

# Tax Research

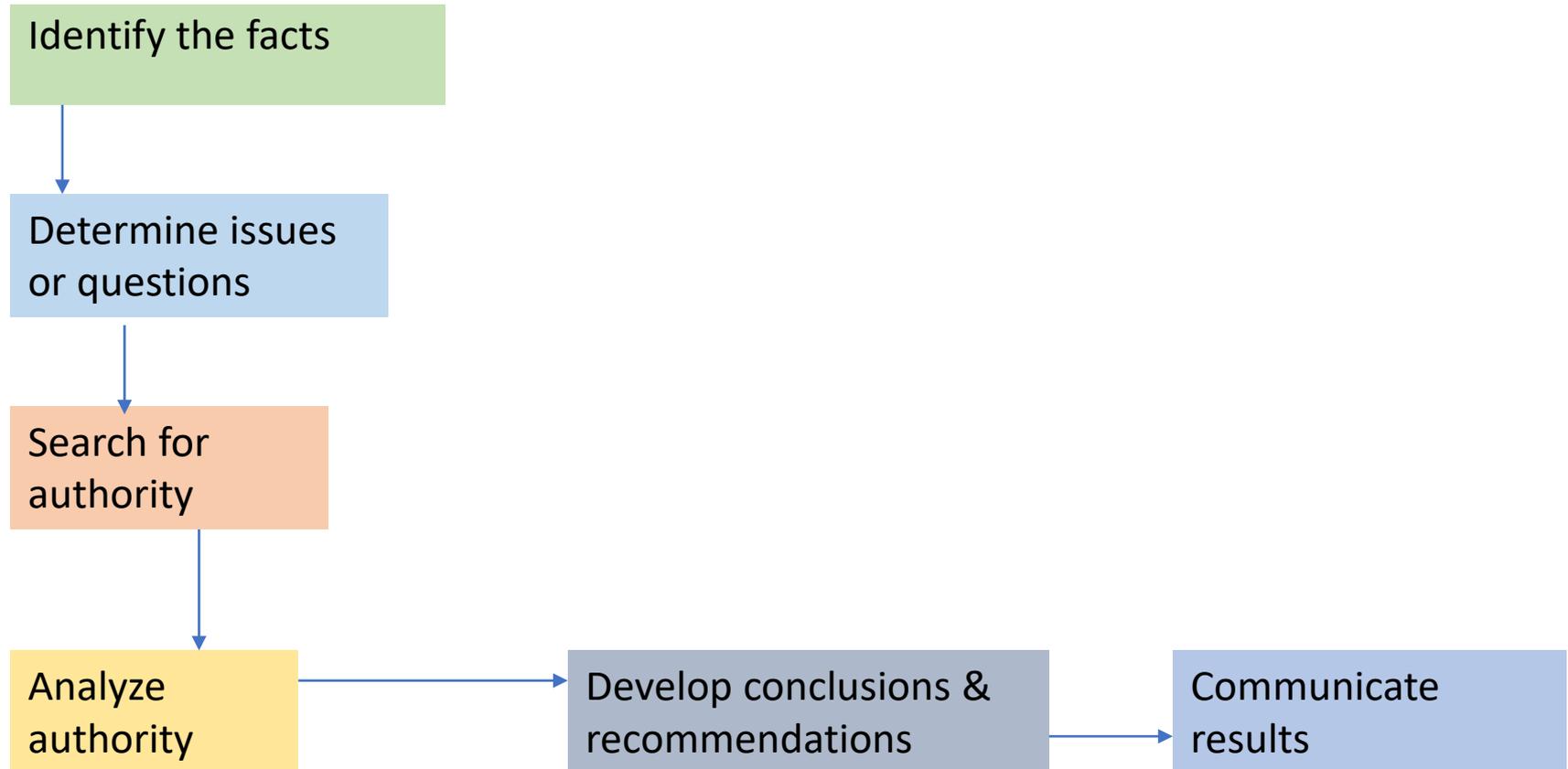
Christopher Brown and Charlie Beckum

12-17-2020

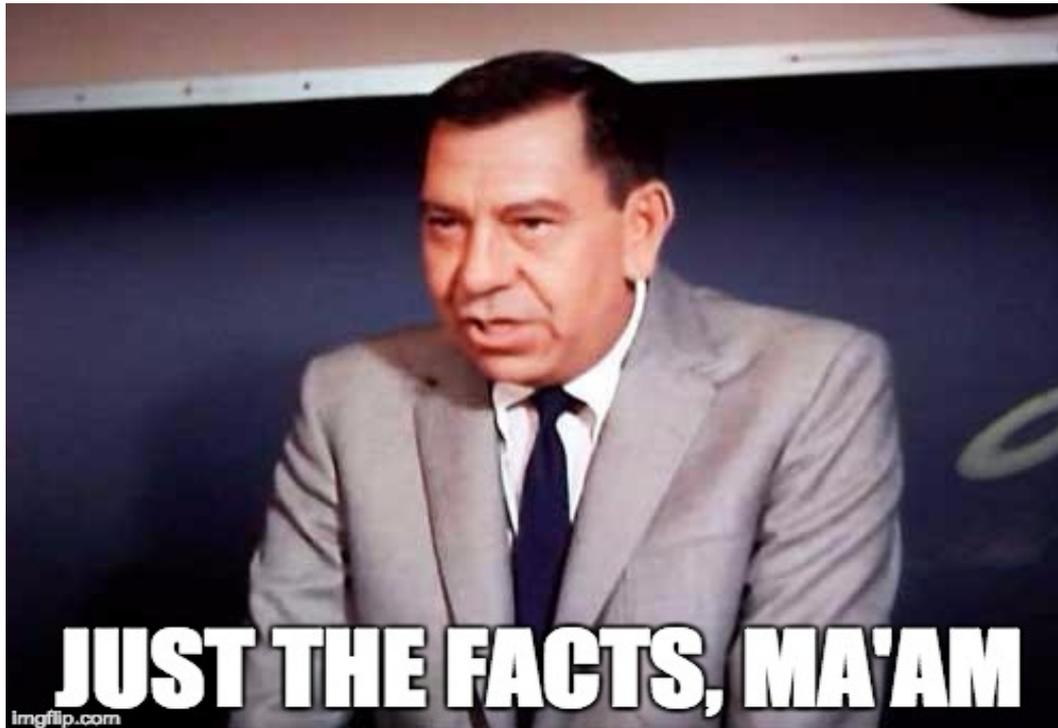
# 3 Types of Tax Research

- **Planning research**
  - Before the event
  - Research performed before client takes action
- **Compliance research**
  - After the fact
  - Issue typically identified when preparing return or during audit
  - Transaction complete, less flexibility
- **Policy research**
  - Analyzing different tax reform proposals
  - Research to influence legislation

# Tax Research Steps



# Step One: Identify the Facts



# Step Two: Determine the Issues or Questions

Deductible?

Taxable?

Limits?

How much?

Thresholds?

When?



Character?

AGI or Taxable  
Income?

How much?

Where?

