McGraw-Hill's Taxation of Individuals and Business Entities 2023 Edition 14th edition Spilker Solutions Manual

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Chapter 2
Tax Compliance, the IRS, and Tax Authorities

INSTRUCTOR'S MANUAL

Learning Objectives

2-1. Identify the filing requirements for income tax returns and the statute of limitations for assessment.
2-2. Outline the IRS audit process, how returns are selected, the different types of audits, and what happens after the audit.
2-3. Evaluate the relative weights of the various tax law sources.
2-4. Describe the legislative process as it pertains to taxation.
2-5. Perform the basic steps in tax research.
2-6. Describe tax professional responsibilities in providing tax advice.
2-7. Identify taxpayer and tax professional penalties.

Teaching Suggestions

This chapter provides a summary of the filing requirements for income tax returns, the IRS audit process, tax law sources and tax research, tax professional responsibilities, and taxpayer and tax practitioner penalties. The time allotted to this chapter will vary based on your expectations regarding the students' abilities to conduct research in the course. The remaining material in the chapter (filing requirements, IRS audit process, tax professional responsibilities, and taxpayer and tax practitioner penalties) can be covered in a class session (or two).

Compared to Chapter 1 and later chapters, the material in Chapter 2 could be considered somewhat "dry." Thus, it is important to bring this material to life in the classroom as much as possible. Some suggestions for the class discussion include:

- Filing requirements: Provide a basic overview of the filing requirements by entity and statute of limitations and then use discussion questions 1 through 3 and problems 43 through 49 to quiz students on their understanding.
- IRS audit process: Most students are interested in how the IRS selects returns for audit. Discussing high-profile IRS cases (Richard Hatch, *Survivor*; Willie Nelson; Al Capone) or personal experiences with IRS audits is typically well received. After the discussion, quizzing the students on identifying the selection method and audit type for various fact patterns is an effective way to make sure that your students can apply the concepts from this discussion.
- Tax law sources: The depth to which you cover the various sources will vary with your expectations regarding the students' abilities to conduct research. If students will be expected to research problems, read primary authorities, etc., showing examples of the specific types of authorities that they will research (code sections, regulations, etc.), highlighting their attributes, contrasting different authorities, and discussing how to locate the authorities and make sure that they are "current" should prove beneficial. This discussion could then be followed with a discussion of how to conduct research and an in-class example of a simple research problem. [As an out-of-class exercise, you might assign students to locate specific

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primary authorities (e.g., court cases, revenue rulings, etc.) and related discussion in an available tax service (CCH, RIA, BNA, etc.) and have the students summarize the issue addressed in the primary authority and tax service and how they located each authority.]

If instead students are simply required to have a basic understanding of tax authorities with little or no research expectation, most of the discussion of authorities could focus on comparing different authorities and their relative weights. This discussion can then be reinforced with classroom questions comparing the weight of different authorities or contrasting different authorities using the "one versus the group" activity suggested below.

- Tax legislation: This discussion may be aided by displaying Exhibit 2-7. You may also remind your class of the *Schoolhouse Rock* song "I'm Just A Bill," which highlights the legislative process. You can watch this song on YouTube.
- Basic tax research steps: This discussion may be enhanced by walking students through the research example in the text or through one of the end of chapter research problems.
- Tax professional standards/taxpayer and tax practitioner penalties: This discussion may be enhanced by a discussion of the IRS's crackdown on tax shelters, the dire consequences associated with not meeting professional standards, and the recent increased thresholds to avoid tax practitioner penalties.

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Assignment Matrix

			Learning Objectives							Text Feature		
		Difficulty	LO1	LO2	LO3	LO4	LO5	LO6	LO7	Research	Planning	Forms
DQ2-1	5 min.	Easy	X									
DQ2-2	10 min.	Easy	X									
DQ2-3	10 min.	Medium	X									
DQ2-4	5 min.	Easy		X								
DQ2-5	10 min.	Medium		X								
DQ2-6	10 min.	Medium		X								
DQ2-7	10 min.	Medium		X								
DQ2-8	15 min.	Medium		X								
DQ2-9	15 min.	Medium			X							
DQ2-10	10 min.	Easy			X							
DQ2-11	10 min.	Medium			X							
DQ2-12	5 min.	Easy			X							
DQ2-13	15 min.	Medium			X							
DQ2-14	10 min.	Medium			X							
DQ2-15	10 min.	Medium			X							
DQ2-16	10 min.	Medium			X							
DQ2-17	15 min.	Medium			X							
DQ2-18	15 min.	Medium			X							
DQ2-19	5 min.	Easy				X						
DQ2-20	20 min.	Medium				X						
DQ2-21	15 min.	Medium				X						

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DQ2-22	10 min.	Easy				X						
DQ2-23	10 min.	Easy					X					
DQ2-24	15 min.	Medium					X					
DQ2-25	15 min.	Medium					X					
DQ2-26	15 min.	Medium					X					
DQ2-27	15 min.	Medium					X					
DQ2-28	15 min.	Medium					X					
DQ2-29	15 min.	Medium					X					
DQ2-30	10 min.	Easy					X					
DQ2-31	15 min.	Medium					X					
DQ2-32	15 min.	Medium					X					
DQ2-33	15 min.	Medium					X					
DQ2-34	15 min.	Medium					X					
DQ2-35	15 min.	Medium					X					
DQ2-36	20 min.	Medium						X				
DQ2-37	15 min.	Medium						X				
DQ2-38	10 min.	Medium						X				
DQ2-39	15 min.	Medium						X				
DQ2-40	15 min.	Medium							X			
DQ2-41	15 min.	Medium							X			
DQ2-42	15 min.	Medium							X			
DQ2-43	15 min.	Medium							X			
DQ2-44	15 min.	Medium							X			
P2-45	15 min.	Medium	X									
P2-46	15 min.	Medium	X									
P2-47	15 min.	Medium	X									
P2-48	15 min.	Medium	X									
P2-49	15 min.	Medium	X									
P2-50	15 min.	Medium	X									
P2-51	15 min.	Medium	X									
P2-52	10 min.	Medium		X								
P2-53	15 min.	Medium		X								
P2-54	10 min.	Medium		X								
P2-55	10 min.	Medium		X								
P2-56	10 min.	Medium		X								
P2-57	10 min.	Medium		X								
P2-58	20 min.	Medium		X							X	
P2-59	20 min.	Medium		X							X	
P2-60	15 min.	Medium			X							
P2-61	15 min.	Medium			X							
P2-62	15 min.	Medium			X							
P2-63	15 min.	Medium			X							
P2-64	10 min.	Medium			X							
P2-65	10 min.	Medium			X							
P2-66	15 min.	Medium				X						
P2-67	15 min.	Medium					X					

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P2-68	10 min.	Medium					X					
P2-69	10 min.	Medium					X					
P2-70	60 min.	Medium					X			X		
P2-71	60 min.	Medium					X			X		
P2-72	60 min.	Medium					X			X		
P2-73	60 min.	Medium					X			X		
P2-74	60 min.	Medium					X			X		
P2-75	120 min.	Hard					X			X		
P2-76	120 min.	Hard					X			X		
P2-77	60 min.	Medium					X			X		
P2-78	20 min.	Medium						X				
P2-79	20 min.	Hard						X				
P2-80	20 min.	Medium							X			
P2-81	20 min.	Medium							X			

