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- Describe the structural relationship among the federal courts that hear taxation cases.
- Detail the constitution of, and procedures concerning, each element of the federal court system hearing tax cases.
- Use proper citation conventions for each of the courts that hear tax cases.
- State where Tax Court cases are published for use by tax researchers.
- Describe conditions under which the practitioner might choose each of the trial-level courts for a client's litigation.
- Work with the format and content of a court case brief.

WHEN A DISPUTE BETWEEN the Internal Revenue Service and a taxpayer cannot be settled through the administrative appeals process (see Chapter 13), the taxpayer can seek relief via the judicial system. The taxpayer may select one of three courts in which to initiate litigation with the IRS. These courts are the Tax Court, U.S. District Courts, and the U.S. Court of Federal Claims. If a taxpayer or the IRS disagrees with a lower court decision, an appeal may be made to the appropriate Court of Appeals and then finally to the U.S. Supreme Court. In this chapter, we will examine the federal court system, learn to locate various Federal tax judicial decisions, and discuss the use of those decisions in solving tax research problems.

FEDERAL COURT SYSTEM

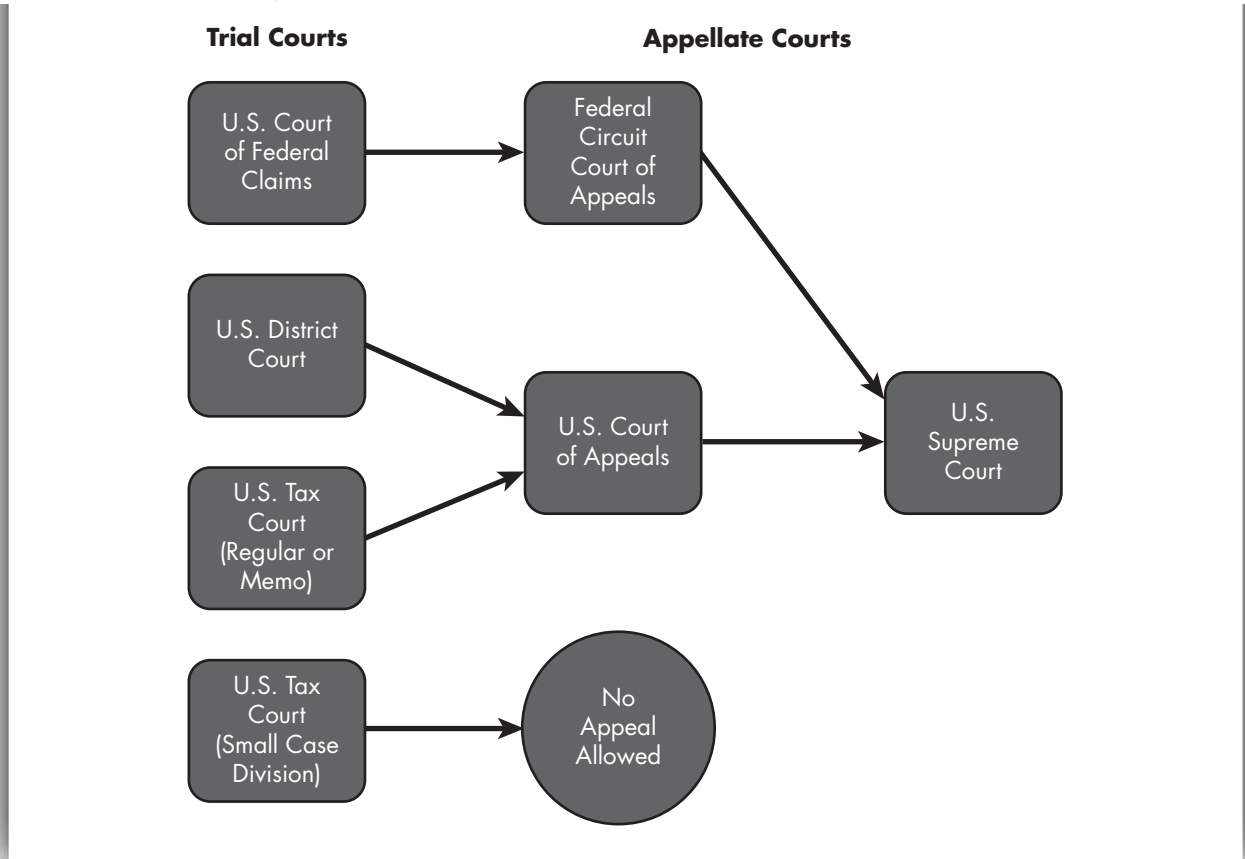
When a taxpayer and the Internal Revenue Service cannot reach an agreement concerning a specific tax matter using the administrative review process (i.e., audits and appeals, which are discussed in Chapter 13), the dispute may be settled in the federal courts. Either the taxpayer or the IRS may initiate legal proceedings in the federal court system. A taxpayer may decide to initiate proceedings as a final attempt to recover an overpayment of tax the IRS refuses to refund or to reverse a deficiency assessment determined by the IRS. Alternatively, the IRS may initiate proceedings to assert its claim to a deficiency, to enforce collection of taxes, or to impose civil or criminal penalties on the taxpayer.

