South-Western Federal Taxation 2016 Essentials of Taxation Individuals and Business Entities 19th edition Raabe Solutions Manual

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CHAPTER 2

WORKING WITH THE TAX LAW

SOLUTIONS TO PROBLEM MATERIALS

PROBLEMS

1. (LO 1) See Exhibit 2.4.

   a. The Tax Court must follow its own cases, the pertinent U.S. Circuit Court of Appeals, and the Supreme Court.

   b. The Court of Federal Claims must follow its own decisions, the Federal Circuit Court of Appeals, and the Supreme Court.

   c. The District Court must follow its own decisions, the pertinent U.S. Circuit Court of Appeals, and the Supreme Court.

2. (LO 1, 3)

Smith, Raabe, Maloney, & Young, CPAs
5191 Natorp Boulevard
Mason, OH 45040

March 25, 2015

Mr. Butch Bishop
Tile, Inc.
100 International Drive
Tampa, Florida 33620

Dear Mr. Bishop:

This letter is in response to your request about information concerning a conflict between a U.S. treaty with Spain and a section of the Internal Revenue Code. The major reason for treaties between the United States and certain foreign countries is to eliminate double taxation and to render mutual assistance in tax enforcement.

Section 7852(d) provides that if a U.S. treaty is in conflict with a provision in the Code, neither will take general precedence. Rather, the more recent of the two will have precedence. In your case, the Spanish treaty takes precedence over the Code section.

A taxpayer must disclose on the tax return any positions where a treaty overrides a tax law. There is a $1,000 penalty per failure to disclose for individuals and a $10,000 penalty per failure for corporations.

Should you need more information, feel free to contact me.

Sincerely,

Alice Hanks, CPA
Tax Partner

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3. (LO 1)

a. Treasury Regulations are issued by the U.S. Treasury Department, while Revenue Rulings are issued by the National Office of the IRS. Both Regulations and Revenue Rulings are designed to provide an interpretation of the tax law. However, Rulings do not have the same legal force and effect as do Regulations. Usually, Rulings deal with more restricted problems. Rulings "are published to provide precedents to be used in the disposition of other cases and may be cited and relied upon for that purpose." See Rev.Proc. 86–15, 1986–1 CB 544.

b. Revenue Procedures are issued in the same manner as are Revenue Rulings, but Procedures deal with the internal management practices and requirements of the IRS. Familiarity with these Procedures can increase taxpayer compliance and assist the efficient administration of the tax law by the IRS.

c. Letter rulings are issued upon a request. They describe how the IRS will treat a proposed transaction. Unlike Revenue Rulings, letter rulings apply only to the taxpayer who applies for and obtains the ruling, and generally, "may not be used or cited as precedent" [§ 6110(k)(3)]. Letter rulings, used to be "private" (i.e., the content of the ruling was made available only to the taxpayer that requested the ruling). However, Federal legislation and the courts have forced the IRS to modify its position on the confidentiality of letter rulings. Such rulings now are published by a number of commercial tax services.

d. Like letter rulings, determination letters are issued at the request of taxpayers. They provide guidance concerning the application of the tax law. They differ from letter rulings in that the issuing source is the taxpayer's own District Director rather than the National Office of the IRS. In addition, determination letters usually involve completed (as opposed to proposed) transactions. Determination letters are not published, but are made known only to the party making the request.

4. (LO 1, 2) The items would probably be ranked as follows (from lowest to highest):

(1) Letter ruling (valid only to the taxpayer to whom issued).

(2) Proposed Regulation (most courts ignore these).

(3) Revenue Ruling.

(4) Interpretive Regulation.

(5) Legislative Regulation.

(6) Internal Revenue Code.

5. (LO 1)

a. This is a Temporary Regulation; 1 refers to the type of Regulation (i.e., income tax), 956 is the related Code section number, 2 is the Regulation section number, and T refers to temporary.

b. Revenue Ruling number 15, appearing on page 975 of the 23rd weekly issue of the *Internal Revenue Bulletin* for 2012.

c. Letter Ruling 51, issued in the 4th week of 2002.