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Lecture Notes

1) Taxpayer Filing Requirements
   a) Filing requirements by entity
      i) Individuals (show Exhibit 2-1)
      ii) Corporations
   b) Tax return due date and extensions
      i) Individuals and C corporations
      ii) Partnerships and S corporations
   c) Statute of limitations
      i) The period in which the taxpayer can file an amended tax return or the IRS can assess a tax deficiency for a specific tax year.
      ii) Generally ends three years from the *later* of (1) the date the tax return was actually filed or (2) the tax return's original due date.
      iii) A six-year statute of limitations applies to IRS assessments if the taxpayer omits items of gross income that exceed 25 percent of the gross income reported on the tax return.
      iv) For fraudulent returns, or if the taxpayer fails to file a tax return, the statute of limitations remains open indefinitely.
2) IRS Audit Selection
   a) Methods of selection
      i) DIF system
      ii) Document perfection
      iii) Information matching
      iv) Other methods
   b) Types of audits
      i) Correspondence examinations
      ii) Office examinations
      iii) Field examinations
   c) After the audit (show Exhibit 2-2)
      i) Proposed adjustment
      ii) 30-day letter

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iii) Appeals conference
iv) 90-day letter
v) Petition courts
vi) Trial-level courts and their differences: Tax Court, U.S. District Court, U.S. Court of Federal Claims
vii) Choosing a trial-level court (show Exhibit 2-3)
viii) Circuit Court of Appeals (show Exhibit 2-4)
ix) Supreme Court

3) Tax Law Sources
   a) Primary and secondary sources
      i) Primary tax authorities (show Exhibit 2-5)
      ii) Secondary authorities (show Exhibit 2-6)
   b) Legislative sources: Congress and the Constitution
      i) U.S. Constitution
      ii) Internal Revenue Code
      iii) Legislative process for tax laws (show Exhibit 2-7)
      iv) Basic organization of the code (show Exhibit 2-8)
      v) Tax treaties
   c) Judicial sources: The courts
      i) The hierarchy of the courts (trial level, appeals, Supreme Court)
      ii) *Stare decisis*
      iii) Golsen rule
   d) Administrative sources: The U.S. Treasury
      i) Regulations: Three different forms (final, temporary, proposed); three different purposes (interpretative, procedural, legislative); highest administrative authority.
      ii) Revenue Rulings and Revenue Procedures: More detailed than regulations; second in administrative weight. Definition of each.
      iii) Letter rulings: Lower authoritative weight; contrast private letter rulings with determination letters and technical advice memorandums.
      iv) Acquiescence, nonacquiescence, and actions on decision: Define and explain why important.
4) Tax Research
   a) Understand facts
      i) Open and closed facts
      ii) How do you determine facts for a research question?
   b) Identify issues
      i) Ability to identify issues varies with experience.
      ii) Understand facts, combine facts with understanding of law, identify general issues. (Is this income taxable? Is this expense deductible?)
      iii) Research will allow you to identify more specific issues.
      iv) Discuss Example 2-4 in class.
   c) Locate relevant authorities
      i) Annotated tax services: Definition and what they contain.
      ii) Topical tax services: Definition and what they contain.
      iii) How to use these services?
      iv) Keyword search: Area of law and key facts; suggestions if key word searching is not proving beneficial.
      v) Topical index
      vi) Browsing the service
      vii) Discuss Example 2-5.
   d) Analyze tax authorities

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i) Questions of fact: Hinges upon the facts and circumstances of the taxpayer's transaction. In this type of question, the researcher will focus on understanding how various facts affect the research answer and identifying authorities with fact patterns similar to her client's. For these types of research questions, judicial sources (court cases) will often specifically state this clearly and then focus their discussion on the facts and circumstances.
ii) Questions of law: Hinges upon the interpretation of the law, such as interpreting a particular phrase in a code section. If a researcher is faced with this type of question, they will spend much of their time researching the various interpretations of the code section and take note of which authorities interpret the code differently and why.
iii) Identifying whether a research question is a question of fact or question of law is primarily helpful when there is some uncertainty in the application of tax law. Distinguishing between these two types of questions helps the tax researcher focus their efforts appropriately. For many tax questions, the answer is quite clear (e.g., the question is answered definitively in the Internal Revenue Code, Regulations, etc.). In these situations, there is no need to attempt to distinguish the question as a question of fact or question of law.
iv) Conflicting authorities: The tax researcher should evaluate the hierarchical level, jurisdiction, and age of the authorities, placing more weight on higher and newer authorities that have jurisdiction over the taxpayer.
v) Checking the status of authorities: Citators and methods to check the status of authorities.

e) Communicate the results
i) The basic parts of a memo: Facts, issues, authorities, conclusion, and analysis.
ii) Facts: Discuss facts that provide necessary background of the transaction and those facts that may influence the research answer.
iii) Issues: State the specific issues that the memo addresses. Issues should be written as specifically as possible and be limited to one or two sentences per issue.
iv) Authorities: The researcher cites the relevant tax authorities that apply to the issue, such as the IRC, court cases, and revenue rulings. Cite enough to provide a clear understanding of the issue and interpretation of the law.
v) Conclusion: One conclusion per issue. Each conclusion should answer the question as briefly as possible, and preferably indicate why the answer is what it is.
vi) Analysis: The goal of the analysis is for the researcher to provide the reader a clear understanding of the area of law and specific authorities that apply. Typically an analysis will be organized to discuss the general area(s) of law first (the Code section) and then the specific authorities (court cases, revenue rulings) that apply to the research question. After you discuss the relevant authorities, apply the authorities to your client's transaction and explain how the authorities result in your conclusion.
vii) The basic parts of a client letter: Salutation and social graces, research question and limitations, facts, analysis, and closing.

5) Tax Professional Responsibilities
a) Tax professionals are subject to various statutes, rules, and codes of conduct.
i) AICPA Code of Professional Conduct
ii) AICPA Statement on Standards for Tax Services
iii) IRS's Circular 230
iv) State board of accountancy statutes
v) Common law
b) Failure to comply with statutes can result in being admonished, suspended, or barred from practicing.

6) Taxpayer and Tax Return Preparer Penalties
a) Civil penalties
i) Generally monetary penalties
ii) Imposed when tax practitioners or taxpayers violate tax statutes without reasonable cause.

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b) Criminal penalties
   i) Much less common than civil penalties.
   ii) Penalties are much higher and can include prison sentences.
c) **Taxpayer** underpayment penalty: No underpayment penalty if there is ***substantial authority*** that supports the tax return position or if there is a reasonable basis for the position and it is disclosed on the taxpayer's tax return.
d) A **tax return preparer** will not be subject to penalty if there is ***substantial authority*** that supports the tax return position or if there is a reasonable basis for the position and it is disclosed on the taxpayer's tax return.

Class Activities

1. Suggested class activities

- **Let's choose a court:** Split the class into groups. Explain to the class that you will be asking a series of questions to the class regarding the choice of trial-level courts after an audit. After you ask the question, a group may buzz in to answer the question when a group member raises his or her hand. If the person gets the question correct, the group will receive one point. If the person misses the question, the group loses one point. The group with the most points after the series of questions will receive bonus participation points for the day. Use the individual court differences and differences in their respective appellate courts to generate questions. See problem 57 for examples of questions to pose.
- **One versus the class:** Have one student volunteer as the "one," with the other class members being the "group." Use the key facts boxes in the text to develop basic multiple-choice questions (A, B, C answers) and then quiz the volunteer and the class on the questions. The volunteer and each class member will need to write the letters A, B, and C on separate sheets of paper and then hold up their appropriate response to the question. Once a student (either the "one" or a member of the "group") misses a question, they are eliminated from the competition. After six (or some other number) of questions, those students left standing receive bonus participation points for the day.

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2. Research activities

- Take one or more of the research problems at the end of the chapter and pose the following questions after reading the problem: (1) What are the key facts in the problem? (2) What is the general issue to be addressed? (3) What key words would you use to research this question? Then walk the students through how you would conduct the research using an available on-line service.

3. Ethics discussion

From page 2-5:

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ETHICS

After Bill and Mercedes's tax return was selected for audit, Bill read on the Internet speculation that filing a paper tax return (instead of filing electronically) and extending a tax return deadline decrease the chance of IRS audit. Bill has convinced Mercedes that they need to use these strategies in the future and look for other ways to avoid audit. Has Bill crossed an ethical boundary?

