Tax Research: Understanding Sources of Tax Law
(Why my IRC beats your Rev Proc!)

Understanding Federal Statutes and Legislation

Federal statutes provide the foundation of the tax system in the United States. Statutory authorities include the Constitution of the United States and the Internal Revenue Code, as well as individual laws passed by Congress and signed into law by the President.

U.S. Constitution

The U.S. Constitution, which went into effect in 1789, is the supreme law in the United States. The Constitution gives Congress the power to levy taxes.

The Constitution consists of 7 Articles and 27 Amendments. The table below highlights important Constitutional provisions for tax law research purposes.

Provisions in the U.S. Constitution Related to Taxes		
Location	Popular Name	Tax-Related Provision
Art. I, Sec. 8, Clause 1	General Welfare Clause	Authorizes Congress to impose and collect taxes.
Art. I, Sec. 2, Clause 3 16th Amendment	Three-Fifths Clause Income Tax Amendment	Requires direct taxes to be apportioned according to population. (The U.S. Supreme Court held that federal income tax is a direct tax.) Allows income taxation without apportionment and specifically provides that Congress has the power to collect taxes on income from whatever source derived.
Art. I, Sec. 7, Clause 1	Origination Clause	Requires that tax revenue bills originate in the House of Representatives.
Art. I, Sec. 10, Clause 2	Import/Export Clause	Prohibits state duties on imports and exports without the consent of Congress.
Art. I, Sec. 8, Clause 3	Commerce Clause	Prohibits state taxation that burdens interstate or foreign commerce.
5th and 14th Amendments	Due Process Clause; Equal Protection Clause	Establishes limits on federal and state taxing authority - prohibits deprivation of property without due process; guarantees equal protection of the law.

Internal Revenue Code

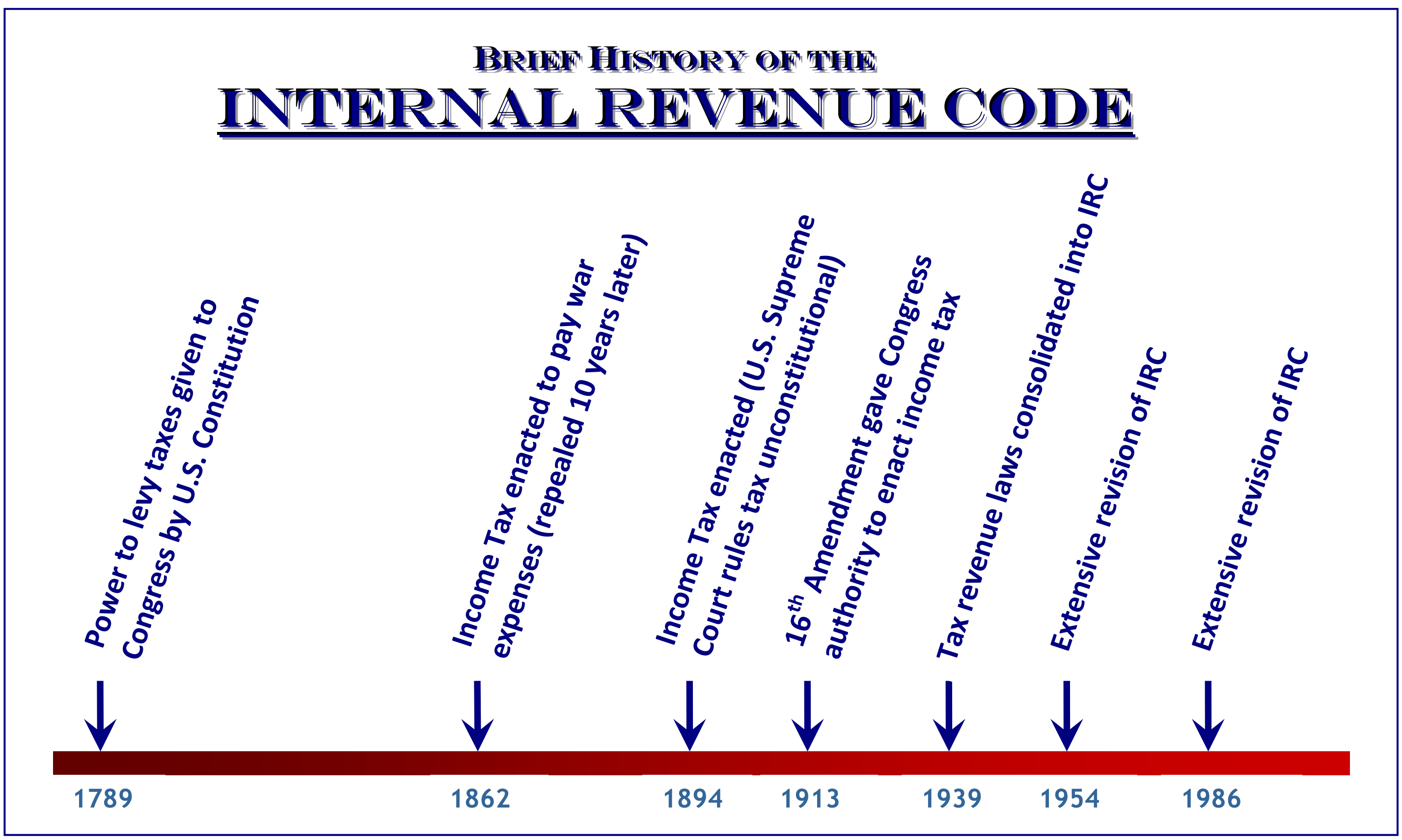
Under the U.S. Constitution, Congress has the power to enact tax laws as the framework for the federal tax system. Under the federal system, laws related to the same subject are "codified"—structured as a cohesive law that governs a particular subject. The consolidated codified law in the US is known as the United States Code or USC for short. There are 51 titles that make up the United States Code. Title 26 of the USC covers tax laws and is known as the Internal Revenue Code. It is cited as "26 USC" or simply by its name, the Internal Revenue Code or IRC.

