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

Federal Tax Law Hierarchy

Tax research can be daunting in the best of circumstances. Seasoned tax professionals have long mastered the intricacies of tax research and the diverse document types that make up the massive collection of sources that must be navigated. For new tax professionals, however, navigating the morass of legal authority, kinds of documents, and sheer volume of documents can be overwhelming. To be a successful tax researcher requires a basic understanding of the sources of tax law as well as how those individual sources relate to each other. This “Tax Research: Understanding Sources of Tax Law” series is designed to help the new tax researcher navigate the complicated tax research landscape.

As with any form of research, some sources of content are more authoritative than other sources. In doing tax research, the goal is to find what the law dictates about a particular issue. The Internal Revenue Code is, therefore, the primary and ultimate authority for federal tax research. If the answer is clearly stated in the statute, it is still important to check for any further developments, such as regulations or judicial decisions that interpret the law and apply that law to a given set of facts. In addition, given the frequency of changes to laws and regulations, it is important to be aware of any proposed modifications to the statute or related regulations.

In going beyond statutes for tax information, it is important to keep in mind the relative authority of the source of the tax information. Some important sources are not authoritative at all, offering only guidance. Still, guidance can be very important to a tax research project where the authoritative sources do not directly address the question.

Primary and Secondary Sources

Generally, primary sources of federal law are documents issued by a branch of the federal government or by a federal agency. When providing support for a position, primary sources carry more weight of authority than secondary sources.
With respect to federal tax law, primary sources that carry a high weight of authority include the following:

- Internal Revenue Code
- Other non-codified Federal tax statutes
- Final and temporary regulations
- Judicial decisions on tax matters
- Revenue Rulings
- Revenue Procedures
- Other published IRS positions (e.g., Notices and Announcements)

Primary sources that provide guidance but should not be cited as legal authority include the following:

- Proposed regulations (unless they are specifically earmarked as “reliance regulations”)
- Legislative history (e.g., Committee Reports)
- IRS Letter Rulings (may be relied on by recipient of ruling)
  - Private Letter Ruling
  - Determination Letter
  - Technical Advice Memorandum
  - Chief Counsel Advice
- IRS internal documents made available to the public
  - Internal Revenue Manual
  - Audit Technique Guides
  - Actions on Decisions
- Taxpayer assistance
  - IRS Publications
  - Federal tax forms and form instructions
  - IRS Frequently Asked Questions and Answers

Secondary sources are publications written by legal analysts, scholars and other tax professionals. There are numerous secondary sources available, including the following:

- Tax law reporters published by commercial tax research services
- Treatises
- Articles in legal periodicals
- Textbooks
- Newsletters

Commercial services, such as IntelliConnect®, are heavily used in tax practice because they are comprehensive, updated frequently and explain the rules in plain English. When beginning federal tax research, starting with a commercial service can save time because the research materials provide an overview of a particular tax topic, along with summaries of and links to full text of primary sources.
Federal Tax Law Rules of Precedence

This section provides a general overview of the hierarchy of authority for federal tax documents. The relative importance of sources of federal tax law is outlined below, beginning with the highest authority.

U.S. Constitution
The U.S. Constitution is the supreme law in the United States and gives Congress the power to impose and collect taxes. Under the U.S. Constitution, Congress has the power to enact tax laws as the framework for the federal tax system.

Federal Tax Statutes
The Internal Revenue Code (IRC) provides the foundation of all federal tax authority in the United States and is the ultimate authority when conducting federal tax research. The IRC is interpreted by Treasury Regulations, judicial decisions on tax matters and IRS rulings.

Additional information on federal tax statutes is provided in the “Federal Statutes and Legislation” presentation.

Treasury Regulations
Treasury Regulations are the Treasury Department's official interpretation of how a particular IRC section is to be administered and applied. There are three types of Treasury Regulations—proposed, temporary and final. In addition, there are three types of tax regulations—legislative, interpretive and procedural.

Final, Temporary and Proposed Regulations. Final regulations are the highest authority issued by the Treasury Department and rank above all IRS rulings. Final regulations must be followed by the IRS and provide guidance to tax professionals for tax compliance and planning purposes. However, a subsequent change to the IRC can reduce or eliminate the need to comply with a final regulation, as the regulation may no longer reflect the spirit of the IRC section to which it relates. Temporary regulations provide guidance until final regulations are adopted and have the same authority as final regulations. While proposed regulations can be useful in indicating the IRS’s position, they are generally not binding. Taxpayers cannot rely on proposed regulations to support a tax position or for planning purposes, unless the IRS clearly states otherwise.

