significant tax issues and are not binding on either the taxpayer to whom they pertain or the IRS.
   (c) Another form of field guidance are Technical Expedited Advice Memoranda (TEAMs). The purpose of TEAMs is to expedite legal guidance to field agents as disputes are developing.

c. Judicial Sources of the Tax Law
   i. Five Federal courts have jurisdiction over tax disputes between the IRS and taxpayers: the U.S. Tax Court, the U.S. District Court, the U.S. Court of Federal Claims, the U.S. Court of Appeals, and the U.S. Supreme Court.
   ii. The Judicial Process in General. After a taxpayer has exhausted the remedies available within the IRS, the dispute can be taken to the Federal courts. The trial and appellate court system for Federal tax litigation is illustrated in Exhibit 2.4 in the text.
      1. A trial court, also known as a court of original jurisdiction, initially hears the case. Appeals (either by the taxpayer or the IRS) are heard by the appropriate appellate court. A taxpayer has a choice of three trial courts: a U.S. District Court, the U.S. Court of Federal Claims, or the U.S. Tax Court.
      2. The U.S. Tax Court contains a Small Cases Division that only hears cases involving amounts of $50,000 or less. No appeal is available. The broken line between the U.S. Tax Court and the Small Cases Division in Exhibit 2.4 in the text indicates that there is no appeal from the Small Cases Division.

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(a) This court only hears cases involving disputed amounts of $50,000 or less.
(b) Informal proceedings.
(1) No requirement for the taxpayer to be represented by a lawyer or other tax adviser.
(2) Special trial judges, rather than Tax Court judges, often preside over the proceedings.
(3) Decisions are not precedent for any other court and are not reviewable by any higher court.

3. American law, following English common law, is frequently created by judicial decisions. Under the doctrine of *stare decisis*, each case has precedential value for future cases with the same controlling set of facts.
4. At the trial court level, a taxpayer is normally the plaintiff (or petitioner) and the Government is the defendant (or respondent). If the taxpayer wins and the Government appeals, the Government becomes the petitioner (or appellant), and the taxpayer becomes the respondent.

iii. Trial Courts. (See Concept Summary 2.1 in the text for a summary of various attributes of the Federal trial courts.) The differences among the various trial courts can be summarized as follows:

- Number of courts.
- Number of judges.
- Location.
- Jurisdiction of the Tax Court and District Courts.
- Jurisdiction of the Court of Federal Claims.
- Jury trial.
- Payment of deficiency.
- Appeals.
- Bankruptcy.
- Gray areas.

iv. Appellate Courts. A trial court decision can be appealed to the appropriate Circuit Court of Appeals by the losing party. The 11 geographic circuits, the circuit for the District of Columbia, and the Federal Circuit appear in Exhibit 2.5 in the text.

1. Generally, a three-judge panel hears a Court of Appeals case, but occasionally the full court decides more controversial cases.
2. If the Government loses at the trial court level (District Court, Tax Court, or Court of Federal Claims), it may decide not to appeal. However, the fact that the IRS does not appeal does not mean that the IRS agrees with the result.
3. The Federal Circuit provides the taxpayer with an alternative forum. When a particular Circuit Court of Appeals has issued an adverse

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decision in a similar case, the taxpayer may prefer the Court of Federal Claims route, because any appeal is to the Federal Circuit.

v. The Appellate Process. The role of the appellate court usually is limited to a review of whether the trial court applied the proper law in arriving at its decision.
   1. Both the Code and the Supreme Court indicate that Federal appellate courts are bound by findings of facts unless they are clearly erroneous.
   2. The appellate court may approve (affirm) or disapprove (reverse) the lower court's finding, or it may send the case back for further consideration (remand).
   3. Appellate Precedents and the Tax Court. District Courts, the Tax Court, and the Court of Federal Claims must abide by the precedents set by a Court of Appeals jurisdiction.
   4. All courts must follow the decision of the U.S. Supreme Court.
   5. Since the *Golsen* decision [*Jack E. Golsen*, 54 T.C. 742 (1970)], the Tax Court decides a case as it believes the law should be applied only if the Court of Appeals has not yet ruled on the issue.
   6. Appeal to the U.S. Supreme Court. The U.S. Supreme Court grants certiorari to resolve a conflict among the Courts of Appeals or where the tax issue is extremely important. The granting of a Writ of Certiorari indicates that at least four of the nine members of the Supreme Court believe that the issue is of sufficient importance to be heard by the full Court.