Judicial decisions are the third primary source of the tax law. The *Internal Revenue Code* is the chief statutory basis for Federal tax laws, and the administrative pronouncements of the IRS interpret provisions of the Code and explain their application. Frequently, however, additional issues and questions arise regarding the proper interpretation or intended application of the law that are not answered either in the law itself or in the administrative pronouncements. The judicial system is left with the task of resolving these questions. In this process, additional tax law is generated that can carry the full force of the statute itself. Often, recurring litigation in an area of innovative or unexpected judicial decisions regarding tax matters will result in Congress enacting legislation codifying certain judicial decisions. The practitioner must be familiar with the workings of this judicial system, which has the ability to stimulate tax laws and influence future legislative developments. In addition, in the event an issue is litigated in the court system, the tax practitioner must be familiar with the precedential value of court cases and the process for review of the court's decision.

Most disagreements with the Internal Revenue Service are resolved through the administrative process of appeals. Judicial decisions should be given significant weight in arriving at a conclusion or recommendation to a tax problem; however, caution should be exercised when it is apparent from the IRS's prior actions that a given position is almost certain to result in litigation. The costs of litigation, in terms of both money and time, may be prohibitive for certain taxpayers.

All litigation between a taxpayer and the government begins in a trial court. If the decision of the trial court is not satisfactory to one of the parties, the trial court decision may be appealed. The appellate court will review the trial court decision, often hear new evidence and arguments, and then either uphold the trial court's decision, modify it in some way, or reverse it.

The federal court system consists of three trial courts and two levels of appellate courts. The three trial courts are the U.S. Tax Court, the U.S. District Courts, and the U.S. Court of Federal Claims. The two appellate courts are the U.S. Court

Exhibit 5-1: Federal Tax System—Tax Cases

of Appeals and the U.S. Supreme Court. Each of the trial courts has different attributes and is designed to serve in a different capacity in the federal judicial system. Exhibit 5-1 diagrams the existing federal court system. An appeal from any of the three trial courts is to the appropriate U.S. Court of Appeals. The taxpayers and the IRS have no direct access to the Supreme Court or any Court of Appeals.

Legal Conventions

Burden of Proof In most litigation, the party initiating the case has the burden of convincing the court that he is correct with respect to the issue. Historically, however, in most civil tax cases the *Internal Revenue Code* placed the burden of proof on the taxpayer, whether or not he or she initiated the case, except in cases of such items as hobby losses, fraud with intent to evade tax, and the accumulated earnings tax.

However, the burden of proof shifts to the IRS in a few situations.¹ The IRS has the burden of proof in any court proceeding on income, gift, estate, or generation-skipping tax liability with respect to factual issues, provided the taxpayer:

- Introduces credible evidence of the factual issue,
- Maintains records and substantiates items as presently required under the Code and Regulations, and

¹IRC §7491.

- Cooperates with reasonable IRS requests for meetings, interviews, witnesses, information, and documents.

For corporations, trusts, and partnerships with net worth exceeding \$7 million, the burden of proof remains on the taxpayer.² The burden of proof also automatically shifts to the IRS:

- If the IRS uses statistics to reconstruct an individual's income, or
- If the court proceeding against an individual taxpayer involves a penalty or addition to tax.

When reading a published opinion, the tax researcher should note whether the decision was based on the IRS's or the taxpayer's failure to meet a needed evidentiary burden, or whether the IRS or the taxpayer established the position with sufficient proof. The first situation should be considered a weaker precedent than the second. Understanding the "strength" of a court decision is an important part of tax research.

Tax Confidentiality Privilege The attorney-client privilege of confidentiality also applies in tax matters to nonattorneys authorized to practice before the IRS (e.g., CPAs and enrolled agents), as identified in Chapter 1. The nonattorney-client privilege may be asserted only in a *noncriminal tax* proceeding before the IRS or federal court.³ The confidentiality privilege usually does not apply to the preparation of tax returns, or the giving of accounting or business advice.

The nonattorney-client privilege does not extend to written communications between a tax practitioner and a corporation in connection with the promotion of any tax shelter. Nor does it apply to the client's workpapers used to determine tax expense for financial statements.

Certified public accountants and enrolled agents need to understand the rules regarding tax confidentiality as they have been applied to attorneys so as to be aware of the privilege limits. Usually, these rules are determined by state law, and the Federal confidentiality privilege cannot extend beyond the protection granted by state law, as it is currently interpreted.

Common Legal Terminology Some of the common legal terms likely to be encountered by the tax researcher follow.

ad hoc For one particular or special purpose; for example, an ad hoc committee might be formed to solve a certain problem.

ad valorem According to value; used in taxation to designate an assessment of taxes based on property value.

appellant The party who appeals a decision, usually to a higher court.

bona fide In good faith and without fraud or deceit.

certiorari (writ of) The process by which the U.S. Supreme Court agrees to hear a case, based on the appeal of a lower court decision by one of the parties involved in that decision.

collateral estoppel When an issue of fact has been determined by valid judgment, that issue cannot be litigated again by the same parties in future litigation.

covenant An agreement or promise to do or not to do something.