Discussion points:

- What are the timing requirements for filing a tax return and paying taxes owed?
- Does Bill's action likely violate any IRS regulation?
- If Bill's action does not violate IRS rules, is it ethical?
- Are ethics and IRS rules the same?

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Chapter 2
Tax Compliance, the IRS, and Tax Authorities

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Discussion Questions

(1) [LO1] Name three factors that determine whether a taxpayer is required to file a tax return.

Filing status (e.g., single, married filing joint, etc.), age, and the taxpayer's gross income.

(2) [LO1] Benita is concerned that she will not be able to complete her tax return by April 15. Can she request an extension to file her return? By what date must she do so? Assuming she requests an extension, what is the latest date that she could file her return this year without penalty?

Benita can file an automatic six-month extension to file her tax return – form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return. This extension must be filed by April 15th. October 15th is the latest date she can file her return without penalty. If October 15th falls on a Saturday, Sunday, or holiday, the extended due date will be the 1st day after October 15th that is not a Saturday, Sunday, or holiday.

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(3) [LO1] Agua Linda Inc. is a calendar-year corporation. What is the original due date for the corporate tax return? What happens if the original due date falls on a Saturday?

The original due date for Agua Linda Inc.'s corporate tax return is April 15th. If the 15th falls on a Saturday, Sunday, or holiday, the due date will be the 1st day after April 15th that is not a Saturday, Sunday, or holiday. In this example, Agua Linda Inc.'s due date is April 17th (i.e., the Monday after Saturday the 15th).

(4) [LO2] Approximately what percentage of tax returns does the IRS audit? What are the implications of this number for the IRS's strategy in selecting returns for audit?

Currently, less than 1 percent of all tax returns are audited. The IRS must be strategic in selecting returns for audit in an effort to promote the highest level of voluntary taxpayer compliance.

(5) [LO2] Explain the difference between the DIF system and the National Research Program. How do they relate to each other?

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The DIF system is basically a scoring system that assigns a score to each tax return that represents the probability that the tax liability on the return has been underreported (i.e., a higher score, a higher likelihood of underreporting). The IRS derives the weights assigned to specific tax return attributes from historical IRS audit adjustment data from the National Research Program (NRP).

The NRP analyzes randomly selected returns to ensure that the DIF scorings are representative of the population of tax returns. The DIF system then uses these (undisclosed) weights to score each tax return based on the tax return's characteristics. Returns with higher DIF scores are then reviewed to determine if an audit is the best course of action.

(6) [LO2] Describe the differences between the three types of audits in terms of their scope and taxpayer type.

The three types of IRS audits consist of correspondence, office, and field examinations. Correspondence examinations are the most common. These audits (as the name suggests) are conducted by mail and generally are limited to one or two items on the taxpayer's return. Among the three types of audits, correspondence audits are generally the narrowest in scope and least complex.

Office examinations are the second most common audit. As the name suggests, the IRS conducts these audits at the local IRS office. These audits are typically broader in scope and more complex than correspondence examinations. Small businesses, taxpayers operating sole proprietorships, and middle to high-income individual taxpayers are likely candidates for office examinations. In these examinations, the taxpayer receives a notice that identifies the items subject to audit, requests substantiation for these items as necessary, and notifies the taxpayer of the date, time, and location of the exam. Taxpayers may attend the examination alone, or simply let their tax adviser or attorney attend on the taxpayer's behalf.

Field examinations are the least common audit. The IRS conducts these audits at the taxpayer's office (i.e., place of business), or the location where the taxpayer's books, records and source documents are maintained. Field examinations are generally the broadest in scope and most complex of the three audit types. They can last many months to multiple years and generally are limited to business returns and the most complex individual returns.

(7) [LO2] Simon just received a 30-day letter from the IRS indicating a proposed assessment. Does he have to pay the additional tax? What are his options?

Simon does not have to pay the additional tax at this time. The 30-day letter

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instructs the taxpayer that they have 30 days (1) to request a conference with an appeals officer, who is independent (resides in a separate IRS division) from the examining agent or (2) to agree to the proposed adjustment. If the taxpayer chooses to go to the appeals conference and reaches an agreement with the IRS at the appeals conference, the taxpayer can then sign the Form 870. If the taxpayer and IRS do not agree on the proposed adjustment at the appeals conference, or the taxpayer chooses not to request an appeals conference, the IRS will then send the taxpayer a 90-day letter (statutory notice of deficiency).

(8) [LO2] Compare and contrast the three trial-level courts.

The U.S. District Court is the only court that provides for a jury trial; the U.S. Tax Court is the only court that allows tax cases to be heard before the taxpayer pays the disputed liability and the only court with a small claims division (hearing claims involving disputed liabilities of $50,000 or less); the U.S. Tax Court judges are tax experts, whereas the U.S. District Court and U.S. Court of Federal Claims judges are generalists. Both the U.S. Tax Court and local U.S. District Court cases appeal to the specific circuit court based on the taxpayer's residence. In contrast, all U.S. Court of Federal Claims cases appeal to the U.S. Circuit Court of Appeals for the Federal Circuit.

(9) [LO3] Compare and contrast the three types of tax law sources and give examples of each.

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The three types of tax law sources include statutory authority issued by Congress (e.g., the Internal Revenue Code, committee reports), judicial authority (i.e., rulings by the U.S. district court, U.S. Tax Court, U.S. Court of Federal Claims, U.S. circuit court of appeals, or U.S. Supreme Court), and administrative authority (e.g., regulations, revenue rulings, and revenue procedures). In addition to being issued by different groups, the format and purposes of each of these authorities are different. Whereas statutory authorities are tax laws enacted by Congress, judicial and administrative authorities generally interpret enacted tax laws.

(10) [LO3] The U.S. Constitution is the highest tax authority but provides very little in the way of tax laws. What are the next highest tax authorities beneath the U.S. Constitution?

The Internal Revenue Code of 1986 and Supreme Court decisions represent the highest tax authority beneath the U.S. Constitution. However, the Supreme Court does not establish law, but instead, simply interprets and applies the Code (and other authorities).

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(11) [LO3] Jackie has just opened her copy of the Code for the first time. She looks at the table of contents and wonders why it is organized the way it is. She questions whether it makes sense to try and understand the Code's organization. What are some reasons why understanding the organization of the Internal Revenue Code may prove useful?

One must understand the organization of a code section (i.e., into subsections, paragraphs, subparagraphs, and clauses) to be able to cite the respective law correctly (e.g., § 162(b)(2)). Many provisions in the Code apply only to specific parts of the Code. If one does not understand what laws are encompassed in the chapter, it would be very difficult to interpret the code section and determine its applicability to a research question. Finally, the Code has been arranged such that, in general, similar code sections are grouped together. Understanding this organization allows the researcher to be much more efficient in locating relevant code sections.

(12) [LO3] Laura Li, a U.S. resident, works for three months this summer in China. What type of tax authority may be especially useful in determining the tax consequences of her foreign income?

The tax treaty between the U.S. and China.

(13) [LO3] What are the basic differences between regulations, revenue rulings, and private letter rulings? TBEXAM.COM

Regulations are the Treasury Department's official interpretation of the Internal Revenue Code and have the highest authoritative weight among regulations, revenue rulings, and private letter rulings. Regulations are issued in three different forms: proposed, temporary, and final. In addition to being issued in three different forms, regulations also serve three basic purposes: interpretative, procedural, and legislative. Unlike regulations, revenue rulings address the specific application of the Code and regulations to a specific factual situation. Thus, while revenue rulings have less authoritative weight, they provide a much more detailed interpretation of the Code as it applies to a specific transaction and fact pattern. Private letter rulings (also known as letter rulings) are less authoritative but more specific than revenue rulings and regulations. Letter rulings generally may not be used as precedent by taxpayers. However, they may be cited as authority to avoid the substantial understatement of tax penalty under § 6662 imposed on taxpayers and related tax practitioner penalty under § 6694. Private letter rulings represent the IRS's application of the Code and other tax authorities to a specific transaction and taxpayer. Private letter rulings are issued in response to a taxpayer request and are common for proposed transactions with potentially large tax implications.