vi. Judicial Citations. (2.2, PPT Slides 36–43) Judicial citations usually follow a standard pattern: case name, volume number, reporter series, page or paragraph number, court, and year of the decision (see Concept Summary 2.2 in the text).
   1. Judicial Citations—The U.S. Tax Court. The U.S. Tax Court issues two types of decisions: Regular and Memorandum, based on the Chief Judge's determination. They differ in both substance and form.
      (a) Memorandum decisions deal with cases that involve only the application of established principles of law.
      (b) Regular decisions involve novel issues not previously resolved by the Tax Court.
      (c) In actual practice, both Regular and Memorandum represent the position of the Tax Court and, as such, can be relied on.
      (d) Regular Tax Court decisions are published by the U.S. Government Printing Office in a series entitled *Tax Court of the United States Reports*. Memorandum decisions are published on the U.S. Tax Court website (ustaxcourt.gov). Memorandum decisions, although available on the U.S. Tax Court website, are not published by the U.S. Government.

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(e) If the IRS loses a decision, it may indicate whether it agrees or disagrees with the results reached by the court by publishing an acquiescence ("A" or "*Acq.*") or nonacquiescence ("NA" or "*Nonacq.*"), respectively. The acquiescence or nonacquiescence is published in the *Internal Revenue Bulletin* (and an *Action on Decision* is issued).

2. Judicial Citations—The U.S. District Court, Court of Federal Claims, and Courts of Appeals. Decisions dealing with Federal tax matters are reported in both the CCH *U.S. Tax Cases* (USTC) and the RIA *American Federal Tax Reports* (AFTR) series. U.S. District Court decisions, dealing with both tax and nontax issues, also are published by West in its *Federal Supplement Second Series*.
3. Judicial Citations—The U.S. Supreme Court. Decisions are published by CCH in the USTCs and by RIA in the AFTRs. The U.S. Government Printing Office also publishes these decisions in the *United States Supreme Court Reports* (U.S.), as does West in its *Supreme Court Reporter* (S.Ct.), and the Lawyer's Co-operative Publishing Company in its *United States Reports, Lawyer's Edition* (L.Ed.).

d. Other Sources of the Tax Law
   i. Tax Treaties. Tax legislation provided that neither a tax law nor a tax treaty takes general precedence. If there is a conflict between the Code and a treaty, the most recent item takes precedence.
   ii. Tax Periodicals. The use of tax periodicals can shorten the research time needed to resolve a tax issue.

II. Working with the Tax Law—Tax Research Tools (2.3, PPT Slides 44–49)

a. Commercial Tax Services
   i. In the past, commercial tax services could be classified as annotated or topical. However, as tax research has become electronic, this classification system is no longer appropriate. Some of the available commercial tax services include the following:
      1. *CCH IntelliConnect* and CCH A*nswerConnect*, CCH/Wolters Kluwer. Includes the *Standard Federal Tax Reporter* (along with other CCH materials).
      2. Thomson Reuters *Checkpoint*, Research Institute of America. Includes RIA's *Federal Tax Coordinator 2d* and *United States Tax Reporter*.
      3. *Practical Tax Expert*, CCH/Wolters Kluwer.
      4. *Tax Management Portfolios*, Bloomberg BNA.
      5. Parker Tax Pro *Library*.
      6. *Mertens Law of Federal Income Taxation*, Thomson Reuters.

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7. Thomson Reuters *Westlaw* and *WestlawNext*—compilations include access to *Tax Management Portfolios*, *Federal Tax Coordinator 2d*, and *Mertens*.
8. LexisNexis *TaxCenter*—a compilation of primary sources and various materials taken from CCH, Matthew Bender, Kleinrock, and Bloomberg BNA.

b. Using Electronic (Online) Tax Services
   i. A competent tax professional must become familiar and proficient with electronic research services and be able to use them to complete research projects efficiently.
   ii. Following certain general procedures can simplify the research process. The following suggestions may be helpful:
      1. Choose keywords for the search carefully.
      2. Take advantage of connectors.
      3. Be selective in choosing the data to search.
      4. Use a table of contents, index, or citation when appropriate.
      5. Always check for current developments.