²IRC §7491(a)(2)(C).

³IRC §7525(a)(1).

de facto In fact or reality; by virtue of accomplishment or deed.

de jure In law or lawful; legitimate.

defendant In civil proceedings, the party that is responding to the complaint; usually the one that is being sued in some matter.

deposition A written statement of a witness under oath, normally taken in question-and-answer form.

dictum (dicta) A statement or remark in a court opinion that is not necessary to support the decision.

en banc A decision by all the judges of a court instead of a single judge or a selected set of judges.

enjoin To command or instruct with authority; a judge can enjoin someone to do or not to do some act.

habeas corpus (writ of) The procedure for determining if the authorities can hold an individual in custody.

nolo contendere A party does not want to fight or continue to maintain a defense; the defendant will not contend a charge made by the government; “no contest.”

non obstante veredicto (n.o.v.) Notwithstanding the verdict; a judgment that reverses the determination of a jury.

nullity Something in law that is void; an act having no legal force.

parol evidence The doctrine that renders any evidence of a prior understanding of the parties to a contract invalid if it contradicts the terms of a written contract.

per curiam A decision of the whole court, instead of just a limited number of judges.

plaintiff The one who initially brings a lawsuit.

prima facie At face value; something that is obvious and does not require further support.

res judicata The legal concept that bars relitigation on the same set of facts. Because of this concept, taxpayers must make sure that all of the issues they want (or do not want) to be litigated are included in a case. Once the case is decided, it cannot be reopened.

slip opinion An individual court decision published separately shortly after the decision is rendered.

vacate A reversal or abandonment of a prior decision of a court.

Tax Court

The U.S. **Tax Court** is a specialized trial court that hears only Federal tax cases. Established by the Code and not directly by the U.S. Constitution,⁴ its jurisdiction is limited to cases concerning the various *Internal Revenue Codes* and Revenue Acts that were adopted after February 26, 1926. Before 1943, the Tax Court was known as the **Board of Tax Appeals (BTA)**; it was an administrative board of the Treasury Department rather than a true judicial court. In 1943, the BTA became the U.S. Tax Court, an administrative court, and in 1969, its status was upgraded to that of a full judicial court, with enforcement powers.

⁴IRC §7441.

Nineteen judges hear Tax Court cases. Each judge is appointed to a fifteen-year term by the President of the United States, with the advice and confirmation of the Senate. This appointment must be based solely on the grounds of the judge's fitness to perform the duties of the office. A Tax Court judge may be removed from his or her position by the President, after notice and opportunity for public hearing, because of inefficiency, neglect of duty, or malfeasance in office, but for no other reason.

To alleviate the heavy caseload of the appointed Tax Court judges, the Chief Judge of the Court periodically designates additional special trial judges to hear pertinent cases for a temporary period. Limited primarily by the budget granted by Congress, these temporary appointments are useful in decreasing the waiting period for taxpayers who wish to be heard before the Court. The decisions of these special judges carry the full authority of the U.S. Tax Court. Senior judges are retired judges who still hear cases from time to time by invitation of the Chief Judge.



SPOTLIGHT ON TAXATION

U.S. Tax Court Judges (2007)

At the time this edition was prepared, the roster of Tax Court judges included the following.

(some positions may be vacant)

Judges:

- * John O. Colvin, Chief Judge
- * Carolyn P. Chiechi
- * Mary Ann Cohen
- * Maurice B. Foley
- * Joseph H. Gale
- * Joseph R. Goeke
- * Harry A. Haines
- * James S. Halpern
- * Mark V. Holmes
- * Diane L. Kroupa
- * David Laro
- * L. Paige Marvel
- * Stephen J. Swift
- * Michael B. Thornton
- * Juan F. Vasquez
- * Thomas B. Wells
- * Robert A. Wherry, Jr.

Senior Judges:

- * Renato Beghe
- * Herbert L. Chabot
- * Howard A. Dawson, Jr.
- * Joel Gerber
- * Julian I. Jacobs
- * Arthur L. Nims, III
- * Robert P. Ruwe
- * Laurence J. Whalen

Special Trial Judges:

- * Peter J. Panuthos

continued

- * Robert N. Armen
- * Lewis R. Carluzzo
- * D. Irvin Couvillion
- * John F. Dean
- * Stanley J. Goldberg
- * Carleton D. Powell

Tax Court judges are tax law specialists, not generalists. Typically, they have acquired many years of judicial or tax litigation experience before being appointed to the Tax Court. Thus, if a taxpayer wants to argue a technical tax issue with the IRS, the Tax Court usually is the best trial-level forum in which to try the case. Tax Court judges are better able to understand such issues than would be a judge in a more general court.



SPOTLIGHT ON TAXATION

Tax Law Complexity

We have from time to time complained about the complexity of our revenue laws and the almost impossible challenge they present to taxpayers or their representatives who have not been initiated into the mysteries of the convoluted, complex provisions affecting the particular corner of the law involved. . . . Our complaints have obviously fallen upon deaf ears.