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6. (LO 1) The main advantage of the U.S. Court of Federal Claims occurs when a taxpayer's applicable Circuit Court previously rendered an adverse decision. Such a taxpayer may select the U.S. Court of Federal Claims because any appeal will be to the Federal Circuit.

   One disadvantage of the U.S. Court of Federal Claims is that the tentative deficiency must be paid before the Court will hear and decide the controversy.

   The U.S. Court of Federal Claims is a trial court that usually meets in Washington, D.C. It has jurisdiction for any claim against the United States that is based on the Constitution, any Act of Congress, or any Regulation of an executive department.

7. (LO 1, 3)

   Raabe, Maloney, Young, Smith, & Nellen, CPAs
   5191 Natorp Boulevard
   Mason, OH 45040

   July 8, 2015

   Mr. Eddy Falls
   200 Mesa Drive
   Tucson, AZ 85714

   Dear Mr. Falls:

   You have three alternatives should you decide to pursue your $229,030 deficiency in the court system. One alternative is the U.S. Tax Court, the most popular forum. Some people believe that the Tax Court judges have more expertise in tax matters. The main advantage is that the U.S. Tax Court is the only trial court where the tax need not be paid prior to litigating the controversy. However, interest will be due on an unpaid deficiency. The interest rate varies from one quarter to the next as announced by the IRS.

   One disadvantage of the U.S. Tax Court is the delay that might result before a case is decided. The length of delay depends on the Court calendar, which includes a schedule of locations where cases will be tried. Another disadvantage is being unable to have the case heard before a jury.

   The major advantage of another alternative, the U.S. District Court, is the availability of a trial by jury. One disadvantage of a U.S. District Court is that the tentative tax deficiency must be paid before the Court will hear and decide the controversy.

   The Court of Federal Claims, the third alternative, is a trial court that usually meets in Washington, D.C. It has jurisdiction for any claim against the United States that is based on the Constitution, any Act of Congress, or any regulation of an executive department. The main advantage of the U.S. Court of Federal Claims occurs when a taxpayer's applicable Circuit Court previously rendered an adverse decision. Such a taxpayer may select the Court of Federal Claims because any appeal will be to the Federal Circuit instead. One disadvantage of the Court of Federal Claims is that the tentative deficiency must be paid before the Court will hear and decide the controversy.

   I hope this information is helpful, and should you need more help, please contact me.

   Sincerely,

   Agnes Reynolds, CPA
   Tax Partner

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8. (LO 1) See Exhibit 2.4, Exhibit 2.5, and Concept Summary 2.1.

   a. There is no appeal by either the taxpayer or the IRS from a decision of the Small Cases Division of the U.S. Tax Court.

   b. The first appeal would be to the Sixth Circuit Court of Appeals. Further appeal would be to the U.S. Supreme Court.

   c. Same as b. above.

   d. The appeal would be to the Federal Circuit Court of Appeals and then to the U.S. Supreme Court.

9. (LO 1) See Concept Summary 2.1.

	U.S. Tax Court	U.S. District Court	U.S. Court of Federal Claims
a. Number of regular judges	19	Varies; one judge hears a case	16
b. Jury trial	No	Yes	No
c. Prepayment of deficiency required before trial	No	Yes	Yes

10. (LO 1) See Exhibit 2.5.

   a. 10th.

   b. 8th.

   c. 9th.

   d. 5th.

   e. 7th.

11. (LO 1) The term *petitioner* is a synonym for plaintiff, which refers to the party requesting action in a court.

12. (LO 1, 2)

   a. If the taxpayer chooses a U.S. District Court as the trial court for litigation, the U.S. District Court of Wyoming will be the forum to hear the case. Unless the prior decision has been reversed on appeal, one would expect the same court to follow its earlier holding.

   b. If the taxpayer chooses the U.S. Court of Federal Claims as the trial court for litigation, the decision that was rendered previously by this Court should have a direct bearing on the outcome. If the taxpayer selects a different trial court (i.e., the appropriate U.S. District Court or the U.S. Tax Court), the decision that was rendered by the U.S. Court of Federal Claims will be persuasive but not controlling. It is, of course, assumed that the result that was reached by the U.S. Court of Federal Claims was not reversed on appeal.