The IRC provides the foundation of all federal tax authority in the United States and is the ultimate authority when researching federal tax law issues. The IRC is interpreted by Treasury regulations, cases that interpret the laws, and IRS rulings.

The IRC is supplemented by individual laws passed by Congress and signed into law by the President (or enacted by Congress by a 2/3rd vote to override a Presidential veto). These individual laws are all assigned a Public Law number (P.L.) and published in the Statutes at Large. These individual laws amend the IRC, but include extra information such as effective dates, transitional rules, and special rules that are not formally included in the codified IRC. These extraneous rules are often referred to as noncode provisions.

History

The timeline below provides a brief history of federal income taxation and development of the IRC in the United States.



The U.S. Constitution gave Congress the power to levy taxes. According to the Constitution as originally adopted, direct taxes must be apportioned according to population. In 1862, Congress enacted an income tax to pay war expenses; this tax was repealed 10 years later. In 1894, Congress revived the income tax. The following year, however, the Supreme Court ruled that the income tax was a direct tax and was unconstitutional because it was not apportioned according to population. In 1913, the 16th Amendment to the U.S. Constitution gave Congress the power to lay and collect taxes on income without apportionment among the states. Thus, the 16th Amendment is the authority upon which the modern taxing structure rests.

In 1939, all of the laws relating to tax revenue were consolidated and codified into a single unified source. The Internal Revenue Code of 1939 was the first codified version of the tax code. The IRC has grown steadily since that time. Congress usually modifies the IRC several times a year, often with major changes. In 1954, Congress completely overhauled the organization and numbering scheme of the Internal Revenue Code, and to avoid confusion with the earlier version was retitled as the "Internal Revenue Code of 1954." In 1986, the Tax Reform Act of 1986 made such substantial substantive changes to the IRC, that Congress renamed it as the "Internal Revenue Code of 1986." The 1986 Act, however, did not renumber or topically reorganize the IRC. The IRC in effect today, is still formally titled the Internal Revenue Code of 1986, although thousands of amendments have been made to it since 1986.

Scope and Organization

The IRC covers income, estate and gift, employment and excise taxes. Procedure and administration are also covered. The IRC does not include all federal tax statutes. For example, there are tax laws found in USC Title 11 (bankruptcy) and Title 28 (judiciary). Other federal statutes that are not contained in the Internal Revenue Code, such as effective date provisions or sunset provisions, provide additional tax laws that must be followed.

The IRC is organized by topic into subtitles and sections.

UNITED STATES CODE
Title 26—Internal Revenue Code
- Subtitle A—Income Taxes
  - Chapter 1—Normal Taxes and Surtaxes
    - Subchapter A. Determination of Tax Liability
      - Part I—Tax on Individuals
        - Sec. 1. Tax imposed

Tax laws in the IRC are generally referred to by section number. Federal income tax on individuals, trusts and estates is imposed by IRC §1. Corporate income tax is imposed by IRC §11.

Within a section of the IRC, there are further divisions into subsections, paragraphs, subparagraphs, clauses and subclauses, as demarked below.

[Section] SEC. 23. ADOPTION EXPENSES.