# Standards of Certainty - Tax Positions

- Frivolous: A “Patently improper” position even if disclosed on a return should never be taken. ( $\approx$  5% or less chance of success)
- Reasonable basis: If met, a **taxpayer** will not be subject to an understatement penalty if the position is adequately disclosed on the return using Form 8275, Disclosure Statement. ( $\approx$  20%)
- Realistic Possibility: If met, a **tax preparer** may take a particular position and sign the return. If the standard is not met, but the taxpayer’s position is not frivolous, the tax preparer may still sign the return if the position is disclosed adequately and a Form 8275 is filed. ( $\approx$ 33%)

# Standards of Certainty con't - Tax positions

- **Substantial Authority:** The Code Sec. 6662 accuracy related penalty related to substantial understatement will not apply if this level of certainty is reached, and the position need not be disclosed on the return. ( $\approx 40\%$ )
- **More Likely than Not:** Tax shelters, reportable transactions, and listed transactions, as defined by the code, must meet this standard before taking a position on a return. (greater than 50%).

## LEVELS OF CONFIDENCE FOR TAX RETURN POSITIONS

Purpose: To understand the relationship between the levels of confidence, disclosure, and potential penalties for preparers and taxpayers.

| Levels of Confidence <sup>1</sup><br><i>(Percentages are approximate and represent relative levels of accuracy)</i>  | Taxpayer Penalty |                            |                    |                | Preparer Penalty  |                  |
|--|------------------|----------------------------|--------------------|----------------|-------------------|------------------|
|  | Negligence       | Substantial understatement | Disregard of regs. | Tax shelter    | Not a tax shelter | Is a tax shelter |
| <b>Will (at least 90%):</b> While the term is not defined by law, this means a virtually certain position. Be cautious in using this term as it can relay a certain level of confidence. <sup>2</sup>  | ✓                | ✓                          | ▲                  | ✓              | ✓                 | ✓                |
| <b>Should (at least 70%):</b> While not defined by law, the preponderance and weight of support is favorable. Be cautious in using this term as it can relay a certain level of confidence. <sup>2</sup>   | ✓                | ✓                          | ▲                  | ✓              | ✓                 | ✓                |
| <b>More Likely than Not (at least &gt;50%):</b> Reasonable belief that the tax treatment of an item at the time the return is filed is more likely than not the proper tax treatment (i.e., there is a greater than 50% chance it will be upheld if challenged by the IRS) based on an analysis of pertinent facts and authorities in the manner described in Regs. Sec. 1.6662-4(d)(3)(ii). [ <i>Regs. Sec. 1.6664-4(f)(2)(B)</i> ] | ✓                | ✓                          | ▲                  | ✓ <sup>3</sup> | ✓                 | ✓                |
| <b>Substantial Authority (at least 40%):</b> An objective standard involving an analysis of the law and application of the law to the relevant facts. Substantial authority exists if the weight of the authority supporting the treatment is substantial in relation to the weight of the authority supporting contrary treatment. [ <i>Regs. Sec. 1.6662-4(d)</i> ]  | ✓                | ✓                          | ▲                  | ⊘ <sup>3</sup> | ✓                 | ▲ <sup>4</sup>   |
| <b>Realistic Possibility of Success (at least 33%):</b> A reasonable and well-informed analysis of the law and the facts by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one-in-three (or greater) likelihood of being sustained on its merits. [ <i>AICPA SSTS No. 1</i> ]  | ✓                | ▲                          | ▲                  | ⊘              | ▲                 | ⊘                |
| <b>Reasonable Basis (20%):</b> If a position is based on one or more authorities, it will generally satisfy reasonable basis even though it does not satisfy the substantial authority standard (not merely arguable or not merely a colorable claim). [ <i>Regs. Sec. 1.6662-3(b)(3); Joint Committee on Taxation Interest and Penalty Study (JCS-3-99)</i> ]   | ✓                | ▲                          | ▲                  | ⊘              | ▲                 | ⊘                |
| <b>Below Reasonable Basis, including Frivolous (below 20%):</b> A position that is patently improper with no plausible argument in support of the position. [ <i>Not defined by statute or regulation</i> ]  | ⊘                | ⊘                          | ⊘                  | ⊘              | ⊘                 | ⊘                |



No disclosure is required.



No penalty with proper disclosure; see Forms 8275 or 8275-R.



Penalty with or without disclosure.

1. The level of confidence means the level of authority needed for either a taxpayer or a preparer to avoid the relevant penalty. See Regs. Sec. 1.6662-4(d)(3)(ii) and [AICPA U.S. Federal Tax Law Hierarchy Quick Reference Chart](#).
2. In rendering tax advice for a return position, it's advisable to use the terminology in the Code and regulations to describe the level of confidence. Exercise care in using terms "should" or "will" because a client may misinterpret the meaning.
3. To avoid a penalty, a taxpayer must have substantial authority and establish a reasonable belief that the treatment meets the more likely than not standard.
4. See [Notice 2009-5](#), Sec. 6694, and Sec. 6707A.

# Step Three: Locate Authority - Two Types of Tax Authority

- **Primary Authority:** The "official" body of tax law consists of the Internal Revenue Code as drafted by Congress, Regulations and other pronouncements of the Department of Treasury, and Judicial decisions devoted to tax issues.
- **Secondary Authority:** Various UNOFFICIAL sources of tax information such as textbooks, journal articles, commentaries, and tax service editorial comments.

*Secondary Authority, while often very helpful and informative, cannot be used (solely) to justify a tax position on a tax return.*

*Probably not Primary Authority!!!*

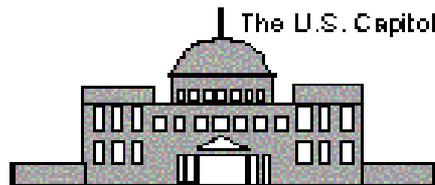
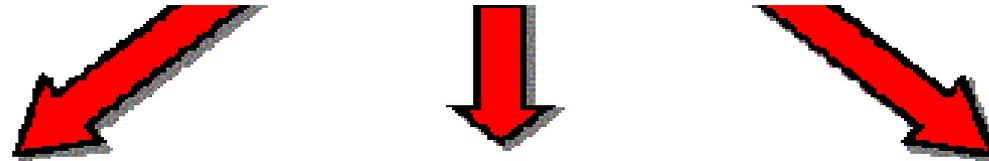
**RESPECT**