Legislative, Interpretive and Procedural Regulations. Legislative regulations are issued when the IRC authorizes the IRS to provide operational rules for specific IRC provisions. Generally, legislative regulations carry the same weight of authority as the law itself. Interpretive regulations help to explain the IRS’s position on various IRC sections. Interpretative regulations are issued under the IRS’s general authority to interpret the language of the IRC, but they are not specifically authorized by the law. They are subject to challenge if they do not reflect Congressional intent. Procedural regulations address procedural rather than interpretative
matters, such as how to go about filing returns and making elections. Generally, procedural regulations relating to particular IRC Sections are considered to be binding. However, the procedural regulations set forth in 26 CFR Part 601, known as the Statement of Procedural Rules, are considered to be directive and not mandatory. The Statement of Procedural Rules provides guidelines for conducting the internal affairs of the IRS. They are issued by the IRS Commissioner without the signature of the Treasury Secretary. Nevertheless, the procedural rules are published in the Federal Register and have the status of regulations. Therefore, such rules have higher weight of authority than other IRS pronouncements that are not published in the Federal Register.

Additional information on regulations is provided in the “Treasury Regulations” presentation.

Legislative History
Legislative history provides insight into what Congress intended when passing a law. The general hierarchy of legislative history documents is as follows:
- 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

Additional information on legislative history is provided in the “Federal Statutes and Legislation” presentation.

Judicial Authorities
Generally, the higher the level of court, the more weight accorded to that court’s opinion and decisions.

The U.S. Supreme Court is the highest court in the federal judiciary, and Supreme Court decisions are binding on all lower federal courts.

A decision by a U.S. Court of Appeals carries a higher authority than a decision by a trial court. A case decided by a particular Circuit Court of Appeals is only binding on the District Courts within that circuit but has high persuasive value in other Federal Courts of Appeal.

A trial court decision generally carries less authority than an appellate court decision. At the trial court level, the U.S. Tax Court is generally considered to have more technical expertise on tax matters than other trial courts, and thus, is often accorded more weight than a district court decision on the same issue. A “regular” decision is issued when the Tax Court believes the case involves a new or unusual point of law and can be cited as legal authority. A Tax Court Memorandum Opinion addresses cases where the law is settled or factually driven and has less authority than a regular Tax Court decision, but can be cited as legal authority.
The U.S. Court of Federal Claims has similar authority as the U.S. Tax Court. The court’s decisions have precedential value in the Court of Federal Claims or in the Court of Appeals for the Federal Circuit.

U.S. District Court decisions are not binding on any courts but are often cited as persuasive authority.

Finally, Tax Court Summary Decisions for small cases have no precedential value but can be persuasive if directly on point.

In addition to the rank of the court, there are several other factors that affect the strength of a court decision, such as whether the decision was unanimous or split, authority of the judges, and how other courts viewed the decision. Detailed information is provided in the “Judicial System” presentation.

**Revenue Rulings**
A Revenue Ruling is an official interpretation by the IRS of the Internal Revenue Code, related statutes, and regulations. A Revenue Ruling applies the law to a specific fact situation and can be relied on by a taxpayer and guide the taxpayer in a similar situation. Revenue Rulings may be cited as authority.

**Revenue Procedures**
Revenue Procedures outline procedures for complying with the tax law, such as claiming benefits or making elections. While a revenue ruling generally states an IRS position, a Revenue Procedure provides return filing or other instructions concerning an IRS position. Revenue Procedures may be cited as authority.

**IRS Letter Rulings**
There are various IRS documents released to the public which may be helpful in determining the IRS’s position on certain issues. The documents provide guidance but should not be cited as legal authority. The following types of documents represent a final determination of the IRS’s position, but only with respect to a specific taxpayer’s situation and issue:

- Private Letter Rulings
- Determination Letters
- Technical Advice Memoranda
- Chief Counsel Advice

Additional information on IRS rulings is provided in the “IRS Rulings and Pronouncements” presentation.

**Taxpayer Assistance**
Tax forms are a common source for tax research, particularly as it relates to computing the amount of tax owed or the various tax credits available. Often, information and examples are included on a form or its instructions that are not otherwise published. However, these forms
of taxpayer assistance—IRS Publications, forms and form instructions, IRS FAQs—are provided for guidance only. Taxpayers should not rely solely on such documents.

Secondary Sources
Secondary sources are unofficial publications. Researchers often turn to secondary sources for an explanation of primary sources. Secondary sources are particularly useful when primary sources do not address a particular tax issue, or in situations when there are conflicting primary source documents.

Substantial Authority
Several types of IRS pronouncements provide recognized authority for the possible defense of the negligent and substantial understatement penalties provisions of IRC §6662. IRC §6662 imposes a 20% penalty for significant understatement of income tax liability. However, the penalty is waived if the taxpayer relied on “substantial authority” for the position taken on the return. Many of the documents discussed above constitute authority for avoiding the substantial underpayment penalty.

According to Treas. Reg. §1.6662-4(d)(3)(iii), “substantial authority” includes the following:
- Internal Revenue Code
- Other statutory provisions
- Treasury Regulations of all types
- Court cases
- Revenue Rulings
- Revenue Procedures
- Tax treaties
- Treasury Decision official explanations of treaties
- Committee Reports
- Floor statements made prior to bill enactment by manager
- Blue Book
- Private Letter Rulings
- Technical Advice Memoranda
- Actions on Decisions
- General Counsel Memoranda
- IRS press releases, notices, announcements
- Other IRS pronouncements published in the Internal Revenue Bulletin