—Arnold Raum, U.S. Tax Court Judge

The U.S. Tax Court is a national court, based in Washington, D.C. Its jurisdiction is not limited to a specific geographical region, as is the case with some other federal courts. Taxpayers need not travel to Washington, D.C., to have a case tried before the Tax Court because some of its judges travel throughout the country and are available to hear taxpayer cases in every major city of the United States several times every year. See Exhibit 5-2 for a map showing cities where the Tax Court occasionally holds trials.

When a case is heard before the Tax Court, it usually is presented before only one of the nineteen Tax Court judges. Taxpayers cannot request jury trials before this court. After the judge hears the case, he or she prepares a decision that is reviewed by the Chief Judge of the court. In most instances, the trial judge's opinion stands, but the Chief Judge can designate the opinion for review by the other members of the Tax Court. Upon their agreement with the decision, the opinion is released.

If the case involves an unusual, important, or novel issue, more than one judge, or the entire Tax Court, might hear the case. This rare occurrence is identified as an *en banc* sitting of the court.

For a case to be heard, the taxpayer must petition the Court within ninety days of the IRS's mailing of a notice and demand for payment of the disputed amount. The taxpayer need not pay the disputed tax liability before the case is heard.

Tax Court Decisions The Tax Court issues two kinds of decisions: regular and memorandum. A **Regular decision** (recently thirty to fifty cases per year) generally involves a new or unusual point of law, as determined by the Chief Judge of the

Exhibit 5-2: Tax Court Trial Locations



court. If the Chief Judge believes that the decision concerns only the application of existing law or an interpretation of facts, the decision is issued as a **Memorandum decision** (250–350 cases per year). Over the years, however, this classification scheme has not always been strictly followed by the Court. Many of its Memorandum decisions address significant points of law or other issues important to the tax researcher. Accordingly, the researcher should not ignore Memorandum decisions. If issues or points of law pertinent to the problem at hand are addressed, both Regular and Memorandum decisions of the Tax Court should be considered by the taxpayer.

Because the Tax Court is a national court, it hears cases that may be appealed to Courts of Appeals (discussed later in this chapter) in different geographical regions, or *circuits*. Because these Courts of Appeals occasionally disagree on tax issues, the Tax Court is faced with a dilemma. For example, one Court of Appeals may have held that a specific item is deductible in computing taxable income, while another has held against such a deduction. Which precedent should the Tax Court follow? Under *Golsen*,⁵ the Tax Court will follow the Court of Appeals that has direct jurisdiction over the taxpayer in question. If the Court of Appeals that has jurisdiction over the taxpayer has not ruled on the matter, the Tax Court will decide the case on the basis of its own interpretation of the disputed provision. This ***Golsen* rule** means the Tax Court may reach opposite decisions, based on identical facts, for taxpayers differentiated solely by the geographical area in which they live. The tax researcher must be aware of the *Golsen* rule in analyzing cases that may be affected by it.

Small Cases Division The Tax Court maintains a **Small Cases Division**, which is similar to a small claims court. If the amount of a disputed deficiency, including penalties, or claimed overpayment does not exceed \$50,000, a taxpayer may be heard before the Small Cases Division, upon approval of the Tax Court. The hear-

⁵54 T.C. 752 (1970).

ing is conducted as informally as possible, and the taxpayer may represent him- or herself, that is, acting *pro se*. (Of course, the taxpayer may be represented by an attorney if he or she so desires.) Neither elaborate written briefs nor formal oral arguments are required in the Small Cases Division. Issues brought before this forum generally are fact-based; for example, does the taxpayer have the necessary documentation to claim the earned income tax credit?

At any time before a decision is final, the Tax Court may interrupt a Small Cases hearing and transfer the case to the regular Tax Court for trial. This might occur, for example, when important facts or issues of law, more suitably heard in the more formal Tax Court context, become apparent only after the Small Cases proceedings have begun.

Small Cases decisions, called Summary Opinions, are not officially published by the government. Nevertheless, they are available for review by tax researchers and taxpayers through commercial publishers. Small Cases Division decisions cannot be used as precedents when dealing with the IRS; however, they do provide insight into how the Tax Court has treated similar tax situations. The decision of the Small Cases judge is final and may not be appealed by the taxpayer or the government. An excerpt from a sample Summary Opinion is presented in Exhibit 5-3.

Exhibit 5-3: Tax Court Small Case (Summary Opinion) Excerpt

Estate of Stevens, Nicholas C., T.C. Summary Opinion 2003-163

Date Issued: 12/1/2003

Judge: Opinion by PANUTHOS

Pursuant to *Internal Revenue Code* Section 7463(B), this opinion may not be treated as precedent for any other case.

COUNSEL

Kim Patricia Bryan, *pro se*.

Clare J. Brooks, for respondent.

Opinion by PANUTHOS

This case was heard pursuant to the provisions of section 7463 of the *Internal Revenue Code* in effect at the time the petition was filed. The decision to be entered is not reviewable by any other court, and this opinion should not be cited as authority. Unless otherwise indicated, subsequent section references are to the *Internal Revenue Code* in effect for the year in issue.

Respondent determined a deficiency in decedent's Federal income tax of \$1,324 and an addition to tax under section 6651(a)(1) of \$121 for taxable year 2000. After respondent's concession, the issue for decision is whether decedent is taxable on unreported income of \$12,154 from wages and interest during the 2000 taxable year.