[Subsection] (a) ALLOWANCE OF CREDIT.—

[Paragraph] **(1) IN GENERAL.—** In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer.

[Paragraph] **(2) YEAR CREDIT ALLOWED.—** The credit under paragraph (1) with respect to any expense shall be allowed—

[Subparagraph] **(A)** in the case of any expense paid or incurred before the taxable year in which such adoption becomes final, for the taxable year following the taxable year during which such expense is paid or incurred, and

[Subparagraph] **(B)** in the case of an expense paid or incurred during or after the taxable year in which such adoption becomes final, for the taxable year in which such expense is paid or incurred.

[Paragraph] **(3) $10,000 CREDIT FOR ADOPTION OF CHILD WITH SPECIAL NEEDS REGARDLESS OF EXPENSES.—** In the case of an adoption of a child with special needs which becomes final during a taxable year, the taxpayer shall be treated as having paid during such year qualified adoption expenses with respect to such adoption in an amount equal to the excess (if any) of $10,000 over the aggregate qualified adoption expenses actually paid or incurred by the taxpayer with respect to such adoption during such taxable year and all prior taxable years.

[Subsection] (b) LIMITATIONS.—

[Paragraph] **(1) DOLLAR LIMITATION.—** The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed $10,000.

[Paragraph] **(2) INCOME LIMITATION.—**

[Subparagraph] **(A) IN GENERAL.—** The amount allowable as a credit under subsection (a) for any taxable year (determined without regard to subsection (c)) shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as—

[Clause] **(i)** the amount (if any) by which the taxpayer's adjusted gross income exceeds $150,000, bears to

[Clause] **(ii)** $40,000.

[Subparagraph] **(B) DETERMINATION OF ADJUSTED GROSS INCOME.—** For purposes of subparagraph (A), adjusted gross income shall be determined without regard to sections 911, 931, and 933.

Internal Revenue Service (IRS)

The IRS, a bureau of the Department of the Treasury, is the nation's tax collection agency. The IRS is headquartered in Washington, D.C., and is under the direction of the Commissioner of Internal Revenue, who is appointed by the President of the United States. IRS responsibilities include tax collection, enforcement of the IRC, and providing guidance on the implementation of the tax laws. There are IRS service centers around the country which process tax returns.

Legislative Process

The Internal Revenue Code is a living document due to frequently enacted tax legislation. Through the legislative process, Congress is constantly tinkering and changing the law. Proposed legislation is called a "bill." If both the House and Senate pass the same bill, it is sent to the President of the United States. When the President signs the bill, it then becomes law. If the President vetoes a bill, it can still become law if two thirds of each of the House and Senate vote to override the veto.

Under the U.S. Constitution, Congress has power to impose and collect federal taxes to raise revenue. The President of the United States can recommend changes to current tax laws, but only Congress can make the changes. Congress is divided into two chambers—the House of Representatives and the Senate. Both chambers must approve identical legislation in order for it to be enacted into law.

The Constitution requires all revenue-raising bills to originate in the House of Representatives. Thus, most tax bills originate in the House, although there are exceptions to this rule.

Once introduced, a tax bill is numbered. In the House, bills are referred to as H.R. [number]. In the Senate, bills are referred to as S. [number]. All bills are referred to a committee. With tax legislation, a bill is referred to the appropriate committee--House Ways and Means Committee or the Senate Finance Committee.

The committee may hold hearings and may amend the tax bill. Sometimes, the committee issues a report with explanations explaining the changes the bill is proposing to make. There may also be "committee prints," documents that researchers often find helpful (e.g., committee rules, drafts of bills or committee reports). Once a tax bill is reported out of committee by a favorable vote of the committee, the bill is sent to the appropriate House or Senate floor for a vote. (If the committee does not act on the bill, the bill stagnates.)

If the tax bill is passed by the full House of Representatives, the bill is then sent to the Senate (or visa versa). After the passage of a bill in one chamber, the other chamber may make subsequent changes to the proposed legislation. This happens quite often, and Congress finds that it has legislation that has been passed by both the House and the Senate, but the legislative language of each is not identical.

In this case, a Joint Conference Committee may be appointed. The Conference Committee, containing delegates from both the House and Senate, will draft compromise legislative language to ensure that the tax bill is acceptable to both chambers. The Joint Committee may issue a Committee Report explaining the updated bill. These committee reports usually detail whether they followed the House version, the Senate version or some compromise version for any given issue contained in the bill.