**MY AUTHORITY**

# Step Three: Locate Authority Primary Authority

## BRANCHES OF U.S. GOVERNMENT



LEGISLATIVE

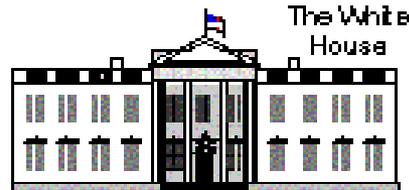
↓  
CONGRESS



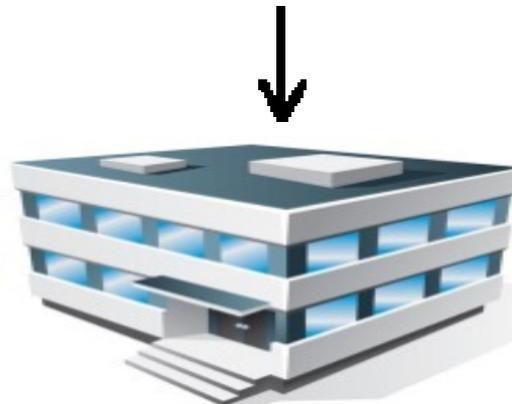
HOUSE OF REPRESENTATIVES

SENATE

Statutory



EXECUTIVE

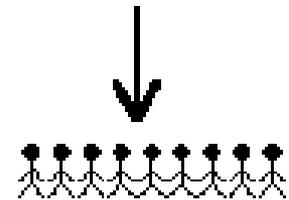


Treasury/IRS

Administrative

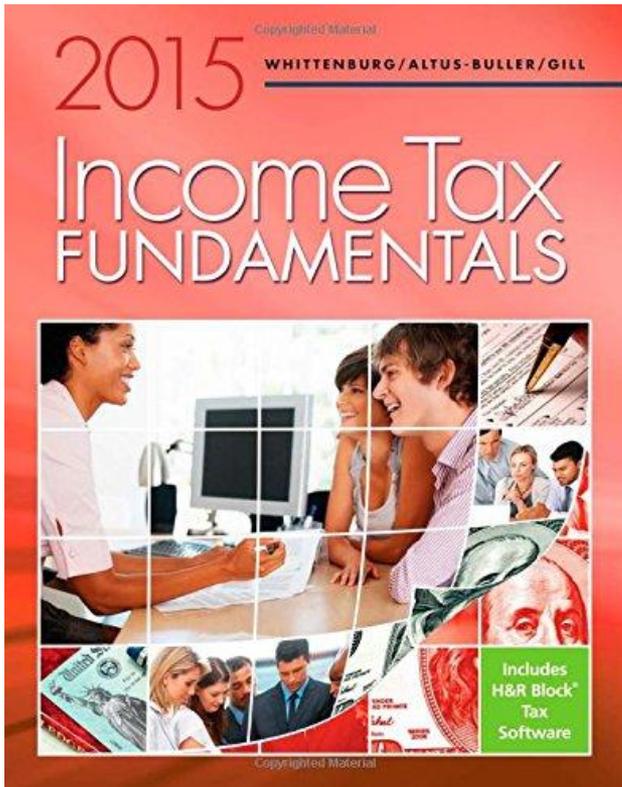


JUDICIAL



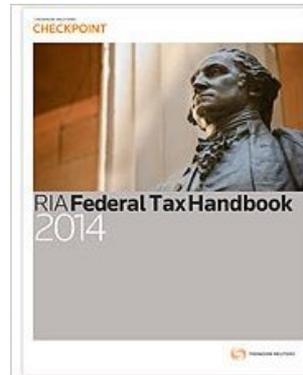
THE SUPREME COURT

Judicial



## Secondary Authority

- Tax services
- Tax journals
- Textbooks
- Newsletters
- **Google**
- Other UNOFFICIAL sources



*Cannot be solely relied upon to support a tax position!*

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Job Security

# Legislative Authority (Statutory)

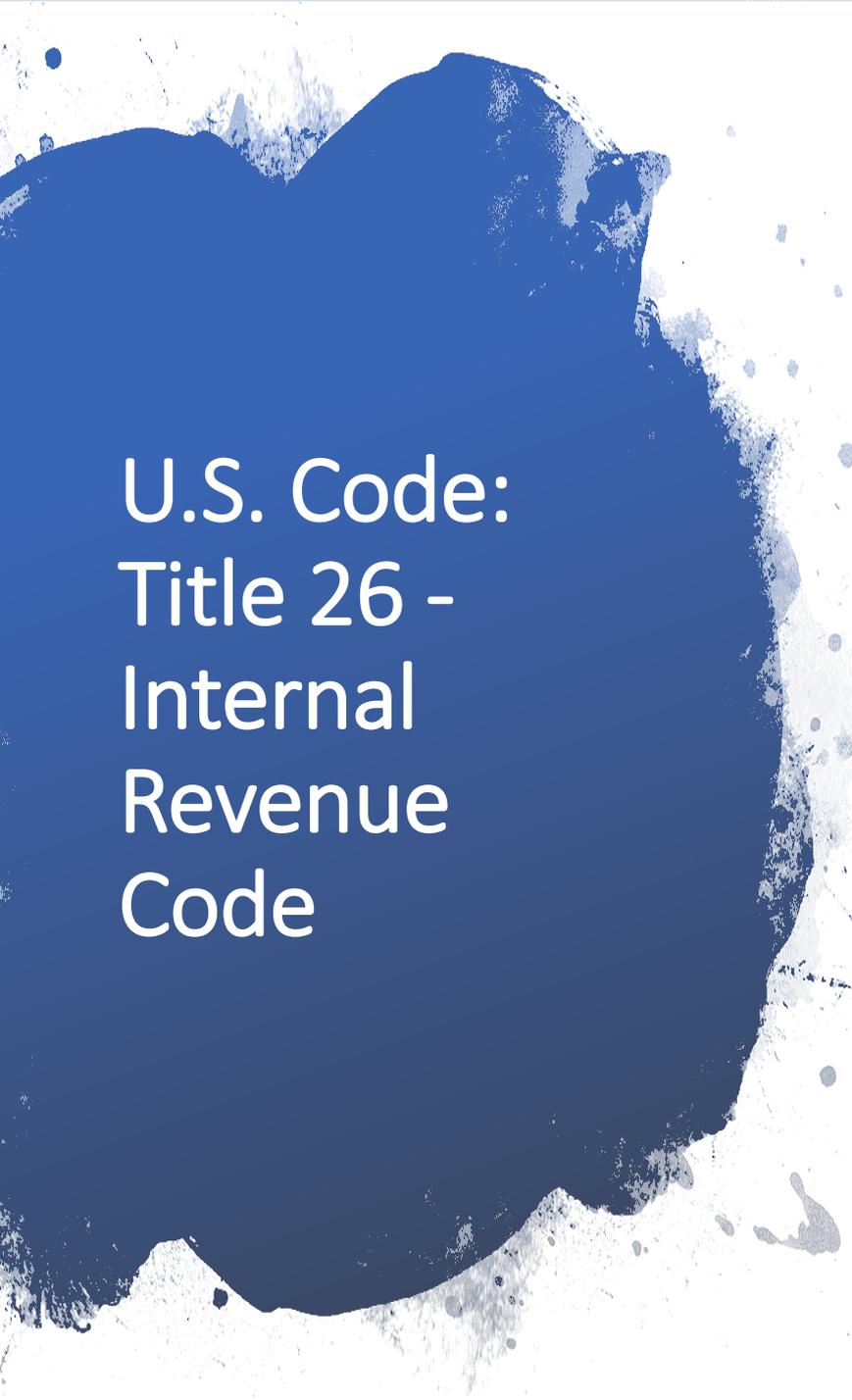
- The Constitution
- The Internal Revenue Code (IRC)
- Tax Treaties





# The Constitution – 16<sup>th</sup> Amendment

- *“The Congress shall have the power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several states, and without regard to any census or enumeration.”*



# U.S. Code: Title 26 - Internal Revenue Code

- Legislative authority refers to tax authority enacted by the Congress. Tax bills are passed by Congress and added to Title 26 of the U.S. Code and have the force and effect of the law unless found unconstitutional.
- Legislative authority also includes committee reports issued by various tax writing committees in Congress as well as tax treaties involving the U.S.