   c. The decision of a U.S. Circuit Court of Appeals will carry more weight than will one that was rendered by a trial court. Because the taxpayer lives in California, however, any appeal from

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a U.S. District Court or the U.S. Tax Court will go to the Ninth Circuit Court of Appeals (see Exhibit 2.4). Although the Ninth Circuit Court of Appeals might be influenced by what the Second Circuit Court of Appeals has decided, it is not compelled to follow such holding. See Exhibit 2.5.

d. Because the U.S. Supreme Court is the highest appellate court, one can place complete reliance upon its decisions. Nevertheless, one should investigate any decision to see whether the Code has been modified with respect to the result that was reached. There also exists the rare possibility that the Court may have changed its position in a later decision. See Exhibit 2.4.

e. When the IRS acquiesces to a decision of the U.S. Tax Court, it agrees with the result that was reached. As long as such acquiescence remains in effect, taxpayers can be assured that this represents the position of the IRS on the issue that was involved. Keep in mind, however, that the IRS can change its mind and can, at any time, withdraw the acquiescence and substitute a nonacquiescence.

f. The issuance of a nonacquiescence usually reflects that the IRS does not agree with the result that was reached by the U.S. Tax Court. Consequently, taxpayers are placed on notice that the IRS will continue to challenge the issue that was involved.

13. (LO 1) The differences between a Regular decision, a Memorandum decision, and a Summary Opinion of the U.S. Tax Court are summarized as follows:

- In terms of substance, Memorandum decisions deal with situations that require only the application of previously established principles of law. Regular decisions involve novel issues that have not been resolved by the Court. In actual practice, however, this distinction is not always observed.
- Memorandum decisions officially were published until 1999 in mimeograph form only, but Regular decisions are published by the U.S. Government in a series that is designated as the *Tax Court of the United States Reports*. Memorandum decisions are now published on the Tax Court website. Both Regular and Memorandum decisions are published by various commercial tax services (e.g., CCH and RIA).
- A Summary Opinion is a Small Cases Division case involving amounts of $50,000 or less. They are not precedents for any other court decisions and are not reviewable by any higher court. Proceedings are timelier and less expensive than a Memorandum or Regular decision. Small cases decisions are published as Summary Opinion, found commercially and on the U.S. Tax Court website.

14. (LO 1)

a. CA–2. An abbreviation that designates the U.S. Second Circuit Court of Appeals.

b. Fed.Cl. An abbreviation for the Federal Claims Reporter published by West Publishing Company. It includes the decisions of the U.S. Court of Federal Claims and begins with Volume 27.

c. *aff'd*. An abbreviation for "affirmed," which indicates that a lower court decision was affirmed (approved of) on appeal.

d. *rev'd*. An abbreviation for "reversed," which indicates that a lower court decision was reversed (disapproved of) on appeal.

e. *rem'd*. An abbreviation for "remanded," which indicates that a lower court decision is being sent back by a higher court for further consideration.

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f. *Cert. denied*. The Writ of Certiorari has been denied by the U.S. Supreme Court. This Writ means that the Court will not accept an appeal from a lower court and, therefore, will not consider the case further.

g. *acq*. An abbreviation for "acquiescence" (agreement). The IRS follows a policy of either acquiescing or nonacquiescing to certain decisions.

h. B.T.A. An abbreviation for the Board of Tax Appeals. From 1924 to 1942, the U.S. Tax Court was designated as the Board of Tax Appeals.

i. USTC. U.S. District Court, U.S. Circuit Court of Appeals, U.S. Court of Federal Claims, and U.S. Supreme Court decisions that address Federal tax matters are reported in the Commerce Clearing House U.S. Tax Cases (USTC) and the RIA (formerly P-H) American Federal Tax Reports (AFTR) series.

j. AFTR. See the solution to part i. above.

k. F.3d. All of the decisions (both tax and nontax) of the U.S. Claims Court (before October 1982) and the U.S. Circuit Court of Appeals are published by West Publishing Company in a reporter that is designated as the Federal Reporter, Second Series (F.2d). Volume 999, published in 1993, is the last volume of the Federal Second Series. It is followed by the Federal Third Series (F.3d).

l. F.Supp. Most Federal District Court decisions, dealing with both tax and nontax issues, are published by West Publishing Company in its Federal Supplement Series (F.Supp.).

m. USSC. An abbreviation for the U.S. Supreme Court.

n. S.Ct. West Publishing Company publishes all of the U.S. Supreme Court decisions in its Supreme Court Reporter (S.Ct.).

o. D.Ct. An abbreviation for a U.S. District Court decision.