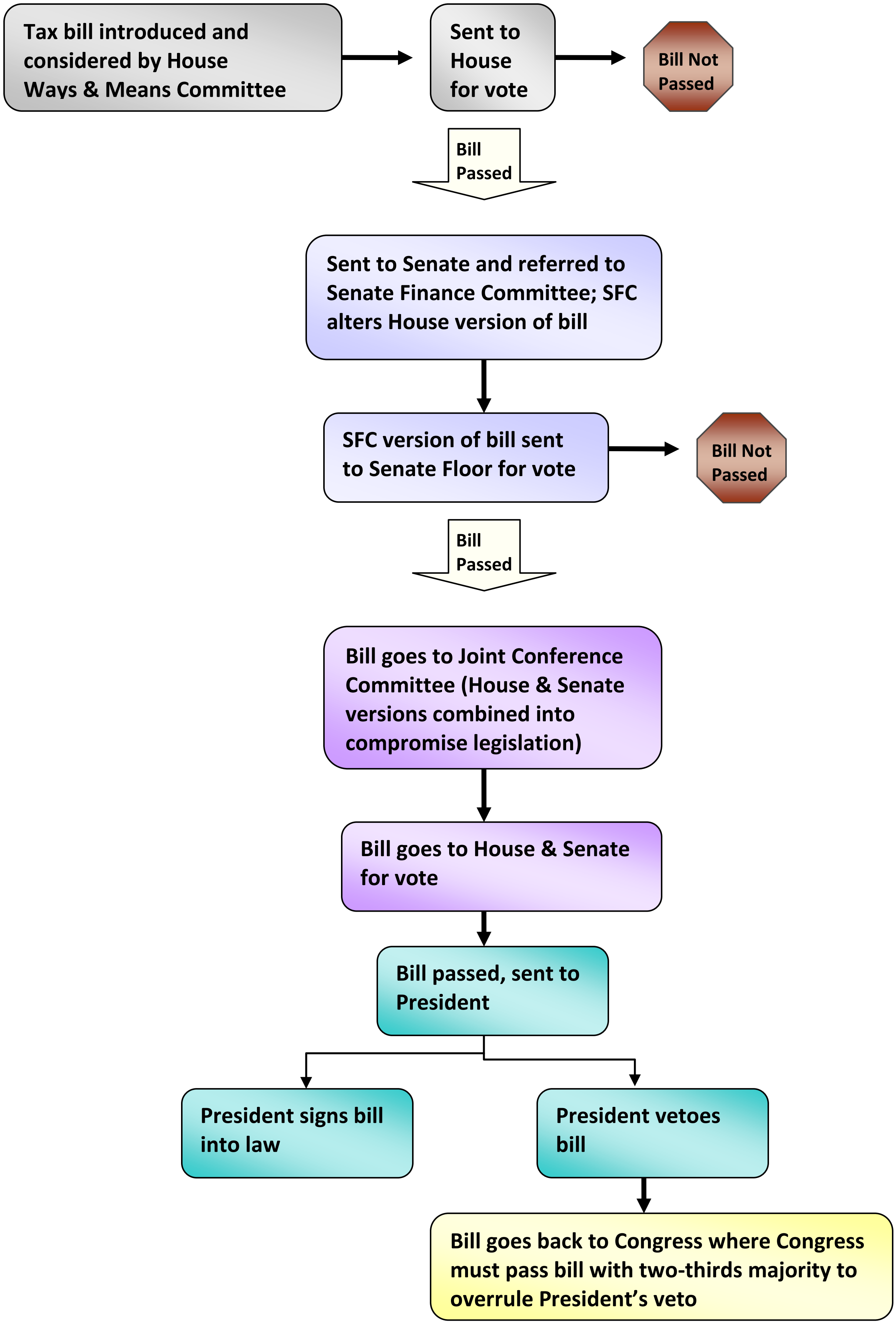
Following this process, the Joint Conference Committee version of the bill is sent back to both the full House and Senate for a vote. Once the tax bill is passed by the House and Senate, it is sent to the President of the United States. Under the U.S. Constitution, the President has ten days to sign the bill into law or veto the bill. If the President vetoes the bill, the bill may still become law if Congress votes by two-thirds of the membership to override the Presidential veto. If Congress is in session and the President takes no action, the bill becomes law without the President's signature after ten days. If Congress adjourns and the President takes no affirmative action within ten days, the bill is considered vetoed (known as a "pocket veto").

There are several versions of a tax bill as it works its way through Congress. The table below provides brief descriptions of common versions of bills.