# Organization of the Internal Revenue Code - Title 26 of the United States Code

- Title 24 Hospitals & Asylums
- Title 25 Indians
- ***Title 26 Internal Revenue Code***
- Title 27 Intoxicating Liquors
- Title 28 Judiciary & Judicial Procedure

# Organization of the IRC (Title 26)

- Subtitles
- Chapters
- Subchapters
- Parts and Subparts
- **Sections and Subsections**

# Subtitles - Identified by a Letter

- Subtitle A—Income Taxes (§§ 1 - 1564)
- Subtitle B—Estate and Gift Taxes (§§ 2001 - 2801)
- Subtitle C—Employment Taxes (§§ 3101 - 3512)
- Subtitle D—Miscellaneous Excise Taxes (§§ 4001 - 5000C)
- Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes (§§ 5001 - 5891)
- Subtitle F—Procedure and Administration (§§ 6001 - 7874)
- Subtitle G—The Joint Committee on Taxation (§§ 8001 - 8023)
- Subtitle H—Financing of Presidential Election Campaigns (§§ 9001 - 9042)
- Subtitle I—Trust Fund Code (§§ 9500 - 9602)
- Subtitle J—Coal Industry Health Benefits (§§ 9701 - 9722)
- Subtitle K—Group Health Plan Requirements (§§ 9801 - 9834)

# Chapters – Organized by a Unique Number: Subtitle A - Income Taxes

- Chapter 1—Normal taxes and surtaxes
- Chapter 2—Tax on self-employment income
- Chapter 6—Consolidated returns
- Chapter 11 – Estate Taxes
- Chapter 12 – Gift Taxes
- Chapter 79 - Definitions

## Subchapters – identified by a capital letter:

Examples of subchapters in  
Subtitle A (Income Taxes)  
Chapter 1 (Normal Taxes)

- A: Determination of Tax Liability
- B: Computation of Taxable Income
- C: Corporate Distributions & Adjustments
- K: Partners & Partnerships
- P: Capital Gains & Losses
- S: S Corporations & Shareholders

# Parts & Subparts

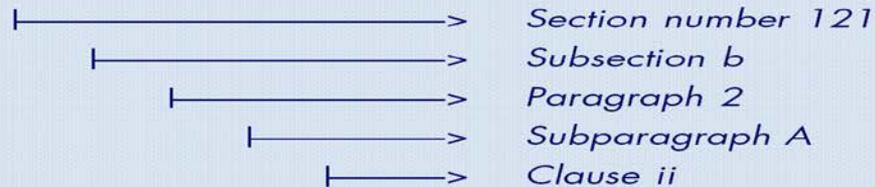
- Groupings addressing essentially the same issue
- Not all subchapters are divided into parts
- Here are some examples of Parts in Subchapter B of Chapter 1 of Subtitle A
  - Part 1: Definition of Gross Income, AGI, Taxable Income
  - Part 2: Items specifically included in gross income
  - Part 3: Items specifically excluded from gross income
- Subparts are used to further divide large Parts



# Sections and Subsections

- Primary unit of the Code (these are often quoted)
  - Section numbers used only once
  - Sections may be further subdivided
  - Subsection (lower case letter)
    - Paragraph (Arabic number)
    - Subparagraph (Capital letter)
    - Clause (lower case Roman numeral)
    - Subclause (upper case Roman numeral)
- Typically no reference is made to the title, subtitle, chapter, subchapter, or part when referencing the Code.

**IRC Section 121(b)(2)(A)(ii)**



|                 |  |
|-----------------|--|
| Section 121     | SEC. 121. EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE   |
| Subsection(a)   | (a) Exclusion<br>Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more. |
| Subsection(b)   | (b) Limitations  |
| Paragraph(1)    | (1) In general<br>The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed \$250,000.  |
| Paragraph(2)    | (2) Special rules for joint returns<br>In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the—property—   |
| Subparagraph(A) | (A) \$500,000 Limitation for certain joint returns<br>Paragraph (1) shall be applied by substituting "\$500,000" for "\$250,000" if—   |
| Clause(i)       | (i) either spouse meets the ownership requirements of subsection (a) with respect to such property;  |
| Clause(ii)      | (ii) both spouses meet the use requirements of subsection (a) with respect to such property; and   |
| Clause(iii)     | (iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3)   |

# Legislative Authority – Tax Treaties

- Another source of legislative authority
- The President may enter into a treaty with another country, and such a treaty is considered having the force and effect of law once approved with the advice and consent of the Senate (2/3 vote).
- Most treaties are designed to eliminate double taxation
- Courts tend to give equal weight to both the Code and treaties.
- When there are conflicts, courts usually assume the one adopted later controls

# Legislative Authority – Committee Reports

- Committee reports are useful in determining the **intent** of Congress behind tax laws (produced while passing laws)
- Committee reports are written by the House Ways and Means Committee, Senate Finance Committee, and often times the Joint Committee on Taxation
- Committee Reports hold “Substantial Authority”
- They can be found on [jct.gov](http://jct.gov), [waysandmeans.house.gov](http://waysandmeans.house.gov), and [finance.senate.gov](http://finance.senate.gov) amongst other places including tax services such as Thomson Reuters Checkpoint.

# Executive Authority - Administrative Sources

- Treasury Department
  - Administers the U.S. tax laws, enforces tax statutes, and collects tax revenue
  - Secretary of the Treasury (member of the Presidential Cabinet)
  - IRS
    - A division of the Treasury Department
    - Commissioner appointed by the President
    - Many of the Treasury's administrative functions are delegated to the IRS

# Administrative Authority

- Regulations are the Treasury Department's official interpretations of the Code.
- Types of Regulations:

**Proposed**



**Final**



**TEMPORARY**

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# U.S. Treasury Regulations – Final

- Final Regulations represent the Treasury and IRS's ultimate interpretation of the Code.
- They are the highest authority issued by the Treasury.
- They are published in the Federal Register as a Treasury Decision (TD) and then in the weekly Internal Revenue Bulletin. Ultimately, they end up in the semi-annual Cumulative Bulletin.

# U.S. Treasury Regulations – Temporary and Proposed

- Temporary Regulations provide immediate guidance to a change in law or a judicial decision.
- They hold the same weight as a final regulation and remain in effect until they are superseded by a Final Regulation or expire after three years.
- All Temporary Regulations are also issued as Proposed Regulations
- Proposed Regulations do NOT have the effect of law but do show the IRS's thinking on an issue.

# Tax Regulation Types

- **Legislative**
  - Congress directs the IRS to provide details for certain tax statutes.
  - Carries the same authority as statutes
- **Interpretive**
  - These regulations attempt to clarify a particular Code section.
  - Don't hold as much weight as legislative Regs, but nonetheless can be relied upon unless challenged
- **Procedural** – Provide detailed procedural rules for various aspects of tax practice

# Citing Regulations – The Basics

- Numerical System
  - 1<sup>st</sup> Number: Type
  - 2<sup>nd</sup> Number: IRC Section
  - 3<sup>rd</sup> Number: Reg number
  - A “T” in a Reg citation represents a temporary Reg
    - **Reg. §1.732-1T**
  - Proposed Regs use the abbreviation “Prop”
    - **Prop Reg §1.263(A)-3**

# Examples of Types of Regulations

- 1: Income Tax
- 20: Estate Tax
- 25: Gift Tax
- 31: Employment Tax

## **Reg. § 1.162-21 (a) (2)**

---

|        |  |
|--------|--|
| —————> | <i>Type of Regulation (1 ÷ income tax)</i> |
| —————> | <i>Related Code Section (162)</i>          |
| —————> | <i>Regulation Number (21)</i>              |
| —————> | <i>Regulation Paragraph (a)</i>            |
| —————> | <i>Regulation Subparagraph (2)</i>         |

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Regulation number      SEC. 1.162-21 FINES AND PENALTIES.

Paragraph →            (a) In general.