15. (LO 2)

a. Ninth Circuit Court of Appeals.

b. U.S. Tax Court.

c. U.S. Supreme Court.

d. Bureau of Tax Appeal (old name of U.S. Tax Court).

e. Tax Court (memorandum decision).

f. Court of Claims.

g. Not a court decision.

h. District Court in New York.

i. Not a court decision.

16. (LO 2)

a. This citation is to a regular decision of the U.S. Tax Court that was issued in 1950. The decision can be found in Volume 14, page 74, of the *Tax Court of the United States Report*, published by the U.S. Government Printing Office.

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b. This citation is for a decision of the U.S. Fifth Circuit Court of Appeals that was rendered in 1979. The decision can be found in Volume 592, page 1251, of the *Federal Reporter*, Second Series (F. 2d), published by West Publishing Company.

c. This citation is for a decision of the U.S. Sixth Circuit Court of Appeals that was rendered in 1995. The decision can be found in Volume 1 for 1995, paragraph 50,104 of *U.S. Tax Cases*, published by Commerce Clearing House.

d. This citation is for a decision of the U.S. Sixth Circuit Court of Appeals that was rendered in 1995. The decision can be found in Volume 75, page 110, of the *Second Series of American Federal Tax Reports*, published by RIA.

e. This citation is for a decision of the U.S. District Court of Texas that was rendered in 1963. The decision can be found in Volume 223, page 663, of the *Federal Supplement Series*, published by West Publishing Company.

17. (LO 2)

a. Yes. Exhibit 2.3

b. No. Not published there.

c. No. Published by private publishers. Exhibit 2.3

d. Yes. Exhibit 2.3

e. Yes. Exhibit 2.3

f. No.

g. Yes. Exhibit 2.3

h. No.

18. (LO 2)

a. The U.S. Tax Court.

b. Yes, the appellate court affirmed, or agreed with, the trial court.

c. United Draperies, Inc., the taxpayer.

d. Yes, in effect, by issuing cert. denied to the appellate court decision (refusing to hear the decision).

19. (LO 2, 4) After understanding the relevant facts:

- Yvonne may begin with the index volumes of the available tax services: RIA, CCH, BNA Portfolios, etc.
- A key word search on an online service could be helpful—WESTLAW, LEXIS, CCH, and Thomson Reuters Checkpoint.
- Yvonne may employ a key word search of a CD-ROM and browse through a tax service, IRS publications, etc. West Publishing, CCH, Kleinrock, and RIA offer CD-ROM products.

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- Yvonne could consult CCH's Federal Tax Articles to locate current appropriate articles written about child support payments. RIA's Tax Service also has a topical "Index to Tax Articles" section that is organized using the RIA paragraph index system.
- Yvonne may consult The Accounting & Tax Index, which is available in three quarterly issues and a cumulative year-end volume covering all four quarters.
- Up-to-date information may be found on the Web. Various legal, accounting, and financial gateways can be found by clicking on highlighted words or phrases.

20. (LO 1, 2)

a. Tom has some false notions. He must sue in the U.S. District Court of his locality and not in any other U.S. District Court.

b. Tom has four choices of courts with respect to his Federal tax question, and a state court is not one of the choices. He may go to the U.S. Tax Court, Small Cases Division of the U.S. Tax Court, U.S. District Court, or U.S. Court of Federal Claims.

c. The B.T.A. decision is an old U.S. Tax Court decision that may have little validity today. Even if the decision still is good law, it probably will have little impact upon a U.S. District Court and certainly no impact upon a state court.

d. The U.S. Court of Federal Claims is a trial court that usually meets in Washington, D.C., and Tom cannot appeal from a U.S. District Court to the U.S. Court of Federal Claims. Any appeal from his U.S. District Court would be to the Sixth Circuit Court of Appeals (and not to the Second).

e. Few tax decisions reach the U.S. Supreme Court. The U.S. Supreme Court must agree to hear a court case.