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(14) [LO3] Under what circumstances would the IRS issue an acquiescence? A nonacquiescence? An action on decision?

Except for Supreme Court cases, whenever the IRS loses, it may issue an acquiescence or nonacquiescence as guidance for how the IRS intends to respond to the loss. Although an acquiescence indicates that the IRS has decided to "follow" the court's adverse ruling in the future, it does not mean that the IRS agrees with the court's ruling. Instead, it simply means that the IRS will no longer litigate this issue. A nonacquiescence has the exact opposite implications. A nonacquiescence alerts taxpayers that the IRS plans to continue to litigate this issue. Finally, the IRS also issues actions on decisions, which explain the background reasoning behind an IRS acquiescence or nonacquiescence.

(15) [LO3] Carlos has located a regulation that appears to answer his tax research question. He is concerned because the regulation is a temporary regulation. Evaluate the authoritative weight of this type of regulation. Should he feel more or less confident in his answer if the regulation is a proposed regulation?

Temporary regulations, as the name suggests, have a limited life (three years for regulations issued after November 20, 1988). Nonetheless, during their "life," they carry the same authoritative weight as final regulations. Thus, Carlos should be confident in his answer. Proposed regulations are, as the name suggests, "proposed," and thus do not carry the same authoritative weight as temporary or final regulations. Carlos should feel less confident in his answer if it was based on a proposed regulation.

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(16) [LO3] Tyrone recently read a regulation that Congress specifically requested the IRS to issue. What type of regulation is this? How does this regulation's authoritative weight compare to other regulations?

Legislative regulation. Legislative regulations are rare and are issued when Congress specifically directs the Treasury Department to issue regulations to address an issue in an area of law. In these instances, the Treasury is actually writing the law instead of interpreting the Code. Because legislative regulations actually represent the tax law instead of an interpretation, legislative regulations generally have been viewed to have more authoritative weight than interpretative and procedural regulations. However, in *Mayo Foundation for Medical Education & Research v. U.S.*, 131 S.Ct. 704 (2011), the Supreme Court held (subject to specific conditions) that all Treasury regulations warrant deference.

(17) [LO3] In researching a tax question, you find only one authority (a trial-level court opinion) that is directly on point. Which court would you least prefer to have heard this case, and why?

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The U.S. district court because these decisions are often considered less authoritative and are likely rendered by a district court outside of the taxpayer's jurisdiction (versus the U.S. Tax Court or U.S. Court of Federal Claims which have jurisdiction over all taxpayers regardless of their residence). U.S. district court decisions are often considered to have the lowest authoritative weight because the U.S. district court hears a much broader spectrum of issues compared to the U.S. Tax Court or U.S. Court of Federal Claims. Thus, U.S. district court judges are considered generalists relative to U.S. Tax Court or U.S. Court of Federal Claims judges.

(18) [LO3] What is *stare decisis,* and how does it relate to the *Golsen* rule?

***Stare decisis* means that a court will rule consistently with (a) its previous rulings (i.e., unless they decide to overrule the decision) and (b) the rulings of higher courts with appellate jurisdiction (i.e., the courts their cases are appealed to). The doctrine of *stare decisis* presents a special problem for the tax court because it appeals to different circuits based on the taxpayer's residence. To implement the doctrine of *stare decisis*, the tax court applies the Golsen rule. The Golsen rule simply means that the tax court will abide by the circuit court's rulings that has appellate jurisdiction for a case. The implication of the Golsen rule is that the tax court may issue conflicting opinions in different circuits.**

(19) [LO4] Mason was shocked to learn that the current Code is the Internal Revenue Code of 1986. He thought that U.S. tax laws change more frequently. What is wrong with Mason's perception?

Congress enacts tax legislation virtually every year that changes the Code. 1986 is simply the last major overhaul of the Internal Revenue Code. All enacted changes are incorporated into the Internal Revenue Code of 1986.

(20) [LO4] Describe in general the process by which new tax legislation is enacted.

As required by the US Constitution (Article 1, Section 7), "All Bills for raising Revenue shall originate in the House of Representatives." The Senate may propose tax legislation, but the first to formally consider a bill will be the House, typically within its Ways and Means Committee. After the committee debates the proposed legislation and drafts a bill, the bill is sent to the House of Representatives for debate and ultimately a vote (either yea or nay without modification). If the bill is approved, it becomes an act and is sent to the Senate, which refers the act to the Senate Finance Committee. Not to be outdone by the House, the Senate Finance Committee typically amends the act during its deliberations. After the revised act passes the Senate Finance Committee, the act is sent to the Senate for debate and vote. Unlike the process in the House of Representatives, senators may modify the

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proposed legislation during their debate.

If the Senate passes the act, both the House and Senate versions of the legislation are sent to the Joint Conference Committee, which consists of members of the House Ways and Means Committee and the Senate Finance Committee. During the Joint Conference Committee deliberations, committee members debate the two versions of the proposed legislation. Possible outcomes for any specific provision in the proposed legislation include adoption of the Senate version, House version, or some compromise version of the two acts. Likewise, it is possible that the Joint Conference Committee will simply choose to eliminate specific provisions from the proposed legislation or fail to reach a compromise on the proposed legislation, thereby terminating the legislation. After the Joint Conference Committee approves the act, the revised legislation is sent to the House and Senate for vote. If approved by both the House and Senate, the act is sent to the president for his or her signature. If the president signs the act, it becomes law and is incorporated into the Internal Revenue Code of 1986 (i.e., Title 26 of the U.S. Code, which contains *all* codified laws of the US). If the president vetoes the legislation, Congress may override the veto with a two-thirds positive vote in both the House of Representatives and Senate.

(21) [LO4] What are the three committees that debate proposed tax legislation? What documents do these committees generate, and how might they be used?

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The House Ways and Means Committee, Senate Finance Committee, and Joint Conference Committee each produce a committee report that explains the current tax law, proposed change in the law, and justification for the change. These committee reports are considered "statutory" sources of the tax law and may be very useful in interpreting tax law changes and understanding Congressional intent. This is especially important after new legislation has been enacted because, with the exception of the Code, there will be very little authority interpreting the new law (i.e., no judicial or administrative authorities because of the time it takes for the new law to be litigated or for the IRS to issue interpretative guidance – e.g., regulations, etc.).

(22) [LO4] The president recently vetoed a tax act passed by the House and Senate. Is the tax act dead? If not, what will it take for the act to be passed?

Congress may override the presidential veto with a two-thirds positive vote in the House of Representatives and Senate.

(23) [LO5] What are the five basic parts of an internal research memo?

The memo has five basic parts: (1) facts, (2) issues, (3) authority list, (4) conclusion, and (5) analysis.

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(24) [LO5] What is the difference between primary and secondary authorities? Explain the role of each authority type in conducting tax research.

Primary authorities are official sources of the tax law generated by the legislative branch, judicial branch, or executive/administrative branch. Secondary authorities are unofficial tax authorities that basically interpret and explain the primary authorities. Secondary authorities may be very helpful in understanding a tax issue, but they hold little weight in a tax dispute (hence, the term unofficial tax authorities). Thus, tax advisers should always be careful to verify their understanding of tax law by examining primary authority directly and never cite secondary authority in a tax research memo.

(25) [LO5] Jorge is puzzled that the IRS and his CPA could legitimately reach different conclusions on a tax issue. Why does this happen?

The tax law is not always clear – i.e., the Code does not specifically address the tax consequences of each transaction type or every possible variation of a particular transaction and thus, the application of the tax law is subject to debate and differing interpretations by the IRS, courts, CPAs, taxpayers, etc.