No deduction shall be allowed under section 162(a) for any fine or similar penalty paid to—

Subparagraph →        (1) The government of the United States, a State, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

Subparagraph →        (2) The government of a foreign country; or

Subparagraph →        (3) A political subdivision of, or corporation or other entity serving as an agency or instrumentality of, any of the above

Paragraph →            (b) Definition.

Subparagraph →        (1) For purposes of this section a fine or similar penalty includes an amount—

# Revenue Rulings

- Revenue Rulings are official IRS interpretations
- They explain the application of the Code to specific factual situations (using a hypothetical taxpayer)
- Revenue rulings do not have the force and effect of regulations but can be relied upon if the facts of a case substantially match that of a Revenue Ruling.

# Citing Revenue Rulings

- Rev Rulings are first published in the weekly Internal Revenue Bulletin and then added to the semi-annual Cumulative Bulletin.
- For this reason there are two types of citations
- Internal Revenue Bulletin (Temp)
  - 1<sup>st</sup> number: Year (4 digits – 2 prior to 2000)
  - 2<sup>nd</sup> number: Weekly issue # of IRB
  - 3<sup>rd</sup> number: Page number



# Citing Revenue Rulings con't

- Cumulative Bulletin (Perm)
  - 1<sup>st</sup> number: year (4 digits – 2 prior to 2000)
  - 2<sup>nd</sup> number: Ruling number
  - 3<sup>rd</sup> number: Volume of CB
  - 4<sup>th</sup> number: page number
- Useful tool – The IRS Bulletin Index-Digest System
  - Organizes **Rev Rulings and Rev Procedures** by Code Section
  - Finding lists are provided and each Ruling or Procedure has a short summary

# Rev Ruling Citation Examples

- Weekly Internal Bulletin
  - **Rev. Rul. 99-40, 1999-48 I.R.B. 5** (the 40<sup>th</sup> ruling in 1999, found in the 48<sup>th</sup> weekly issue of the 1999 Internal Revenue Bulletin on page 5)
- Cumulative Bulletin
  - **Rev. Rul. 99-40, 1999-2 C.B. 60** (found on page 60 of the 2<sup>nd</sup> Cumulative Bulletin of 1999)
- *Note: From 2000 and beyond the year is represented with 4 digits*

# Revenue Procedure

- Revenue Procedures deal with the internal practice and procedures of the IRS in the administration of tax laws.
- They are official statements of procedures relating to sections of the IRC, related statutes, tax treaties, and regulations.
- Basically, they tell taxpayers how to do something
- They hold the same authority as Revenue Rulings

# Citing Revenue Procedures

- Revenue Procedures are cited in much the same manner as Revenue Rulings and are published in the same manner (Internal Revenue Bulletin and then the Cumulative Bulletin)
- Citation in the Internal Revenue Bulletin
  - **Rev. Proc. 99-40, 1999-48 I.R.B. 5** (the 40<sup>th</sup> procedure in 1999, found in the 48<sup>th</sup> weekly issue of the 1999 Internal Revenue Bulletin on page 5)
- Citation in the Cumulative Bulletin
  - **Rev. Proc. 99-40, 1999-2 C.B. 60** (found on page 60 of the 2<sup>nd</sup> Cumulative Bulletin of 1999)
- *Note: From 2000 and beyond the year is represented with 4 digits*

# Private Letter Ruling (PLR)

- Are issued by the IRS in response to a specific taxpayer issue
- A PLR is issued only to the requesting taxpayer and may only be relied upon as authority by that taxpayer
- The IRS insists PLRs may not be relied upon as precedents, but they are on the list of substantial authorities (PLRs after Oct 31, 1976)
- PLRs were made available to the public by the Freedom of Information Act
- PLRs do provide insight into the IRS thinking on certain issues

# Private Letter Ruling Citation

- PLRs are generally cited in one of the two following ways
  - Pre 2000
    - **PLR 8651012** (86 is the year, 51 is the 51<sup>st</sup> week of the year, and 012 represents the 12<sup>th</sup> ruling that week)
  - 2000 and beyond
    - **PLR 200727008** (2007 is the year, 27 is the 27<sup>th</sup> week of the year, and 008 represents the 8<sup>th</sup> ruling that week)
- Most tax services have complete texts of all PLRs (Thomson Reuters Checkpoint)

# Tax Advice Memoranda (TAM)

- A TAM is another type of letter ruling issued by the IRS
- It is typically requested by an IRS District Director or Appeals Officer regarding a technical question arising from an audit
- Involves a completed transaction
- Like a PLR, a TAM is based on a specific taxpayer situation and may only be relied upon by that taxpayer as authority
- TAMs are cited in the same fashion as PLRs
  - **TAM 9812130** (pre-2000) or **TAM 200411031** (2000+)

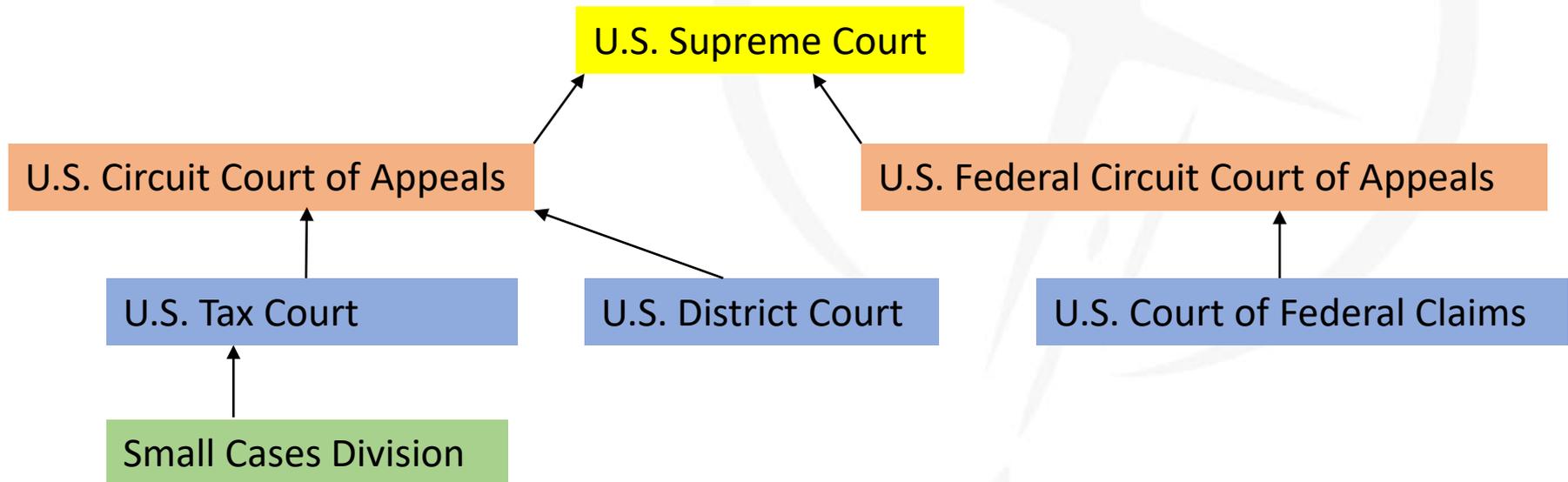
# TAXMAN v SUPERMAN

DAWN OF TAX DAY



# Judicial Authority

- Judicial Authority refers to decisions of the federal courts on tax matters
- Court Options for a Tax Case:



# The Small Cases Division of the U.S. Tax Court

- The disputed deficiency (or overpayment) plus interest and penalties must not exceed \$50,000
- Taxpayers may represent themselves
- Informal hearing
- Judge is usually an experienced tax attorney appointed by the Tax Court
- Decision is final – no appeal possible
- Judge can send to Tax Court if it becomes apparent it would be more suitable for the case (rare)

# The U.S. Tax Court (National Court)

- A taxpayer must file a petition within 90 days from the mailing of the statutory notice of deficiency (IRS 90 Day Letter)
- Taxpayer **does not** have to pay the deficiency beforehand, but interest will accumulate on any deficiency declared
- Judges are generally experienced tax attorneys with substantial litigation experience
- No jury
- Only hears tax cases
- Legal representation required
- Appeals are heard by 1 of the 12 U.S. Circuit Courts of Appeals (depending on location of trial – Tax Court hears cases in roughly 90 different cities)

# The U.S. District Court (Several jurisdictions throughout the U.S.)

- Taxpayers must pay deficiency beforehand and then file a claim for refund
- Is a federal court that hears all types of cases, not just tax cases
- Judge is usually not a tax specialist
- Only court to offer a trial by jury
- Appeals from a U.S. District Court are heard by the U.S. Circuit Court of Appeals in which the taxpayer resides
- Different districts may have differing precedents so the location of a case could be very important

# The U.S. Court of Federal Claims (National Court)

- Hears all types of cases involving claims against the U.S. Government, not just tax cases
- Taxpayer must pay deficiency beforehand and then file a refund claim
- No jury
- Judges are not tax specialists
- May be advantageous to bring a suit here if rulings in home circuit (U.S. District Court) are averse to taxpayer
- Appeals are heard by the U.S. Court of Appeals for the Federal Circuit
  - Only in existence since 1982 so very few tax precedents are on record (could be advantageous)



## U.S. Supreme Court (National Court)

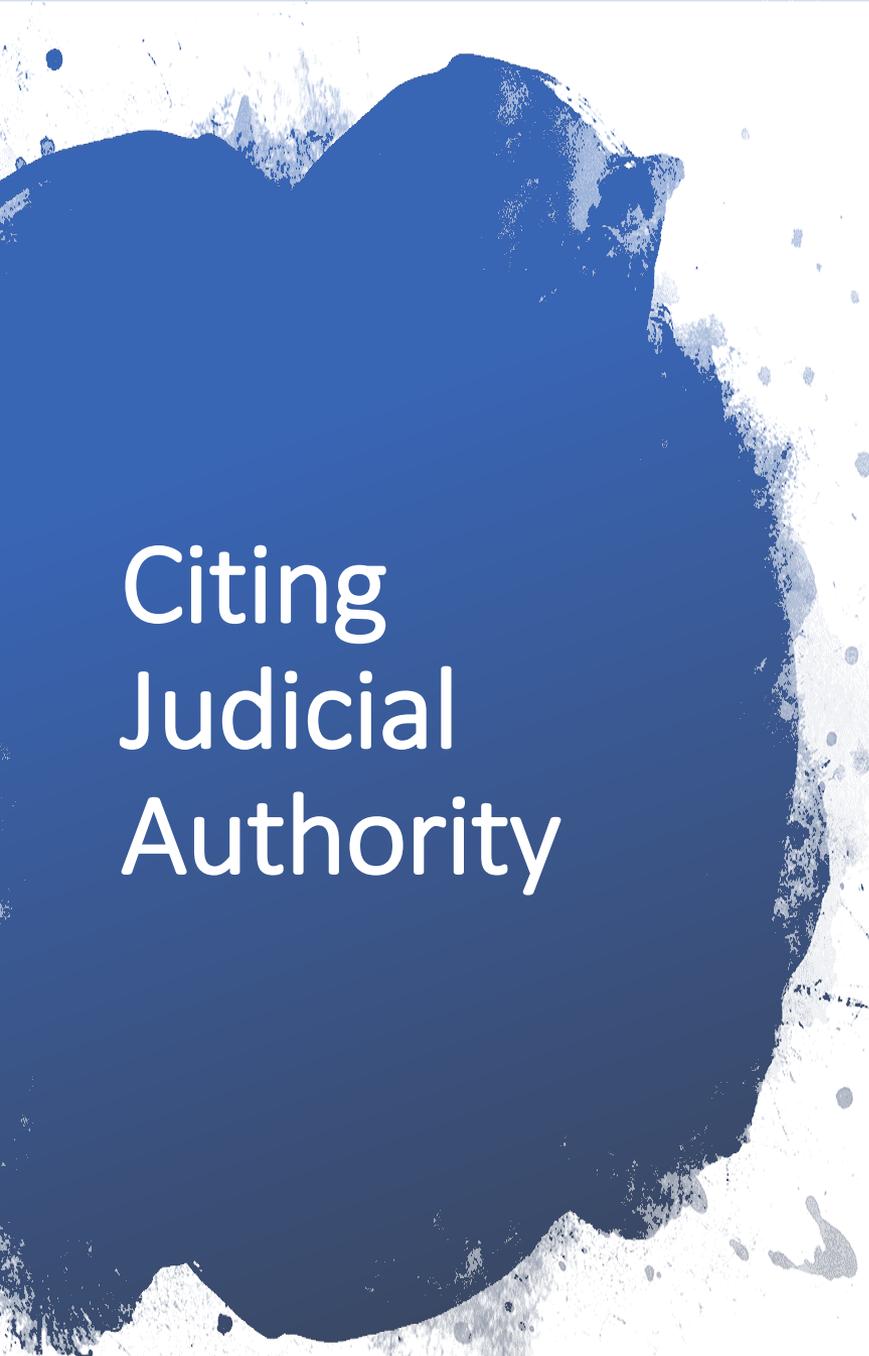
- This is the final stop. Tax cases rarely make it to the Supreme Court but when they do it's usually a constitutional issue concerning tax.

# Precedents

- Stare Decisis – “let the decision stand” – courts view own past decisions as precedents to be followed unless revisited
- The Tax Court must follow its own decisions, the pertinent U.S. Circuit Court of Appeals, and the Supreme Court
- The U.S. Court of Federal Claims must follow its own decisions, the U.S. Federal Circuit Court of Appeals, and the Supreme Court
- U.S. District Courts must follow its own decisions, the pertinent U.S. Circuit Court of Appeals, and the Supreme Court
- Appellate courts follow their own previous precedents and the Supreme Court

# The IRS and Adverse Court Decisions

- Sometimes when the IRS loses a significant case it will issue an acquiescence or nonacquiescence.
- An acquiescence indicates the IRS will follow the Court's decision with regards to taxpayers in similar situations.
- A nonacquiescence indicates the IRS disagrees with the adverse decision and will only follow it for the specific taxpayer involved in the case.
- At times the IRS will agree with only part of the decision and issue a nonacquiescence with respect to certain issues it disagrees with.
- Note – Occasionally the IRS will change its acquiescence or nonacquiescence by withdrawing the original pronouncement.
- Acquiescences and nonacquiescences are published in the IRB and then the CB as "Actions on Decision." (AOD)



# Citing Judicial Authority

- Not going to go into depth on citing cases due to time, but it is of the utmost importance to do a **citation search**
  - Three popular Citators
    - CCH Citator (Wolters Kluwer)
    - RIA Citator (Thomson Reuters)
    - Shephard's Citator
- A Citator lists cases, rulings, or other authority that “cites” the case of interest. This is invaluable as to make sure the case you are researching reflects the latest thinking (precedent) on the tax matter you are researching.