21. (LO 1)

a. T.

b. C (before October 1982) and A.

c. D, C, A, and U.

d. D, C, A, and U.

e. U.

f. C and U.

g. D.

h. D, T, and C.

i. A and U.

j. C.

k. T.

l. T.

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22. (LO 1, 2)
    a. N, a cite for an IRS Revenue Ruling.
    b. T, U.S. Tax Court.
    c. A, U.S. Circuit Court of Appeals.
    d. U, U.S. Supreme Court.
    e. T, U.S. Tax Court (previous name of the Tax Court).
    f. D, U.S. District Court.
    g. T, U.S. Tax Court.
    h. N, a cite for a Letter Ruling.
    i. T, U.S. Tax Court's Small Cases Division decision.

23. (LO 1, 2)
    a. P.
    b. P.
    c. P.
    d. S.
    e. P.
    f. S.
    g. P. Valid for three years.
    h. P.
    i. N.
    j P.

24. (LO 1)
    b. p. 2-5

25. (LO 1, 2)
    b. Exhibit 2.3

26. (LO 1, 2) The number 66 is the volume number for the U.S. Tax Court, 39 refers to the page number of the 562nd volume of the *Federal Second Series*, and *nonacq*. means that the IRS disagreed with the decision. The Tax Court (T.C.) cite is to the trial court.

27. (LO 1) There is no automatic right of appeal to the U.S. Supreme Court. Appeal is by Writ of Certiorari. If the Court agrees to hear the dispute, it will grant the Writ (*Cert. granted*). Most often, the highest court will deny jurisdiction (*Cert. denied*).

28. (LO 2) Tax research serves two major functions: (a) alerting the tax advisor to planning opportunities and documentation requirements that can reduce a taxpayer's liability through alternative means of structuring a transaction; and (b) determining the correct treatment of completed transactions to ensure accurate compliance with U.S. tax laws. A professional approach to client service, therefore, demands thorough tax research as part of the job. Attention to the requirements of our country's tax

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laws is also mandated by the canons of professional ethics and the regulations applicable to professional tax preparers. Although some clients might prefer a head-in-the-sand approach to tax compliance, the range of potential penalties and interest charges make knowledge of the likely tax treatment of a particular transaction imperative.

The low IRS audit rate, moreover, does not justify playing the "audit lottery." Besides, this low rate masks much higher audit rates for certain categories of taxpayers and certain types of income—including returns prepared by persons known by the IRS to be negligent or unduly aggressive.

29. (LO 1, 4) The Internet Activity research problems require that the student access various sites on the Internet. Thus, each student's solution likely will vary from that of the others.

You should determine the skill and experience levels of the students before making the assignment, coaching them where necessary so as to broaden the scope of the exercise to the entire available electronic world.

Make certain that you encourage students to explore all parts of the World Wide Web in this process, including the key tax sites, but also information found through the websites of newspapers, magazines, businesses, tax professionals, government agencies, political outlets, and so on. They should work with Internet resources other than the Web as well, including newsgroups and other interest-oriented lists.

Build interaction into the exercise wherever possible, asking the student to send and receive e-mail in a professional and responsible manner.

30. (LO 2, 3)

a. Section 61(a)(13): Gross income of a taxpayer includes distributive share of partnership gross income.

b. Section 643(a)(2): Distributable net income of a trust or estate is computed without allowing a deduction for a personal exemption.

c. Section 2503(g)(2)(A): The term "qualified work of art" means any archaeological, historic, or creative tangible personal property.

BRIDGE DISCIPLINE PROBLEMS

1. a. There is a correspondence between the sources of the Federal tax law and the three branches of the law as described in the U.S. Constitution. Congress is the legislative branch, Treasury and the IRS are the executive branch, and the courts are the judicial branch.

But the IRS likely is more aggressive than most other federal agencies, despite its current "customer service" orientation. And there are few federal courts in which the taxpayer's chances of prevailing are so low as they are in tax litigation.