BACKGROUND

Some of the facts have been stipulated, and they are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference.

Nicholas Charles Stevens, Jr. (decedent) died in Baltimore County, Maryland, in October 2001 at the age of 18 years. Decedent's mother, Kim Patricia Bryan (Ms. Bryan), was directed to serve as personal representative of decedent's estate. At the time the petition was filed, Ms. Bryan resided in Baltimore, Maryland.

During the year in issue, decedent received wages of \$1,048 from Maryland Car Care, Inc. and \$4,719 from Mangione Enterprises of Turf Valley. Also during the year in issue, decedent was credited with interest income of \$7,435 from custodial accounts at Farmers and Mechanics

continued

Exhibit 5-3: (continued)

National Bank. Such accounts were established pursuant to the Maryland Uniform Transfers to Minors Act upon the death of decedent's father in 1992. Decedent, a minor, was 17 years old in 2000.

Decedent filed a Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents, for the 2000 taxable year (2000 return). Decedent reported wages of \$1,048 on his 2000 return. He did not report wages of \$4,719 from Mangione Enterprises of Turf Valley. Nor did he report the interest income of \$7,435 from custodial accounts.

Respondent issued decedent a notice of deficiency dated December 23, 2002, determining that decedent was taxable on unreported income of \$12,154 from wages and interest during the 2000 taxable year. Ms. Bryan contends that a deceased person should not be liable for any tax deficiencies.

DISCUSSION

Decedent having filed his 2000 return after July 22, 1998, section 7491(a) is applicable in the instant case. However, neither party takes a position as to whether the burden of proof has shifted to respondent under section 7491(a). We conclude that resolution of the issue whether decedent is taxable on unreported income of \$12,154 does not depend upon who has the burden of proof.

Gross income includes compensation for services. Sec. 61(a)(1). In the present case, decedent received wages of \$4,719 from Mangione Enterprises of Turf Valley, and he did not report such amount in his 2000 return. Accordingly, we sustain respondent's determination that decedent received unreported income of \$4,719 from wages in 2000.

Gross income also includes interest. Sec. 61(a)(4). In the present case, decedent was credited with interest income of \$7,435 in 2000 from custodial accounts established pursuant to the Maryland Uniform Transfers to Minors Act (MUTMA). Under the MUTMA, interest income constitutes "custodial property" that generally transfers to a minor when he or she attains the age of either 18 years or 21 years, depending upon who originally transferred such property to the custodian. See Md. Code Ann., Est. & Trusts secs. 13-301(f), 13-320 (2001). While decedent was only 17 in 2000, he enjoyed the economic benefit of interest income from the custodial accounts, and therefore, such interest is taxable in the year earned and not in the year of actual receipt by him. See *Anastasio v. Commissioner*, 67 T.C. 814, (LEXIS through 2003 Sess.). 817-818 (1977), *affd.* 41 AFTR 2d 78-328, 78-1 USTC par. 9153 (2d Cir. 1977). We sustain respondent's determination that decedent was taxable on unreported interest income of \$7,435 from custodial accounts in 2000.

Ms. Bryan nevertheless contends that a deceased person should not be liable for any tax deficiencies. "Death may be an avenue of escape from many of the woes of life, but it is no escape from taxes." *Estate of Kahr v. Commissioner*, 414 F.2d 621, 626 (2d Cir. 1969) (cited by *United States v. Critzer*, 498 F.2d 1160, 1163 (4th Cir. 1974)), *affg.* in part and *revg.* in part 48 T.C. 929 (1967).

Reviewed and adopted as the report of the Small Tax Case Division.

To reflect the foregoing, Decision will be entered for respondent with respect to the deficiency and for petitioner with respect to the addition to tax under Section 6651(a)(1).

Locating Tax Court Decisions Tax Court regular decisions are published by the Government Printing Office (GPO) in a set of bound reporters called the *Tax Court of the United States Reports*. These volumes are cited as "T.C." The Board of Tax Appeals had its own reporter, called the *United States Board of Tax Appeals*, cited as "BTA."

Memorandum decisions are not published by the GPO. They are included in special-decision reporters that are published by Commerce Clearing House (CCH) and by Research Institute of America (RIA). The CCH reporter is titled *Tax Court Memorandum Decisions*, cited as “TCM,” and the RIA reporter is known as *RIA Tax Court Memorandum Decisions*, cited as “RIA T.C. Memo.” The Tax Court reporter is published twice a year, and both of the memorandum-case reporters are published once a year.

Because many months may elapse between the release of a Tax Court decision and its publication in a bound reporter, such decisions receive both a temporary and a permanent citation. The **temporary citation** is structured as follows.

Hillman, D. H., 114 T.C._____, No. 6 (2000), where

114 is the volume number.

T.C. is the abbreviation for the Tax Court Reporter.

_____ indicates the page number, which is to be determined later.

No. 6 is the number of the case.

(2000) is the year of the decision.

The temporary citation includes no page number for the case because the opinion has not yet been published. All proper citations either italicize or underline the name of the court case; major elements of the citation are separated by commas. The **permanent citation** for the same case is reported as follows.