(26) [LO5] What is the difference between open and closed facts? How is this distinction important in conducting tax research?

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Open facts are those that have not yet occurred (e.g., the facts associated with a proposed transaction). Closed facts are those that have already occurred (i.e., facts that have already transpired). The distinction between open and closed facts is important because open facts can be altered, and thus are flexible. Different facts may result in very different tax consequences. Open facts allow the taxpayer to arrange a transaction to achieve the most advantageous outcome.

(27) [LO5] In writing a research memo, what types of facts should be included in the memo?

Discuss facts that are relevant to the question presented – that is, facts that provide necessary background of the transaction and those facts that may influence the research answer (generally who, what, when, where, and how much). The fact discussion should be relatively brief to focus the reader's attention on the relevant characteristics of the transaction.

(28) [LO5] Aminata is a tax expert, whereas Rob is a tax novice. Explain how their process in identifying tax issues may differ.

A tax practitioner's ability to identify issues is largely a function of their tax

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expertise. A tax expert in a particular area will typically be able to identify quickly the specific tax issues that relate to transactions in that area. A novice, on the other hand, would likely identify broader issues first and then more specific issues as they research the relevant tax law.

(29) [LO5] Discuss the basic differences between annotated and topical tax services. How are these services used in tax research?

Annotated tax services are arranged by code section – i.e., for each code section, an annotated service includes the code section, a listing of the code section history, copies of congressional committee reports that explain changes to the code section, a copy of all the regulations issued for the specific code section, the service's unofficial explanation of the code section, and brief summaries (called annotations) of relevant court cases, revenue rulings, revenue procedures, letter rulings, etc. that address issues specific to the code section.

Topical tax services are arranged by topic (e.g., taxable forms of income, tax-exempt income, trade or business expenses, etc.). For each topic, the services identify tax issues that relate to each topic, and then explain and cite (i.e., reference) authorities relevant to the issue (code sections, regulations, court cases, revenue rulings, etc.). Beginning tax researchers often prefer topical services, as they generally are easier to read.

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An expert would probably go directly to the relevant portions of an annotated or topical service. A novice may conduct a keyword search in the service, use the tax service's topical index, or browse the tax service to identify the relevant portions of the service.

(30) [LO5] In constructing a keyword search, what should the keyword search include?

An ideal keyword search typically includes (1) the relevant area of law and (2) a fact or two that describes the transaction.

(31) [LO5] Lindley has become very frustrated in researching a tax issue using keyword searches. What suggestions can you give her?

If keyword searching is not proving beneficial, check your spelling, make sure you are searching the correct database, rethink your keywords, use another research method, use another tax service, or at as a last resort, take a break.

(32) [LO5] Nola, a tax novice, has a fairly simple tax question. Besides tax services, what are some sources that she can use to answer her question?

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Tax publishers, such as CCH and RIA, produce quick reference tax guides (e.g., the CCH Master Tax Guide or the RIA Tax Handbook) that may be used to answer basic tax questions.

(33) [LO5] Armando identifies a tax research question as being a question of fact. What types of authorities should he attempt to locate in his research?

If you are researching a question of fact, it is important for the researcher to understand which facts determine the answer. In this type of question, Armando should focus his efforts understanding how various facts impact the research answer and identifying authorities with fact patterns similar to his client's fact pattern.

(34) [LO5] How are citators used in tax research?

Citators are used to review the history of a case (i.e., was it subsequently appealed and overturned?) and to identify subsequent cases that cite the case (i.e., either favorably, which strengthens the case, or unfavorably, which weakens the case). Citators can also be used to check the status of revenue rulings, revenue procedures, and other IRS pronouncements.

(35) [LO5] What is the general rule for how many authorities a research memo should discuss?

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Enough to provide a clear understanding of the issue and interpretation of the law. It's important to consider authorities that may support and authorities that may go against your desired conclusion to reach an accurate assessment of the strength of your conclusion.

(36) [LO6] Identify some of the sources for tax professional standards. What are the potential ramifications of failing to comply with these standards?

Some examples include: the American Institute of CPAs (AICPA) Code of Professional Conduct, the AICPA Statements on Standards for Tax Services (SSTS), the IRS's Circular 230, and statutes enacted by a CPA's specific State Board of Accountancy. Failure to comply with the standards could result in some rather adverse consequences for the tax professional (e.g., being admonished, suspended, barred from practicing before the IRS, admonished, suspended, or expelled from the AICPA, suspension or revocation of the CPA license, etc.).

Tax practitioners are also legally governed by common law. Issues that may arise include breach of contract (e.g., tax practitioner failing to complete a tax return for a client, client providing tax data timely but tax practitioner filing a return late, tax practitioner filing incomplete or incorrect returns), negligence (e.g., tax practitioner careless actions in filing returns or giving

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tax advice), or fraud (e.g., tax practitioner intentionally committing reckless action in tax return filing or advice). In each case, the client may sue the tax practitioner for compensation for damages incurred and, in some cases, a third party can do so (e.g., intended beneficiary of a trust or estate).

(37) [LO6] Levi is recommending a tax return position to his client. What standard must he meet to satisfy his professional standards? What is the source of this professional standard?

AICPA SSTS No. 1 provides that a tax professional must comply with the standards imposed by the applicable tax authority when recommending a tax return position or preparing or signing a tax return. § 6694 provides these standards for federal tax purposes.

§ 6694 imposes a penalty on a tax practitioner for any position that is not supported by substantial authority. A good tax professional evaluates whether supporting authority is substantial based upon the supporting and opposing authorities' weight and relevance. Substantial authority suggests the probability that the taxpayer's position is sustained upon audit or litigation is in the 35 to 40 percent range or above. The tax practitioner can also avoid penalty under § 6694 if the tax return position has at least a reasonable basis (i.e., supported by one or more authorities) and the position is disclosed on the taxpayer's return.

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Circular 230 imposes the same tax practitioner standards as in IRC § 6694 for when a tax practitioner generally may recommend a tax return position (substantial authority and no disclosure or reasonable basis with disclosure).

(38) [LO6] What is Circular 230?

Circular 230 provides regulations governing tax practice and applies to all persons practicing before the IRS. There are five parts of Circular 230: Subpart A describes who may practice before the IRS (e.g., CPAs, attorneys, enrolled agents) and what practicing before the IRS means (tax return preparation, representing clients before the IRS, etc.). Subpart B describes the duties and restrictions that apply to individuals governed by Circular 230. Included in Subpart B are provisions discussing the submission of records to the IRS, guidelines when a practitioner discovers a tax return error, restrictions on charging contingency fees, prohibition of sharing employment with someone suspended from practicing before the IRS, stringent rules relating to providing advice for tax shelters, and standards for when a practitioner can recommend a tax return position. Subparts C and D explain sanctions and disciplinary proceedings for practitioners violating the Circular 230 provisions. Subpart E concludes with a few miscellaneous provisions (such as the Circular 230 effective date).

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(39) [LO6] What are some of the common law issues that a tax practitioner may face with respect to their duties and how might a tax practitioner avoid these issues?

Issues that may arise include breach of contract (e.g., tax practitioner failing to complete a tax return for a client, client providing tax data timely but tax practitioner filing a return late, tax practitioner filing incomplete or incorrect returns), negligence (e.g., tax practitioner careless actions in filing returns or giving tax advice), or fraud (e.g., tax practitioner intentionally committing reckless action in tax return filing or advice). In each case, the client may sue the tax practitioner for compensation for damages incurred and, in some cases, a third party can do so (e.g., intended beneficiary of a trust or estate). Best advice for a tax practitioner to avoid these issues: use appropriate due care to execute their professional responsibilities in a timely and complete manner.

(40) [LO7] What determines whether someone is considered a tax return preparer?