# Examples of Case Citations

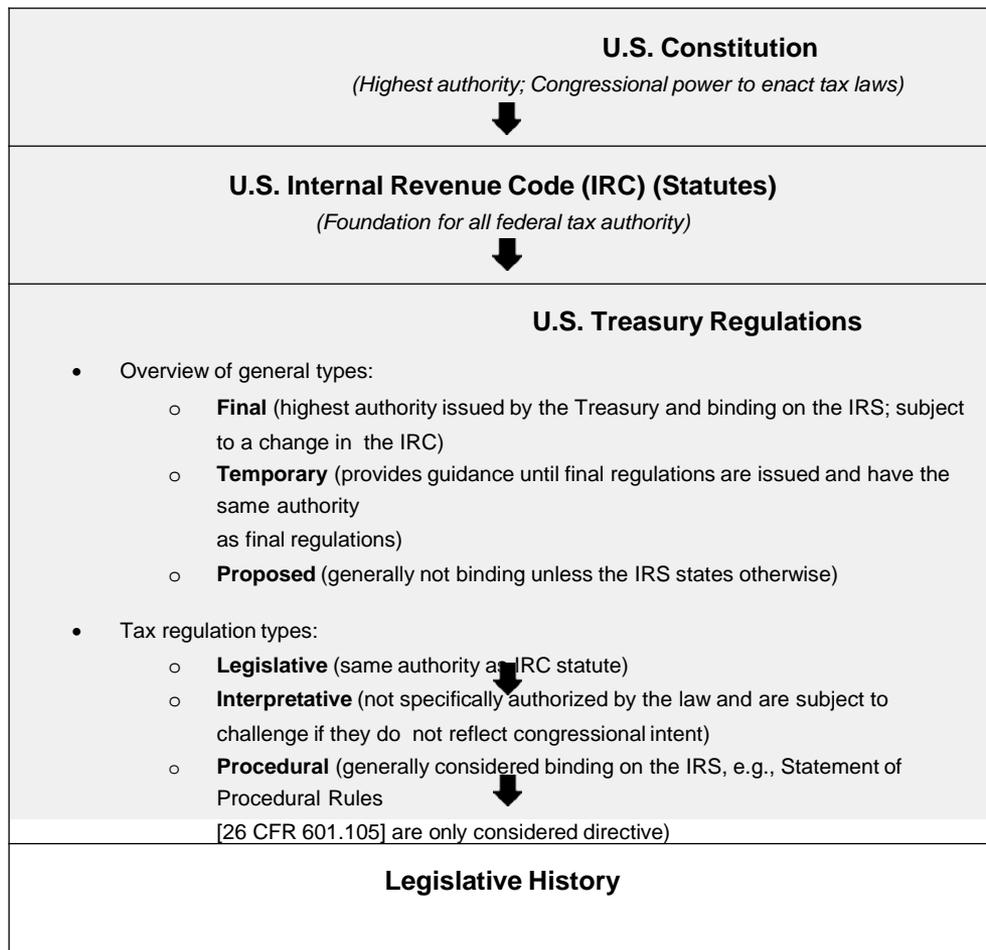
- U.S. Tax Court:
  - Security State Bank, 111 **T.C.** 210 (1998), *acq.* 2001-1 C.B. xix
  - Estate of Algerine Allen Smith, 108 **T.C.** 412 (1997), *nonacq.* 2000-1 C.B. xvi
- U.S. District Court:
  - Flamingo Resort Inc v. U.S., (1980, **DC NV**) 45 AFTR 2d 80-1487
- U.S. Court of Federal Claims:
  - Purdey, William v. U.S., (1997, **Ct Fed Cl**) 80 AFTR 2d 97-7600

# Examples of Case Citations con't

- U.S. Circuit Court of Appeals:
  - U.S. v. Tuff, James H., (2006, **CA9**) 98 AFTR 2d 2006-7975
- U.S. Court of Appeals for the Federal Circuit
  - Palahnuk, Jonathan v U.S., (2007, **CA Fed Cir**) 99 AFTR 2d 2007-794
- U.S. Supreme Court
  - Com. v. Soliman, Nader, (1993, **S Ct**) 71 AFTR 2d 93-463

## U.S. Federal Tax Law Hierarchy Quick Reference Chart

The chart below summarizes the weight of authority from highest to lowest for use in determining whether these sources can be relied upon for a tax position or tax planning.



**Judicial Authority**

*(Authority based on the rank of court and jurisdiction covered by court)*

- **U.S. Supreme Court** (highest court; decisions are binding on all lower federal courts)
- **U.S. Circuit Court of Appeals** (decisions are only binding on district courts within the circuit, but can be persuasive in other federal courts of appeal)
- **U.S. District Court** (decisions are not binding on any courts outside the district, but can be persuasive)
- **U.S. Tax Court** (generally, decisions are given more weight than a U.S. District Court decision on the same tax issue; three types of decisions: regular, memorandum, and summary. Summary decisions have no precedential weight.)
- **U.S. Court of Federal Claims** (decisions are binding in the U.S. Court of Federal Claims or in the Court of Appeal for the Federal Circuit)