Hillman, D. H., 114 T.C. 103 (2000), where

114 is the volume number.

T.C. is the abbreviation for the Tax Court Reporter.

103 is the page number.

(2000) is the year of the decision.

Most court case citations include the names of both parties involved. This convention is ignored for most Tax Court citations, however, because all such cases involve the taxpayer bringing suit against the government to avoid payment of disputed tax liabilities. Thus, a traditional citation for the above case would be *Hillman v. U.S.* (or, more precisely, *David H. Hillman v. Commissioner*). Nonetheless, common practice allows the tax researcher to omit the reference to the defendant in the action (i.e., the government or the IRS Commissioner), because such reference could be inferred from the notation for the court in which the lawsuit is heard.

Once the GPO publishes the decision in the permanent bound edition of the regular Tax Court cases, the temporary citation becomes obsolete. The same citation procedure is used with respect to Board of Tax Appeals cases, substituting “BTA” for the “T.C.” identification. Indeed, this procedure for disclosing the citation for a case (i.e., Name–Volume Number–Reporter–Page Number–Year) is common among all American courts. Exhibit 5-4 is an example of a regular Tax Court decision, reproduced from the GPO Tax Court reporter.

Using the same citation conventions, the general and permanent citations, respectively, for a Tax Court memorandum decision would appear as follows.

General

Chi Wai, T.C. Memo 2006-179, where

T.C. Memo is a reference to a Tax Court Memorandum decision.

2006 is the year of the decision.

179 is the decision number.

Exhibit 5-4: Tax Court Regular Opinion-Excerpt

Campbell, Edwina D., 121 T.C. 290, Code Sec(s) 6015.

Date Issued: 11/24/2003.

By Final Notice of Determination dated Nov. 6, 2001, R determined that P was not entitled to relief from joint and several liability relating to 1989 because the request was, pursuant to Sec. 6015, I.R.C., filed more than 2 years after R's first collection activity against P. On Feb. 1, 2002, P filed, pursuant to sec. 6015(e)(1), I.R.C., a petition seeking review of R's determination. On Mar. 10, 2003, P filed a Motion for Partial Summary Judgment and on Mar. 31, 2003, R filed a Notice of Objection and Cross-Motion for Summary Judgment. The issue in both parties' motions is whether R's application of P's overpayment, relating to 1998, as a credit against P's 1989 tax liability is, pursuant to sec. 6015, I.R.C., a collection activity that bars P's request for relief relating to 1989.

Held: R's offset of P's overpayment is, pursuant to sec. 6015, I.R.C., a collection activity.

Held, further, P's Motion for Partial Summary Judgment is denied.

Held, further, R's Cross-Motion for Summary Judgment is granted. There is no genuine issue as to whether P is entitled to relief from joint and several liability relating to 1989 because P's election was, pursuant to sec. 6015, I.R.C., filed more than 2 years after R's first collection activity against P.

COUNSEL

Edwina Diane Campbell, pro se. Erin K. Huss, for respondent.

FOLEY, Judge

OPINION

This matter is before the Court on Petitioner's Motion for Partial Summary Judgment and Respondent's Notice of Objection and Cross-Motion for Summary Judgment pursuant to Rule 121. The sole issue for decision is whether respondent's application of petitioner's overpayment, relating to 1998, as a credit against petitioner's 1989 tax liability is, pursuant to section 6015, a collection action that bars petitioner's request for relief from joint and several liability relating to 1989.

BACKGROUND

On May 13, 1999, respondent applied, pursuant to section 6402(a), petitioner's overpayment, relating to 1998, as a credit against a portion of petitioner's 1989 tax liability and sent petitioner written notification thereof. On July 23, 2001, petitioner requested, pursuant to section 6015(b), (c), and (f), relief from joint and several liability relating to her 1989 joint Federal income tax return filed with Alvin L. Campbell.

By Final Notice of Determination dated November 6, 2001, respondent determined that petitioner was not entitled to relief from joint and several liability relating to 1989 because the request was, pursuant to section 6015, filed more than 2 years after respondent's first collection activity against petitioner.

On February 1, 2002, petitioner, while residing in Tucson, Arizona, filed a petition pursuant to section 6015(e)(1) seeking review of respondent's determination. Petitioner, on March 10, 2003, filed a Motion for Partial Summary Judgment, accompanied by a Memorandum of Points and Authorities, and Affidavit in support thereof. On March 31, 2003, respondent filed a Notice of Objection and Cross-Motion for Summary Judgment, accompanied by Declarations, and Memorandum of Law in support thereof. Petitioner, on April 16, 2003, filed an Opposition to Respondent's Cross-Motion for Summary Judgment.

continued

Exhibit 5-4: (continued)**DISCUSSION**

An election pursuant to section 6015(b), (c), or (f) must be made within 2 years of respondent's first collection activity taken after July 22, 1998, against the individual making the election. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, sec. 3201(g)(2), 112 Stat. 740; sec. 6015(b)(1)(E), (c)(3)(B); Rev. Proc. 2000-15, sec. 5, 2000-1 C.B. 447, 449.