A tax return preparer is any person or entity who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any tax return or any claim for refund is a preparer. Tax return preparers may be signing or nonsigning preparers. For example, someone who for compensation renders tax advice on a position that is directly relevant to the determination of the existence, characterization, or amount of an entry on a tax return or claim for refund is treated as having prepared that entry, even if they did not sign the tax return. Determining what is a substantial portion of a tax return depends upon the facts and circumstances. Factors considered in determining what is a substantial portion include the size and complexity of an item relative to the taxpayer's gross income, the size of the understatement attributable to the item compared to the taxpayer's reported liability, and whether the tax advisor knows or reasonably should know that the item is a substantial portion of the tax required to be shown on the tax return or refund claim. For nonsigning preparers, the portion of a return prepared is not substantial if, aggregating all schedules, etc., they prepared, the portion that involves gross income, deductions, or amounts on which credits are based that are: (1) less than $10,000, or (2) less than $400,000 and less than 20% of the gross income (AGI, for individuals) as shown on the return.

(41) [LO7] What are the basic differences between civil and criminal tax penalties?

Civil penalties are much more common, generally in the form of monetary penalties, and may be imposed when tax practitioners or taxpayers violate tax statutes without reasonable cause, as the result of negligence or intentional disregard of pertinent rules, or through willful disobedience or outright fraud. Criminal penalties are much less common than civil penalties. They are

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commonly charged in tax evasion cases (i.e., willful intent to defraud the government) but are imposed only after normal due process (i.e., trial). There is a higher standard for conviction in a criminal trial (beyond a reasonable doubt). However, the penalties are also much higher (i.e., fines up to $100,000 for individuals plus a prison sentence).

(42) [LO7] What are some of the most common civil penalties imposed on taxpayers?

Some common examples of civil penalties that apply to taxpayers include: failure to file a tax return (5 percent of tax due per month with a maximum of 25% of net tax due), failure to pay tax owed (0.5 percent of tax due per month with a maximum of 25% of net tax due), failure to make estimated tax payments (rate varies on federal short-term interest rate and underpayment), substantial understatement of tax (20 percent of understatement), underpayment of tax due to transactions lacking economic substance (20 percent of understatement if position is disclosed on the tax return or 40 percent of understatement if position is not disclosed), providing false withholding information ($500), and fraud (75 percent of liability attributable to fraud).

(43) [LO7] What are the taxpayer's standards to avoid the substantial understatement of tax penalty?

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Taxpayers are not subject to penalty (i.e., a substantial understatement of tax penalty) for a disallowed tax return position if there is substantial authority that supports the tax return position. One evaluates whether supporting authority is "substantial" or not based upon the supporting and opposing authorities' weight and relevance. Substantial authority suggests that the probability that the taxpayer's position is sustained upon audit or litigation is in the 35 to 40 percent range or above. The taxpayer can also avoid penalty if the tax return position has a reasonable basis (i.e., supported by one or more tax authorities) and the position is disclosed on the taxpayer's return.

(44) [LO7] What are the tax return preparer's standards to avoid a penalty for recommending a tax return position?

§ 6694 imposes a penalty on a *tax return preparer* for any position that is not supported by substantial authority. A good tax professional evaluates whether supporting authority is substantial based upon the supporting and opposing authorities' weight and relevance. Substantial authority suggests the probability that the taxpayer's position is sustained upon audit or litigation is in the 35 to 40 percent range or above. The tax return preparer can also avoid penalty under § 6694 if the tax return position has at least a reasonable basis (i.e., supported by one or more tax authorities) and the position is disclosed on the taxpayer's return.

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Problems

(45) [LO1] Ahmed does not have enough cash on hand to pay his taxes. He was excited to hear that he can request an extension to file his tax return. Does this solve his problem? What are the ramifications if he doesn't pay his tax liability by April 15?

Extensions allow the taxpayer to delay filing a tax return but *do not* extend the due date for tax payments. If a taxpayer fails to pay the entire balance of tax owed by the original due date of the tax return, the IRS charges the taxpayer interest on the underpayment from the due date of the return until the taxpayer pays the tax. The interest rate charged depends on taxpayer type (e.g., individual vs. corporation) and varies quarterly with the federal short-term interest rate. The interest rate for tax underpayments for individuals equals the federal short-term rate plus three percentage points.

(46) [LO1] Molto Stancha Corporation had zero earnings this fiscal year; in fact, it lost money. Must the corporation file a tax return?

Yes, all corporations are required to file an income tax return regardless of their taxable income.

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(47) [LO1] The estate of Monique Chablis earned $450 of income this year. Is the estate required to file an income tax return?

No, because the estate's gross income is less than $600, the estate is not required to file an income tax return.

(48) [LO1] Jamarcus, a full-time student, earned $2,500 this year from a summer job. He had no other income this year and will have zero federal income tax liability this year. His employer withheld $300 of federal income tax from his summer pay. Is Jamarcus required to file a tax return? Should Jamarcus file a tax return?

Jamarcus is not required to file an income tax return because his gross income of $2,500 is well below the gross income threshold for a single taxpayer ($12,950 for 2022). However, he should file a tax return to receive a refund of the $300 previously withheld.

(49) [LO1] Shane has never filed a tax return despite earning excessive sums of money as a gambler. When does the statute of limitations expire for the years in which Shane has not filed a tax return?

The statute of limitations remains open indefinitely for years in which the taxpayer fails to file a return.

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(50) [LO1] Latoya filed her tax return on February 10th this year. When will the statute of limitations expire for this tax return?

The statute of limitations generally ends three years from the *later* of (i) the date the tax return was actually filed (3 years from February 10th of this year) or (ii) the tax return's original due date (3 years from April 15th of this year). Accordingly, Latoya's statute of limitations for the tax return will end 3 years from April 15th.

(51) [LO1] Using the facts from the previous problem, how would your answer change if Latoya understated her income by 40 percent? How would your answer change if Latoya intentionally failed to report as taxable income any cash payments she received from her clients?

A six-year statute of limitations applies to IRS assessments if the taxpayer omits items of gross income that exceed 25 percent of the gross income reported on the tax return. Thus, Latoya's statute of limitations would end 6 years from April 15th if she understated her income by 40 percent.

The statute of limitations remains open indefinitely for fraudulent returns (e.g., if Latoya intentionally fails to report cash payments received as income).

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(52) [LO2] Paula could not reach an agreement with the IRS at her appeals conference and has just received a 90-day letter. If she wants to litigate the issue but does not have sufficient cash to pay the proposed deficiency, what is her best court choice?

The U.S. Tax Court, the only court that allows tax cases to be heard before the taxpayer pays the disputed liability.

(53) [LO2] In choosing a trial-level court, how should a court's previous rulings influence the choice? How should circuit court rulings influence the taxpayer's choice of a trial-level court?

It is relatively common for the trial courts (i.e., the U.S. Tax Court, local U.S. district court, or the U.S. Court of Federal Claims) to interpret and rule differently on the same basic tax issue. Given a choice of courts, the taxpayer should prefer the court that is most likely to rule favorably on his or her particular issues. The taxpayer also has the ability to determine which circuit court (i.e., the circuit court based on her residence or the circuit court for the Federal Circuit) would hear her case through the initial selection of a trial court (i.e., U.S. district court, U.S. Tax Court, or U.S. Court of Federal Claims). Given that alternative circuit courts may interpret the law differently, a taxpayer should consider the relevant circuit courts judicial

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history to determine which circuit court (and thus, which trial court) would be more likely to rule favorably for the taxpayer.

(54) [LO2] Sophia recently won a tax case litigated in the 7th Circuit. She recently heard that the Supreme Court denied the *writ of certiorari*. Should she be happy or not, and why?

The denial of the *writ of certiorari* means that the Supreme Court has decided not to hear Sophia's case. Thus, Sophia should be happy as 7th Circuit's ruling will not be reversed by the Supreme Court.