c. Noncommercial Electronic (Online) Tax Services
   i. The internet provides a wealth of tax information in several popular forms, sometimes at no cost to the researcher.
   ii. A tax professional can access a significant amount of information that can assist in the research process.
      1. Websites are provided by accounting and consulting firms, publishers, tax academics, libraries, and governmental bodies as a means of making information widely available. One of the best sites available to the tax professional is the Internal Revenue Service's home page, illustrated in Exhibit 2.6 in the text.
      2. Exhibit 2.7 in the text lists some of the websites that may be most useful to tax researchers.
      3. Blogs and RSS sites provide a means by which information related to the tax law can be exchanged among taxpayers, tax professionals, and others who subscribe to the group's services.

III. Working with the Tax Law—Tax Research (2.4, PPT Slides 50–56)

   i. Tax research is the process of finding a competent and professional conclusion to a tax problem. The problem may originate either from completed or proposed transactions.
   ii. Tax research involves the following steps (illustrated in Exhibit 2.8 in the text):
      1. Identifying and refining the problem.
      2. Locating the appropriate tax law sources.
      3. Assessing the validity of the tax law sources.

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4. Arriving at the solution or at alternative solutions (including consideration of nontax factors).
5. Effectively communicating the solution to the taxpayer.
6. Updating the solution in light of new developments.

a. Identifying the Problem
   i. Problem identification must start with a compilation of the relevant facts involved. In other words, all of the facts that may have a bearing on the problem must be gathered.
b. Refining the Problem
   i. Use new facts to refine the tax problem.
c. Locating the Appropriate Tax Law Sources
   i. Once the problem is clearly defined, most tax research begins with a keyword search using an electronic tax service.
d. Assessing the Validity of Tax Law Sources
   i. Once a source has been located, the next step is to assess it in light of the problem at hand. Proper assessment involves careful interpretation of the tax law with consideration given to its relevance and validity.
   ii. Interpreting the Internal Revenue Code. This is the greatest challenge for the IRS. The language of the Code is difficult to comprehend fully. If an answer is not in the Code, it may be necessary to look to other tax law, including Regulations and judicial decisions.
   iii. Assessing the Validity of a Treasury Regulation.
      1. Give the Code and related Regulations equal weight when dealing with taxpayers and their representatives.
      2. Proposed Regulations are not binding.
      3. The burden of proof is on the taxpayer.
      4. If the taxpayer loses a challenge, then a 20% accuracy-related penalty may apply.
      5. Final Regulations can be classified as procedural, interpretive, or legislative. Procedural Regulations are housekeeping-type instructions indicating information that taxpayers should provide the IRS.
      6. Interpretive Regulations are almost impossible to overturn.
      7. In some Code Sections, Congress has given the Treasury Secretary the authority to prescribe Regulations to carry out the details of administration. Regulations issued under this type of authority possess the force and effect of law and are often called legislative Regulations.
      8. Courts tend to apply a legislative reenactment doctrine.
   iv. Assessing the Validity of Other Administrative Sources of the Tax Law. Revenue Rulings issued by the IRS carry less weight than Treasury Department Regulations. Revenue Rulings are important, however, in that they reflect the position of the IRS on tax matters.

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v. Assessing the Validity of Judicial Sources of the Tax Law. How much reliance can be placed on a particular decision depends on the following variables:
   1. The level of court. The higher the level of the court that issued a decision, the greater the weight accorded to that decision.
   2. Residence of the taxpayer. More reliance is placed on decisions of courts that have jurisdiction in the area where the taxpayer's legal residence is located.
   3. Regular or Memorandum decision. A Tax Court Regular decision carries more weight than a Memorandum decision because the Tax Court does not consider Memorandum decisions to be binding precedents.
   4. Circuit Court decision. A Circuit Court decision heard *en banc* (all of the judges participate) carries more weight than a normal Circuit Court case.
   5. Other courts' support. A decision that is supported by cases from other courts carries more weight than a decision that is not supported by other cases.
   6. Status on appeal. The weight of a decision also can be affected by its status on appeal.