Petitioner contends that respondent's offset of her overpayment is not, pursuant to section 6015, a collection activity. We disagree. The offset of an overpayment is by its plain and ordinary meaning a collection activity pursuant to section 6015. See *Perrin v. United States*, 444 U.S. 37, 42 (1979) (stating that "A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning"); *Trent v. Commissioner*, T.C. Memo. 2002-285 [TC Memo 2002-285] (stating that nonlevy collection actions include "offsetting overpayments from other tax years after the requesting spouse files for relief"). Because petitioner reported overpayments of tax on her 1998 return, she generally would be entitled to claim a refund. See sec. 6511(a), (b)(1); *Commissioner v. Lundy*, 516 U.S. 235, 240 [77 AFTR 2d 96-406] (1996). Pursuant to section 6402(a), however, respondent used petitioner's overpayment to partially satisfy her 1989 tax liability. Thus, respondent engaged, pursuant to section 6015, in a collection activity against petitioner. Because petitioner's election was filed more than 2 years after that collection activity (i.e., respondent applied the overpayment and sent petitioner written notification thereof on May 13, 1999, and on July 23, 2001, petitioner elected relief), there is no genuine issue as to whether petitioner is entitled to relief from joint and several liability relating to 1989. See Rule 121(b); *Natl. Indus., Inc. v. Republic Natl. Life Ins. Co.*, 677 F.2d 1258, 1265 (9th Cir. 1982). Thus, Petitioner's Motion for Partial Summary Judgment is denied, and Respondent's Cross-Motion for Summary Judgment is granted.

Contentions we have not addressed are irrelevant, moot, or meritless.

To reflect the foregoing, An appropriate order and decision will be entered.

Permanent RIA

Chi Wai, RIA T.C. Memo ¶ 2006-179, where
RIA T.C. Memo is the RIA Tax Court Memorandum reporter.
2006-179 is the paragraph number.

Permanent CCH

Chi Wai, 92 TCM 181 (2006), where
92 is the volume number.
TCM is the CCH Tax Court Memorandum reporter.
181 is the page number.
(2006) is the year of the decision.

One can observe from the general and RIA citations that the opinion was issued in 2006 because all of the Tax Court Memorandum Decisions for that year are cited using paragraph numbers that begin with "2006." Thus, the reference in parentheses to the year of the decision is redundant and may be omitted. Again, the citation omits the reference to the government, typically "v. Comm.," as this is common among all Tax Court cases.

As we observed with respect to the regular Tax Court decisions, the temporary citation becomes obsolete when the permanent bound edition of the memorandum reporter is published.

Besides the traditional published sources for Tax Court decisions, these items also are available on computer tax services such as RIA Checkpoint, Lexis, and so on. All of the computer services reference the general citation, and most give the parallel RIA and CCH reporter citations.

Tax Court Rule 155 When a court reaches a tax decision, it normally will not compute the tax that is due to the government or the refund that is due to a taxpayer. The computation of this amount is left to be determined by the IRS and the taxpayer. The court will compute the tax only if the government and the taxpayer cannot agree. When the Tax Court reaches a decision without calculating the tax, the decision is said to be entered under *Rule 155*. See *Julie A. Toth*, 128 T.C. 1 (2007), for an example of how the Tax Court enters a decision under Rule 155. For Tax Court decisions prior to 1974, this practice was referred to as *Rule 50*.

Scope of Tax Court Decisions The Tax Court may examine an entire tax return for a taxpayer whose case it is hearing. On the other hand, the District Court and Court of Federal Claims can address only the specific issue or issues that are involved in the case. If a taxpayer wants only a specific issue (or issues) litigated in a case, then the District Court or Court of Federal Claims may be a better forum than the Tax Court.

District Courts

The U.S. **District Courts** are another trial-level forum that hears tax cases. Unlike the Tax Court, however, the District Courts hear cases involving legal issues based on the entire U.S. Code, not just the *Internal Revenue Code*. District Court judges typically are generalists, rather than specialists in Federal tax laws. The same District Court judge might render opinions concerning matters of tax law, civil rights, bank robbery, interstate commerce, kidnapping, and fraud.

The District Courts are further distinguished from the Tax Court in that a taxpayer who disagrees with the IRS may take his or her case to the appropriate District Court only after paying the disputed tax liability; thus, in the typical District Court taxation case, the taxpayer sues the government for a refund of the disputed tax liability.

Numerous District Courts are located throughout the United States, each assigned a geographical area. The designated district can be as small as one city (New York City) or as large as the largest state (Alaska). Typically, the taxpayer will request a hearing before the District Court that has jurisdiction over the location in which he or she lives or conducts business.

District Court cases are heard before one judge, not a panel of judges. In the appropriate District Court, the taxpayer can request a jury trial concerning a tax case (or certain other Federal matters). This opportunity may be useful if the taxpayer wants to argue an “emotional” issue rather than a technical one, or if the taxpayer or his or her associates are particularly credible witnesses (and thus have a good chance of winning a jury trial). Limited to decisions concerning questions of fact, juries apparently occasionally can be persuaded in a tax case to hold for the taxpayer when a judge might not be so inclined.