(55) [LO2] Campbell's tax return was audited because they failed to report on their tax return interest they earned. What IRS audit selection method identified their tax return?

Information matching. This program compares the taxpayer's tax return to information submitted to the IRS from other taxpayers (banks, employers, mutual funds, brokerage companies, mortgage companies, etc.). Information matched includes items such as wages (Form W-2 submitted by employers), interest income (Form 1099-INT submitted by banks), dividend income (Form 1099-DIV submitted by brokerage companies), etc.

(56) [LO2] Yong's tax return was audited because he calculated his tax liability incorrectly. What IRS audit procedure identified his tax return for audit?

All returns are checked for mathematical and tax calculation errors. This process is referred to as the document perfection program.

(57) [LO2] Randy deducted a high level of itemized deductions two years ago relative to his income level. He recently received an IRS notice requesting documentation for his itemized deductions. What audit procedure likely identified his tax return for audit?

The Discriminant Function System (DIF system). The IRS likely selected Randy's return for audit because his high level of itemized deductions relative to his income resulted in a high DIF score.

(58) [LO2] {Planning} Jackie has a corporate client that has recently received a 30-day notice from the IRS with a $100,000 tax assessment. Her client is considering requesting an appeals conference to contest the assessment. What factors should Jackie advise her client to consider before requesting an appeals conference?

An appeals officer would consider the merits of the unresolved issues as well as the "hazards of litigation" – that is, the probability that the IRS will lose if the case is brought to court and the resulting costs of a taxpayer-favorable

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ruling. Thus, the appeals officer has a bit more latitude to settle cases than examining agents. Because the appeals division is independent, it may be possible for the taxpayer to receive a more favorable resolution as the appeals officer has less emotionally invested in the audit. On the downside, the appeals officer may raise new issues, and thus, increase the taxpayer's tax exposure. In addition, the longer the dispute continues without resolution, the more interest will accrue on the assessment.

(59) [LO2] {Planning} The IRS recently completed an audit of Shea's tax return and assessed $15,000 additional tax. Shea requested an appeals conference but was unable to settle the case at the conference. She is contemplating which trial court to choose to hear her case. Provide a recommendation based on the following alternative facts.

a. Shea resides in the 2d Circuit, and the 2d Circuit has recently ruled against the position Shea is litigating.

Shea should choose the U.S. Court of Federal Claims to move the case to the Federal Circuit jurisdiction instead of the 2nd Circuit.

b. The Federal Circuit Court of Appeals has recently ruled in favor of Shea's position.

Shea should choose the Federal Circuit jurisdiction, and thus litigate in the U.S. Court of Federal Claims.

c. The issue being litigated involves a question of fact. Shea has a very appealing story to tell but little favorable case law to support her position.

Shea may benefit from a jury trial. Thus, her only option would be the U.S. district court.

d. The issue being litigated is highly technical, and Shea believes strongly in her interpretation of the law.

Shea would benefit from having her case heard by tax experts. Thus, she should litigate in the U.S. Tax Court.

e. Shea is a local elected official and would prefer to minimize any local publicity regarding the case.

Local publicity is likely to be highest in a U.S. district court. Thus, Shea should consider the U.S. Tax Court or the U.S. Court of Federal Claims.

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(60) [LO3] Juanita, a Texas resident (5th Circuit), is researching a tax question and finds a 5th Circuit case ruling that is favorable and a 9th Circuit case that is unfavorable. Which circuit case has more "authoritative weight" and why? How would your answer change if Juanita were a Kentucky resident (6th Circuit)?

The 5th Circuit case has more authoritative weight because Juanita lives in the 5th Circuit. If Juanita lived in the 6th Circuit, the 5th and 9th Circuit cases would have equal weight. Juanita should be careful to analyze both cases to understand the underlying reasoning for the different opinions.

(61) [LO3] Faith, a resident of Florida (11th Circuit), recently found a circuit court case that is favorable to her research question. Which two circuits would she prefer to have issued the opinion?

She would prefer the circuits that would potentially hear her case to have issued the opinion (i.e., the 11th Circuit or the Federal Circuit).

(62) [LO3] Robert has found a "favorable" authority directly on point for his tax question. If the authority is a court case, which court would he prefer to have issued the opinion? Which court would he least prefer to have issued the opinion?

Given the favorable ruling, Robert should prefer the United States Supreme Court (i.e., the highest authority) to have issued the opinion. He would least prefer a U.S. district court in a jurisdiction other than his district as this court would have the least authoritative weight and would not have jurisdiction for Robert's case if litigated.

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(63) [LO3] Jamareo has found a "favorable" authority directly on point for his tax question. If the authority is an administrative authority, which specific type of authority would he prefer to answer his question? Which administrative authority would he least prefer to answer his question?

Jamareo should prefer that the authority be a Treasury Department regulation, as this is the highest administrative authority. Private letter rulings are generally considered the least administrative authority; thus, Jamareo would least prefer this type of authority.

(64) [LO3] For each of the following citations, identify the type of authority (statutory, administrative, or judicial) and explain the citation.

a. Reg. § 1.111-1(b)

Administrative. Type of regulation (1 = income tax), code section 111, regulation number 1, paragraph b.

b. § 469(c)(7)(B)(i)

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Statutory. Internal Revenue Code, Section 469, subsection c, paragraph 7, subparagraph B, clause i.

c. Rev. Rul. 82-204, 1982-2 C.B. 192

Administrative. Internal Revenue Service ruling number 82-204 (204th ruling of 1982), volume of cumulative bulletin 1982-2, page number 192.

d. *Amdahl Corp*., 108 TC 507 (1997)

Judicial. Volume 108 of the Tax Court reporter, page 507, year 1997.

e. PLR 9727004

Administrative. Internal Revenue Service, Private Letter Ruling, Year 1997, week number 27 (27th week of 1997), ruling number 004 (4th ruling of the week).

f. *Hills v. Comm'r*, 50 AFTR 2d 82-6070 (11th Cir., 1982)

Judicial. 50th volume of RIA AFTR2d court reporter, paragraph 82, circuit 11th, year 1982.

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(65) [LO3] For each of the following citations, identify the type of authority (statutory, administrative, or judicial) and explain the citation.

a. § 280A(c)(5)

Statutory. Internal Revenue Code, Section 280A, subsection c, paragraph 5

b. Rev. Proc. 2004-34, 2004-1 C.B. 911

Administrative. Internal Revenue Service, Revenue Procedure number 2004-34 (34th procedure of 2004), volume of cumulative bulletin 2004-1, page number 911.

c. *Lakewood Associates*, RIA TC Memo 95-3566.

Judicial. Paragraph number 95-3566 of the RIA Tax Court Memorandum reporter.

d. TAM 200427004

Administrative. Internal Revenue Service, Technical Advice Memorandum, Year 2004, week number 27 (27th week of 2004), ruling

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number 004 (4th ruling of the week).

e. *United States. v. Muncy*, 2008-2 USTC par. 50,449 (E.D Ark., 2008)

Judicial. 2008-2 volume of the CCH court reporter, paragraph 50,449, Eastern District (E.D.), state Arkansas, year 2008.

(66) [LO4] Justine would like to clarify her understanding of a code section recently enacted by Congress. What tax law sources are available to assist Justine?

The House Ways and Means Committee, Senate Finance Committee, and Joint Conference Committee each produce a committee report that explains the current tax law, proposed change in the law, and justification for the change. These committee reports are considered statutory sources of the tax law and may be very useful in interpreting tax law changes and understanding Congressional intent. This is especially important after new legislation has been enacted because, with the exception of the Code, there will be very little authority interpreting the new law (i.e., no judicial or administrative authorities because of the time it takes for the new law to be litigated or for the IRS to issue interpretative guidance – e.g., regulations, etc.).

(67) [LO5] Aldina has identified conflicting authorities that address her research question. How should she evaluate these authorities to make a conclusion?