Common Versions of Bills	
As introduced	Version of a bill formally presented by a member of Congress to a bill clerk when Congress is in session.
As reported	Version of a bill as reported by the committee to which it was referred, including any changes made in committee, often accompanied by a committee report. The bill is then available for consideration by the full House or Senate.
Engrossed version	Official copy of the bill as passed by one full chamber, including any floor amendments.
Companion bill	A bill introduced in one chamber that is similar or identical to a bill introduced in the other chamber.
Enrolled bill	Official copy of the bill passed in identical form by both the House and the Senate and sent to the President for signature.

The following flowchart is one scenario of how a bill might move through the process to become a law.

How a Tax Bill Becomes a Law*



* There are many possible paths for a tax bill to become a law. This flowchart illustrates a common path.

Legislative History

"Legislative history" refers to documents produced during the creation of legislation. When there are questions about the meaning or application of a tax law, researchers may review legislative history to gain insight into what Congress intended when passing the law.

Congressional Committee Reports

Committee reports accompany federal legislation and provide insight into what Congress intended when passing a particular law. Committee Reports may also provide guidance when the regulations for an IRC section have not yet been issued.

Under the Constitution, all bills for raising revenue must originate in the House of Representatives. In the House, the Ways and Means Committee is responsible for considering all tax legislation. The Senate Finance Committee is responsible for considering tax legislation in the Senate. The House and Senate committees may issue reports after a tax bill is considered.

The committee report details the progress of the bill in the committee. Committee reports usually include the following:

- The purpose and scope of the bill.
- The committee's reasoning for supporting the bill, including its findings and recommendations.
- A cost or revenue estimate.
- A listing of any changes to current laws.

Joint House-Senate Conference Committees resolve differences between House and Senate-passed versions of a bill. The Conference Committee may issue a report that includes the legislative language that the conference committee has agreed on, as well as a joint explanatory statement, which explains the agreement and addresses the issues that led to the creation of the conference committee.

Committee reports are identified by the following information: number of Congress and session, chamber (House or Senate), report number, bill number being reported on, committee, title and date.

In recent years, this formal path has rarely been followed by Congress on tax legislation. Often there are no formal Committee Reports, but the Joint Committee on Taxation (JCT) will issue a report that has the same look and feel as a formal committee report from Congress. In some cases, Congress actually “adopts” the JCT report as their own. In absence of a formal committee report, researchers often use these JCT reports.

Floor Debates and Amendments

After committee approval, a bill is available for consideration by the full chamber. The bill is debated and can be altered through amendments on the floor of the House or Senate. (Floor amendments cannot be made to bills approved by Conference Committees.) The "Congressional Record" is the official record of congressional debates and proceedings. Remarks made by the committee chairperson or key sponsor of the bill carry more authority than remarks of other members.

Joint Committee on Taxation

The Joint Committee on Taxation (JCT) is a committee under the United States Congress established by the Revenue Act of 1926. The Committee is comprised of 10 tax leaders in the House and Senate, and is supported by a number of economists, accountants and attorneys.

The Joint Committee Staff is very involved with the tax legislative process, including:

- Assisting Congressional tax-writing committees and Members of Congress with development and analysis of legislative proposals;
- Preparing official revenue estimates of all tax legislation considered by the Congress;
- Drafting legislative histories for tax-related bills; and
- Investigating various aspects of the Federal tax system.

At the end of each Congressional session, the JCT prepares an explanation of significant tax legislation. Each JCT report, commonly known as the "Blue Book," summarizes the tax legislation enacted during the year and provides Congressional insights and analysis. Although Blue Books are issued after tax laws are enacted and are not considered part of legislative history, Blue Books are useful guides in understanding legislative intent and meaning of new tax laws.

Legislative History Hierarchy

The most authoritative documents of legislative history are the reports of the congressional committees that considered the tax bill and recommended its enactment. Committee reports explain proposed federal legislation and are written by the legislators who most closely evaluated the tax bill.

Text of earlier or alternative versions of a bill may also be useful for tax research. For example, researchers may compare the language of a tax bill at an early stage to the language of the final tax law. There are several versions of a bill, and inclusion or exclusion of language in the enacted tax law provides insight into legislative intent.

Other documents that are part of legislative history generally have lower value. Researchers may gain some insight into legislative intent from floor debates, statements or testimony at committee hearings, committee prints, and presidential signing statements.

Documents generated after tax laws are enacted, such as the JCT Blue Books, are not part of the legislative history. Post-enactment reports are generally considered to be less persuasive than legislative history. However, such reports do provide valuable information on the meaning and application of new tax laws.

General Hierarchy of Legislative History Documents

Congressional Committee Reports / Conference Reports

Text of earlier or alternative versions of a bill

Floor Debates

Statements or testimony at Committee Hearings

Committee Prints

Presidential Signing Statements