And one seldom sees elsewhere the power of the congressional committees assigned to shepherd tax proposals to a vote.

Remembering the quote of von Bismarck, the making of tax law is a creature unto itself, unparalleled elsewhere in the federal system today.

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b. The high costs of tax litigation, and the low probabilities of success once a taxpayer reaches the court, diminish the checks-and-balances feature of the federal tax system. Very few taxpayer pockets are "deep enough" to pursue a regular strategy of litigation to find the correct computation of one's tax liability. Thus, the government holds an important advantage over the taxpayer in working through the adversarial system that comprises today's federal tax structure.

At least there are plenty of opportunities for the taxpayer to reach an agreeable settlement with the government. The path through IRS appeals has a number of intermediate stops at which the parties can measure the strength of each other's position and negotiate a settlement in computing the tax due. Perhaps this is the trade-off at hand: Negotiated settlements save all parties time and money, even though they are not mentioned in the Constitution or the Revenue Code.

2. Solution will vary by student.

3. Solution will vary by student.

4. There is nothing illegal or immoral about minimizing one's tax liability. A citizen has every legal right to arrange his or her affairs so as to keep the attendant taxes as low as possible. One is required to pay no more taxes than the law demands. There is no ethical difference between a tax advisor's reduction of a tax expense and a cost accountant's reduction of a cost of operating a business.

RESEARCH PROBLEMS

1. a. In this Tax Court Memorandum decision, the court upheld the IRS's methods of income reconstruction and imposed a civil fraud penalty.

b. In this letter ruling, a proposed merger between members of an affiliated group qualified for tax-free reorganization treatment under § 355.

c. The IRS issued a nonaquiescence to *Algerine Smith Estate,* 198 F.2d 515 (CA–5, 1999).

2. a. Code § 708(a) provides that an existing partnership shall be considered as continuing if it is not terminated.

b. Code § 1371(a) provides that, with exceptions, Subchapter C shall apply to S corporations and its shareholders.

c. Code § 2503(a) provides that the term ''taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided in Subchapter C.

3. a. Regulation § 1.170A–4(A)(b)(2)(ii)(C) provides that the care of the ill means alleviation or cure of an existing illness and includes care of the physical, mental, or emotional needs of the ill.

b. Regulation § 1.672(b)–1 defines a nonadverse party as any person who is not an adverse party.

c. Regulation § 20.2031–7(f) provides several tables for valuation of annuities, life estates, terms for years, and remainders.

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4. A subtitle of the Internal Revenue Code should contain tax provisions related to a well-defined area of tax law. Subtitle E encompasses §§5001–5891 and contains tax law provisions related to excise taxes (e.g., alcohol, tobacco, firearms). Note that although other IRC sections may not address these excise taxes specifically, they are indirectly addressed in various other code sections. For example, § 164 addresses the deductibility of taxes and § 56 addresses taxes deductible for alternative minimum tax purposes.

5. a. *Higgens v. Comm*., 312 U.S. 212 (1941).

   b. *Talen v. U.S*., 355 F.Supp.2d 22 (D.Ct. D.C., D.D.C., 2004).

   c. Rev.Rul. 2008–18, 2008–13 I.R.B. 674.

   d. *Pahl v. Comm*., 150 F.3d 1124 (CA–9, 1998).

   e. *Veterinary Surgical Consultants PC*, 117 T.C. 141 (2001).

   f. *Yeagle Drywall Co*., T.C. Memo. 2001–284.

6. Using the citation, find the case in RIA *Checkpoint* or find the case on the U.S. Tax Court website (www.ustaxcourt.gov), under "Opinions Search" tab.

   The issue in *Green* concerns the deductibility of commuting expenses. The taxpayer, Thomas Green, was a television executive whose office, his primary place of work, was in Manhattan. However, Mr. Green claimed that the den in his Long Island home was also a place of business because he worked there in the evenings. As a result, Mr. Green deducted the commuting costs he incurred driving between his home and his clients' offices, on the way to his Manhattan office. The Tax Court concluded that these costs were nondeductible commuting expenses.