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The tax researcher should evaluate the hierarchy, jurisdiction, and age of the authority, placing more weight on higher and newer authorities that have jurisdiction over the taxpayer.

(68) [LO5] Georgette has identified a 1983 court case that appears to answer her research question. What must she do to determine if the case still represents "current" law?

Georgette should check the court case's history in the citator. The citator can be used to review the history of the case to find out, for example, whether it was subsequently appealed and overturned and to identify subsequent cases that cite the case. Favorable citations strengthen a case, while unfavorable citations weaken the case.

(69) [LO5] Sandy has determined that her research question depends upon the interpretation of the phrase "not compensated by insurance." What type of research question is this?

This is a question of law – i.e., the answer hinges upon the interpretation of a particular phrase in a code section.

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(70) [LO5] {Research} J.C. has been a professional gambler for many years. They love this line of work and believe the income is tax-free.

a. Use an available tax research service to determine whether J.C.'s thinking is correct. Is the answer to this question found in the Internal Revenue Code? If not, what type of authority answers this question?

b. Write a memo communicating the results of your research.

J.C. is incorrect. It is well established that gambling income is taxable as gross income. This issue is not specifically addressed in the code. Instead, see the following court cases that address this issue. Slavin, Arthur, (1941) 43 BTA 1100, McKenna, James, (1925) 1 BTA 326. Ellery, E., (1944) 4 TC 407 (1944).

(71) [LO5] {Research} Katie recently won a ceramic dalmatian valued at $800 on a television game show. She questions whether this prize is taxable because it was a "gift" she won on the show.

a. Use an available tax research service to answer Katie's question.

b. Write a letter to Katie communicating the results of your research.

§ 74(a) provides that gross income includes amounts received as prizes and awards. § 74 provides some exceptions to the general rule, but Katie will not satisfy any of these exceptions.

(72) [LO5] {Research} Pierre recently received a tax penalty for failing to file a tax return. He was upset to receive the penalty, but he was comforted by the thought that he will get a tax deduction for paying the penalty.

a. Use an available tax research service to determine if Pierre is correct.

b. Write a memo communicating the results of your research.

§ 162(f) states that no deduction is allowed for any penalty paid to a government for the violation of any law. Reg. § 1.162-21 further clarifies that penalties include civil penalties imposed by Federal, State, or local law, including additions to tax.

(73) [LO5] {Research} Paris was happy to provide a contribution to her friend Nicole's campaign for mayor, especially after she learned that charitable contributions are tax deductible.

a. Use an available tax service to determine whether Paris can deduct this contribution.

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b. Write a memo communicating the results of your research.

It is well established that political contributions are not deductible – either under § 162 as trade or business expenses or under § 170 as charitable contributions.

(74) [LO5] {Research} Janelle and Lori were divorced in 2016. Pursuant to the divorce decree, Janelle receives $10,000 of alimony each month. Use an available tax service to determine if the alimony Janelle receives is taxable. Would your answer change if Janelle and Lori still live together?

For divorce decree or separation agreements executed on December 31, 2018 or before, § 71(a) specifically states that alimony is included in gross income (i.e., it is taxable). If Janelle and Lori continue to live together, the $10,000 would not meet the definition of alimony under § 71(b)(1)(C), and thus, would not be taxable.

(75) [LO5] {Research} Omar is a huge college football fan. In the past, he has always bought football tickets on the street from ticket scalpers. This year, he decided to join the university's ticket program, which requires a $2,000 contribution to the university for the "right" to purchase tickets. Omar will then pay $400 per season ticket. Omar understands that the price paid for the season tickets is not tax deductible as a charitable contribution. However, contributions to a university are typically tax deductible.

a. Use an available tax service to determine how much, if any, of Omar's $2,000 contribution for the right to purchase tickets is tax deductible.

b. Write a letter to Omar communicating the results of your research.

§ 170(l) provides that no deduction is allowed for the amount contributed to the University for the right to purchase tickets; the contribution is not tax deductible.

(76) [LO5] {Research} Latrell recently used his Delta Skymiles to purchase a free round-trip ticket to Milan, Italy (value $1,200). The frequent flyer miles used to purchase the ticket were generated from Latrell's business travel as a CPA. Latrell's employer paid for his business trips, and he was not taxed on the travel reimbursement.

a. Use an available tax research service to determine how much income, if any, Latrell will have to recognize as a result of purchasing an airline ticket with Skymiles earned from business travel.

b. Write a memo communicating the results of your research.

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IRS Announcement 2002-18 states that frequent flier miles earned for business travel and redeemed for in-kind benefits (e.g., a free airline ticket) do not represent taxable income. This ruling only applies to in-kind benefits and not frequent flier miles converted to cash. Since Latrell used his frequent flier miles to purchase an airline ticket, he will have no taxable income from the transaction.

(77) [LO5] {Research} Benjamin, a self-employed bookkeeper, takes a CPA review course ($3,000 cost) to help prepare for the CPA exam.

a. Use an available tax research service to determine if Benjamin may deduct the cost of the CPA exam course.

b. Write a memo communicating the results of your research.

Benjamin cannot deduct the cost of the CPA review course because passing the exam qualifies Benjamin for a new trade or business. See Rev. Rul. 69-292, 1969-1 CB 84 and *William D. Glenn*, 62 TC 270 (1974).

(78) [LO6] Randy has found conflicting authorities that address a research question for one of his clients. The majority of the authorities provide an unfavorable answer for his client. According to Randy's estimates, if the client takes the more favorable position on its tax return, then there is approximately a 48 percent chance that the position will be sustained upon audit or judicial proceeding. If the client takes this position on its tax return, will Randy be subject to penalty? Will the client potentially be subject to penalty?

A tax preparer (Randy) may recommend a tax return position and avoid penalty if the position is supported by substantial authority. A good tax professional evaluates whether supporting authority is substantial based upon the supporting and opposing authorities' weight and relevance. Substantial authority suggests the probability that the taxpayer's position is sustained upon audit or litigation is in the 35 to 40 percent range or above. The tax practitioner can also avoid penalty under § 6694 if the tax return position has at least a reasonable basis (i.e., supported by one or more tax authorities) and the position is disclosed on the taxpayer's return. Because Randy estimates that there is a 48 percent chance that the position will be sustained, the taxpayer does not have to disclose the tax return position on the tax return for Randy to avoid penalty.

Similar tax return standards apply to taxpayers. Specifically, a taxpayer will also not be subject to an underpayment penalty if there is substantial authority that supports the tax return position or if the tax return position has a reasonable basis and the position is disclosed on the taxpayer's return. Thus, based on the stated facts, Randy's client would also not have to disclose

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the position on its tax return to avoid penalty.

(79) [LO6] Using the same facts from the previous problem, how would your answer change if Randy estimates that there is only a 20 percent chance that the position will be sustained upon audit or judicial proceeding?

To avoid both taxpayer and tax preparer penalties, the position must be disclosed on the tax return. Unlike the previous problem, the 20 percent likelihood of success does not meet the substantial authority standard. Thus, disclosure is required to avoid the taxpayer and tax preparer penalties.

(80) [LO7] Sasha owes additional tax imposed in a recent audit. In addition to the tax, will they be assessed other amounts? If so, how will these amounts be determined?

Sasha will owe interest on the assessed tax. The IRS charges the taxpayer interest on the underpayment from the due date of the return until the taxpayer pays the tax. The interest rate for tax underpayments for individuals equals the federal short-term rate plus three percentage points.

(81) [LO7] Maurice has a client that recently asked him about the odds of the IRS detecting cash transactions not reported on a tax return. What are some of the issues that Maurice should discuss with his client?

Maurice should discuss the severe negative consequences of committing tax fraud (civil and criminal penalties) as well as his own professional standards. If Maurice suspects that his client is not fully reporting his income, he should carefully consider terminating the client relationship.

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