   In connection with the last three variables, the use of a citator is invaluable to tax research. A citator provides the history of a case, including the authority relied on in reaching the result.

vi. Assessing the Validity of Other Sources.
   1. Primary sources of tax law include the Constitution, legislative history materials, statutes, treaties, Treasury Regulations, IRS pronouncements, and judicial decisions.
   2. Reference to secondary sources such as legal periodicals, treatises, legal opinions, IRS publications, and other materials can be useful. In general, secondary sources are not authority.
   3. For purposes of the accuracy-related penalty in § 6662, the IRS expands the list of substantial authority to include a number of non-primary sources.
   4. A letter ruling or determination letter is substantial authority only for the taxpayer to whom it is issued, except for the accuracy-related penalty.
   5. Once major tax legislation is completed, the staff of the Joint Committee on Taxation (in consultation with the staffs of the House Ways and Means and Senate Finance Committees) often prepares a General Explanation of the Act, commonly known as the Bluebook.

e. Arriving at the Solution or at Alternative Solutions
   i. Discuss possible solutions to The Big Picture questions.

f. Communicating Tax Research (2.5, PPT Slides 50–56)

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i. A good tax research communication should tell the audience what was researched, the results of the research, and the justification for the recommendation made. It should contain the following elements:
   - A clear statement of the issue.
   - A short review of the facts that raised the issue.
   - A review of the relevant tax law sources.
   - Any assumptions made in arriving at the solution.
   - The solution recommended and the logic or reasoning supporting it.
   - The references consulted in the research process.

ii. Exhibits 2.9 and 2.10 in the text present the tax file memorandum (internal to the firm) and the client letter associated with the facts of The Big Picture.

IV. Working with the Tax Law—Tax Planning (2.6, PPT Slides 57–58)

i. Tax research and tax planning are inseparable.
   1. The primary purpose of effective tax planning is to maximize the taxpayer's after-tax wealth.
   2. The secondary objective of effective tax planning is to reduce or defer the tax in the current tax year.

a. Nontax Considerations
   i. Tax considerations may impair the exercise of sound business judgment by the taxpayer. The goal should be a balance that recognizes the significance of taxes, but not beyond the point where planning detracts from the exercise of good business judgment.

b. Components of Tax Planning
   i. The popular perception of tax planning often is restricted to the adage "defer income and accelerate deductions." Although this timing approach does hold true and is important, meaningful tax planning involves considerably more.
   ii. The key components of tax planning include the following:
      1. Avoid the recognition of income.
      2. Defer the recognition of income.
      3. Convert the classification of income.
      4. Choose the business entity with the desired tax attributes.
      5. Preserve formalities by generating and maintaining supporting documentation.
      6. Act in a manner consistent with the intended objective.

c. Tax Avoidance and Tax Evasion
   i. 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.

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1. Tax avoidance is merely tax minimization through legal techniques. In this sense, tax avoidance becomes the proper objective of all tax planning.
2. Evasion, although also aimed at the elimination or reduction of taxes, connotes the use of subterfuge and fraud as a means to an end.

d. Follow-Up Procedures
   i. Because tax planning usually involves a proposed transaction, being aware of if or when the law changes is critical to the tax planning process. A change in the tax law could alter the original conclusion. Additional research may be necessary to test the solution in light of current developments. (Refer to the broken lines at the right in Exhibit 2.8 in the text.)

e. Tax Planning
   i. Point out that throughout this text, each chapter concludes with observations on Tax Planning.

V. Taxation on the CPA Examination (2.7, PPT Slide 59)

   i. The CPA exam continues to test in the familiar four sections—Auditing and Attestation (AUD), Business Environment and Concepts (BEC), Financial Accounting and Reporting (FAR), and Regulation (REG).
   ii. The exam continues to evolve, placing less emphasis on remembering-and-understanding skills and greater focus on higher-level analysis and evaluation skills.
      1. Task-based simulations, a highly effective way to assess higher-order skills, are part of each section of the CPA exam.
      2. Total testing time is 16 hours (4 hours per section).
      3. Multiple-choice questions and task-based simulations each contribute about 50% toward the candidate's score in the AUD, FAR, and REG sections. In the BEC section, multiple-choice questions contribute about 50% of the scoring, with 35% coming from task-based simulations and 15% from written communication.
      4. Using Bloom's taxonomy, the CPA exam tests remembering and understanding, application, analysis, and evaluation. In prior years, the CPA exam only tested for the first two of these items.

a. Preparation Blueprints
   i. To prepare for the CPA exam, candidates are able to use AICPA-developed Blueprints that replaced the Content Specification Outline (CSO) and Skill Specification Outline (SSO).
   ii. The Blueprints provide candidates with more detail about what to expect on the exam and contain about 570 representative tasks.
   iii. The Blueprints provide candidates with sample tasks that align with both the content and skill level at which the content will be tested.