   Mr. Green used an IRS publication (Publication 17, *Your Federal Income Tax*) to support the conclusion that his expenses were deductible commuting expenses. However, IRS publications are not primary sources of tax law on which research conclusions should be based. This was confirmed by the Tax Court. In the opinion, the judge said that even if the sentence taken out of context from the publication could support Mr. Green's conclusion, "…the sources of authoritative law in the tax field are the statute and regulations, and not informal publications such as Your Federal Income Tax."

7. IRC § 7463(b) states that a decision entered into by any small case decision "shall not be reviewed in any other court and shall not be treated as precedent for any other case."

   In the reviewed opinion *Larry Mitchell* 131 T.C. 215 (2008), the court held that an ex-wife's share of military retirement payments is subject to tax. This same issue had been litigated previously by the taxpayer in *Mitchell*, T.C. Summ. 2004–160.

   In the past, the Tax Court has used collateral estoppel in small tax case decisions to stop (estop) a party from litigating the same issue in a regular Tax Court case. As a result, this reviewed decision seems to contradict their stance. Judge Holmes stated that this Tax Court decision means "that they are without effect on future litigation at all."

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8. In the Tax Court case Kathryn Bernal:

   a. Docket number 930-02.

   b. Filed on February 20, 2003.

   c. Respondent is David Jojola for the IRS.

   d. Kathryn Bernal, the taxpayer, acted as her own attorney (e.g., pro se).

   e. This case was assigned to and written by the Chief Trial Judge Peter J. Panuthos.

   f. The court granted respondent's (IRS) motion to dismiss for lack of jurisdiction. Taxpayer mailed her petition beyond the 3-year available time period.

9. Section 152(f)(3) allows the IRS to disallow a dependency deduction where a relationship is in violation of local law:

   ''An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law." S.Rep. No. 1983, 85th Cong., 2d Sess. Indicates that it was the intention of Congress to preclude any dependency deduction for the partner of a taxpayer when the two are living in a quasimarital relationship, which is illicit under the laws of the state in which they reside.

   John T. Untermann, 38 T.C. 93 (1962) holds that marital allowances are available only if the man and woman taxpayers are legally married under the laws of the state in which they reside. In a more recent decision [*Cassius L. Peacock,* III, 37 TCM 177, T.C. Memo. 1978–30] involving the interpretation of Arizona law, the exemption was denied on the same grounds.

   The couple might consider moving to another state to salvage the deduction in future years. If a state has no criminal sanctions for sexual activity between consenting adults (e.g., California), the dependency exemption would be allowable. See, for example, In *Re Shackelford v. U.S.* [80–1 USTC ¶ 9276, 45 AFTR2d 80–1074 (D.Ct. Mo., 1980)] where the court interpreted Missouri law so as to permit an unmarried female to claim a dependency exemption for a male who was living with her and had no source of income. See Chapter 16 for a general discussion of personal and dependency exemptions.

Research Problems 10 to 12

The Internet Activity research problems require that students utilize online resources to research and answer the questions. As a result, solutions may vary among students and courses. You should determine the skill and experience levels of the students before assigning these problems, coaching where necessary. Encourage students to explore all parts of the Web in this research process, including tax research databases, as well as the websites of the IRS, newspapers, magazines, businesses, tax professionals, other government agencies, and political outlets. Students should also work with resources such as blogs, Twitter feeds, and other interest-oriented technologies to research their answers.

10. To find the case, go to the website and click on the US Tax Court link on the left side of the page. Enter the name Mark Spitz in the search bar.

    a. The tax years are 2001 and 2002, as indicated in the first sentence of the case, not 2006, the year in the citation, which is the year the case was decided.

    b. As noted above, 2006.

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c. The court decided in favor of the IRS.
d. At the end of the decision, the penalty in Sec. 6662 is discussed. This section imposes a 20% accuracy-related penalty on any portion of a tax liability underpayment (the situation in which Mr. Spitz found himself) attributable to a substantial understatement of income tax. Mr. Spitz was found not liable for the penalty because the court indicated that he was unsophisticated in tax law and had relied on a competent adviser to prepare his return.

11. See the Internet Activity comment above.

12. See the Internet Activity comment above.

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