**IRS Positions**

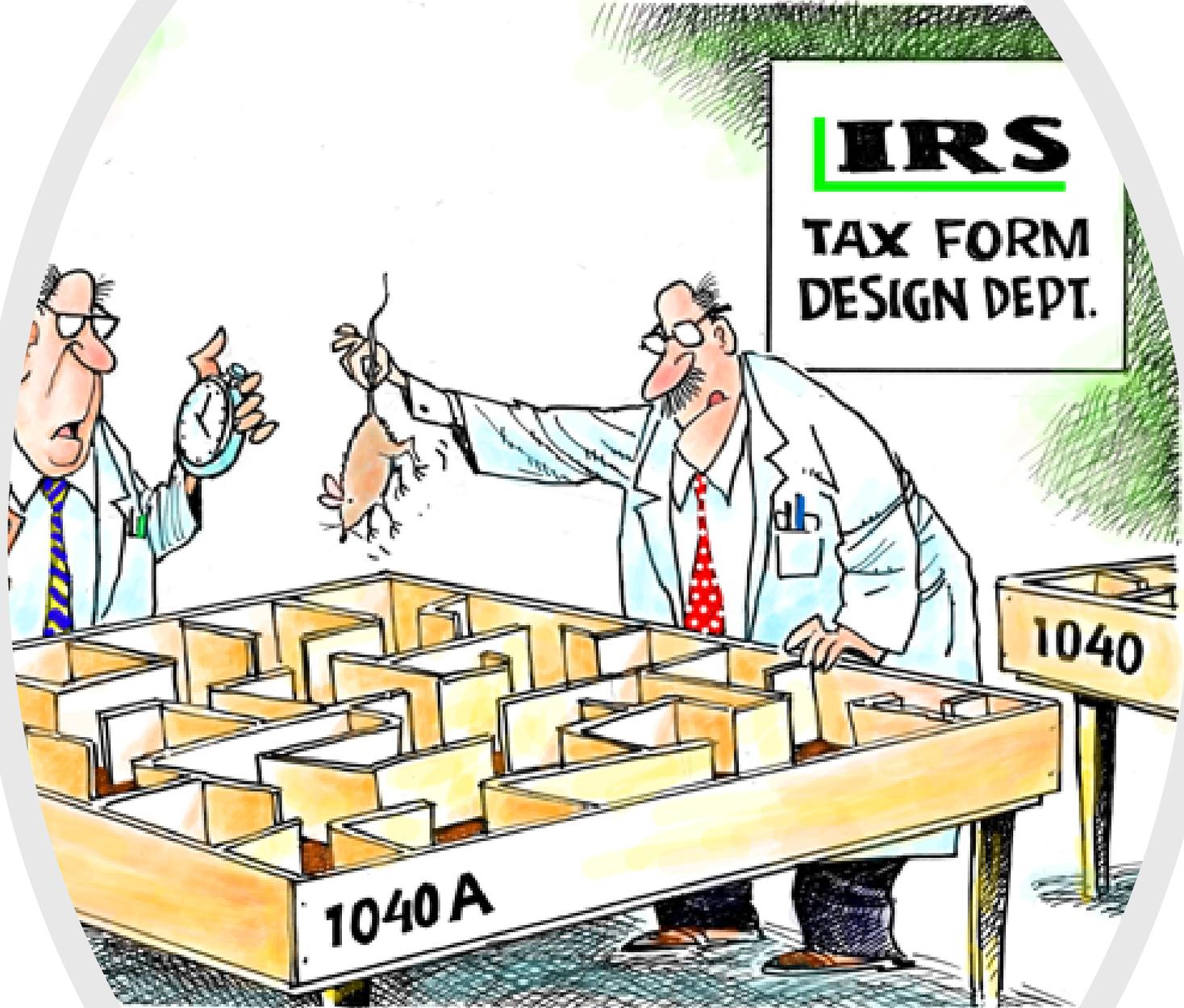
- **Revenue Rulings** (official IRS interpretation of IRC and can be relied upon and cited as authority)
- **Revenue Procedures** (official IRS interpretation on how to comply with the tax law and can be relied upon and cited as authority)
- **Private Letter Rulings, Determination Letters, Technical Advice Memoranda, and Chief Counsel Advice** (provide guidance on a specific taxpayer's situation and cannot be relied upon by other taxpayers, however, can provide insight on the IRS's position on certain issues and may lead to a primary source that may not have been previously considered)
- **IRS Forms, Publications, and FAQs** (provide guidance only and should not be solely relied upon)

**Secondary Sources**

*(Unofficial sources that carry lower weight of authority than primary sources; should not be cited as authority)*

**Special Thank You**

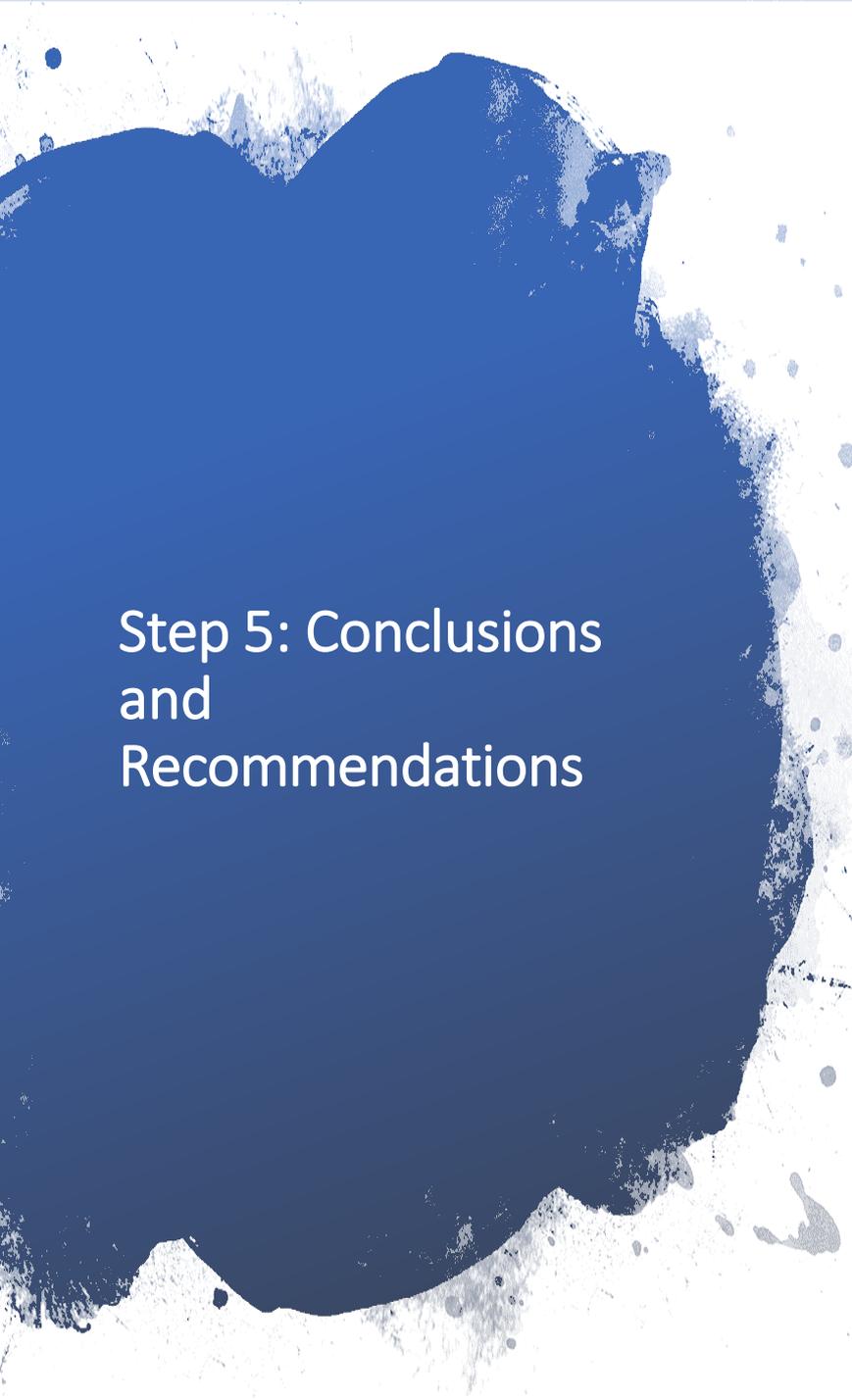
We thank Michael Crisler, CPA, CITP, CGMA; Charlotte Frank, CPA, JD; Ami Oppe, CPA, CGMA; T. Charles Parr, III, CPA, CGMA; and Vance Randall, CPA for using their practical experiences to compose this resource.



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## Step 4: Evaluate Authority

- Determine which identified authorities would apply best to a taxpayer's position
- If authorities are in conflict, determine which authority holds precedent or is of higher authority
- Using sound professional judgement is of the utmost importance



## Step 5: Conclusions and Recommendations

- Sometimes there may not be a single best alternative
  - Evaluate the alternatives
  - Consider the client's preferences
- Client recommendations should always include alternatives
- Be clear and open with the client on his/her options

# Step 6: Communicate Recommendations



## Memo to client file (documenting)

Include all facts, assumptions, issues, authorities, and recommendations



## Letter to client

Usually less technical than memo to file  
Client should understand any limitations of the research and available alternatives

Once again be very clear on the facts as you understand them and include all relevant information in the letter

Emailing the letter is a good way to time stamp the correspondence

# Reminder

Please remember to complete your feedback surveys and submit them along with the 3 code words given during this presentation!

Thanks!

Questions?





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