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b. Regulation Section
    i. Taxation continues to be tested within the REG section of the CPA exam. Testing within REG is administered in five blocks called testlets, which feature multiple-choice questions (MCQs) and task-based simulations (TBSs).
    ii. There are five content areas in the REG section of the CPA exam:
        - Area 1: Ethics, professional responsibilities, and Federal tax procedures (weight: 10% to 20%).
        - Area 2: Business law (weight: 10% to 20%).
        - Area 3: Federal taxation of property transactions (weight: 12% to 22%).
        - Area 4: Federal taxation of individuals (weight: 15% to 25%).
        - Area 5: Federal taxation of entities (weight: 28% to 38%).
    iii. Candidates can learn more about the CPA examination at aicpa.org/resources/toolkit/cpa-exam.

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Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. Discussion 1 (2.1, PPT Slides 6–35) Duration 15 minutes.
    a. A client who is a small independent oil and gas producer asks you to determine whether the business qualifies for percentage depletion. The client is worried that it may be classified as a refiner. Look up and read Code § 613A(d)(4), and prepare a response to your client.
        i. Answer: There are a number of limitations on the percentage of depletion deduction, but there is a limited exception for independent producers and royalty owners. This deduction, however, is not available for a taxpayer that is a retailer or refiner. But § 613A(d)(4) indicates that a percentage depletion deduction "shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 75,000 barrels." So as long as the independent producer is refining 75,000 barrels or less in a taxable year, the percentage depletion deduction will be available.
2. Discussion 2 (2.1, PPT Slides 6–35) Duration 15 minutes.
    a. Sanjay receives a settlement letter from the IRS after his discussion with an IRS appeals officer. He is not satisfied with the $101,000 settlement offer. Identify the relevant issues facing Sanjay if he chooses to contest the settlement offer.
        i. Answer: Sanjay must consider several factors in deciding whether to take the dispute to the judicial system:
            - How expensive will it be?
            - How much time will be consumed?
            - Does he have the temperament to engage in the battle?

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- What is the probability of winning?
- Once a decision is made to litigate the issue, the appropriate judicial forum must be selected.
- Tax Court judges have more expertise in tax matters.
- The tax deficiency need not be paid to litigate in the Tax Court. However, if Sanjay loses, interest must be paid on any unpaid deficiency.
- If a trial by jury is preferred, the U.S. District Court is the appropriate forum.
- The tax deficiency must be paid before litigating in the District Court or the Court of Federal Claims.
- If an appeal to the Federal Circuit is important, Sanjay should select the Court of Federal Claims.
- A survey of the decisions involving the issues in dispute is appropriate. If a particular court has taken an unfavorable position, that court should be avoided.

3. Discussion 3 (2.2, 2.3, and 2.4, PPT Slides 36–56) Duration 15 minutes.
   a. You inherit a tax problem that was researched five months ago. You believe the answer is correct, but you are unfamiliar with the general area. How would you find recent articles dealing with the subject area? How do you evaluate the reliability of the authority cited in the research report? How do you determine the latest developments pertaining to the research problem?
      i. Answer: The best means of locating tax articles pertinent to your problem is through Commerce Clearing House's *Federal Tax Articles*. This multivolume service includes a subject index, a Code Section number index, and an author's index. Another is the *Index to Federal Tax Articles* (published by Thomson Reuters). Both of these indexes are updated periodically but are available only in print form.

         Court decisions, Revenue Rulings and Procedures, and other relevant authority may be reviewed for reliability using a citator within the commercial tax service. A citator provides the history of a case, including the authority relied on (e.g., other judicial decisions) in reaching the result. Reviewing the references listed in the citator discloses whether the decision was appealed and, if so, with what result (e.g., affirmed, reversed, or remanded). It also reveals other cases with the same or similar issues and how they were decided. As a result, a citator reflects on the validity of a case and may lead to other relevant authority. If one intends to rely on a judicial decision to any significant degree, "running" the case through a citator is imperative.

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Video Information

Related Cengage Video Content

- 1 Show Me How video
- Concept Clips/Quick Lessons video (none applicable)

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