Because the District Courts are general in nature and do not specialize in tax matters, over time, their decisions can vary significantly among the districts. Some of their decisions have important precedential value and can be relied on by the tax researcher; however, many of these decisions are poorly structured or poorly

conceived from a technical standpoint, and represent candidates for overturn on appeal. The tax researcher must examine these decisions carefully to assess their probable use as a precedent before using them to help solve a client's tax problem.

Locating District Court Decisions District Court tax decisions are published in three different reporters. West Publishing includes such cases in its *Federal Supplement Series*; citations for these cases include the “F.Supp.” or the “F.Supp.2d.” abbreviation. The series contains all decisions of the District Courts designated for publication, including those for the numerous nontax cases. Most university and law school libraries subscribe to the *Federal Supplement Series*. However, it is a waste of money for the tax researcher to subscribe to this series to obtain just the tax decisions that are rendered in the District Courts. Instead, the tax researcher can use special tax case reporters that include only tax decisions selected from all of the decisions of the federal courts except the Tax Court. (As we discussed earlier, the Tax Court's Regular and Memorandum Decisions are published in specialized reporters, so they do not present a budgeting problem of this sort.)

RIA's specialized tax reporter is titled *American Federal Tax Reports*, abbreviated in citations as **AFTR**. Currently, the second series of this reporter is in use, with “2d” added to indicate that the cases therein usually relate to the current *Internal Revenue Code*. Accordingly, the abbreviation AFTR2d is commonly used. CCH's specialized Federal tax case reporter is known as *United States Tax Cases*, which is abbreviated as **USTC** in traditional citations. Do not confuse this abbreviation with that for the U.S. Tax Court, which we have identified as “T.C.” Occasionally, the West citation (F.Supp.) is referred to as the primary citation for a case, and the CCH and RIA reporters are used for secondary citations. The AFTR2d and USTC reporters each publish 1,000–1,500 tax cases in a typical year from courts other than the U.S. Tax Court.

Besides the traditional published primary and secondary court reporters, electronic court reporters are also available. The computer-based reporters have their own citations, and they usually cross-reference one or more of the standard printed reporters (West, RIA, and CCH). An illustration of various citations for a District Court case follows.

Court Reporters

West: *Barber, Lori*, 85 F.Supp.2d 967 (N.D.Ca., 2000)

RIA: *Barber, Lori*, 85 AFTR2d 2000-879 (N.D.Ca.)

CCH: *Barber, Lori*, 2000-1 USTC ¶ 50,209 (N.D.Ca.)

Each of these citations indicates both the specific District Court that heard the case and the year in which the opinion was issued. Given publication time lags, however, this may not match the year in which the reporter volume was published. Unless necessitated by such a delay, a proper citation need not include in the parentheses the year in which the opinion was issued, in all but a West citation.

Notice that more than one volume of the USTC reporter was published by CCH in 2000, as indicated by the volume number, and that this reporter uses paragraph numbers to organize the opinions. Other elements of the citations are familiar. A complete citation for this case, using traditional form, would appear as follows.

(N.D.Ca.).

Court of Federal Claims

The U.S. **Court of Federal Claims** is the newest of the trial-level courts. It was cre-

this act, the U.S. Court of Claims and the U.S. Court of Customs and Patent Appeals were reorganized into two new courts. The trial division of the U.S. Court of Claims became the new U.S. Claims Court, and the remaining divisions of both courts became the new Court of Appeals for the Federal Circuit, discussed later. The forum was renamed the U.S. Court of Federal Claims in 1992. Sixteen judges are appointed to the Court of Federal Claims. Its jurisdiction lies in hearing cases concerning all monetary claims against the Federal government, only one type of which is in the form of tax refunds. Thus, the taxpayer must pay the disputed tax and sue the government for a refund in order for the case to be heard in the Court of Federal Claims. Similarly, like the District Court but unlike the Tax Court, the Court of Federal Claims is composed of judges who, with only a few exceptions, are not specialists in technical tax law. The Court of Federal Claims does not allow jury trials on any matter.

The U.S. Court of Federal Claims is a national court located in Washington, D.C. However, because the Court of Federal Claims judges periodically travel to the major cities of the country and hear cases in these various locations, in a manner similar to that of the Tax Court, one need not go to Washington, D.C., to present a case before the Court of Federal Claims.

Moreover, because the Court of Federal Claims is a national court that must follow the decisions only of the Federal District of the Court of Appeals, it is not bound by the geographical Circuit Courts of Appeals that have ruled on similar cases, nor by the Court of Appeals for the circuit in which the taxpayer works or resides. This may be important to a taxpayer whose circuit has held adversely to his or her position on the disputed issue: if the case were presented to the appropriate District Court, or to the Tax Court (recall the *Golsen* rule), the precedent of the adverse ruling would be adopted by those trial courts, but the Court of Federal Claims is not so bound.

Locating Court of Federal Claims Decisions Before October 1982, all U.S. Court of Claims decisions concerning both tax and nontax issues were published in West's *Federal Reporter*, second series (this reporter is now in its third series). Citations to the reporter use the abbreviations "F.2d" or "F.3d," as the case may be. Current decisions of the U.S. Court of Federal Claims can be found in West's primary reporter, *U.S. Court of Federal Claims*, which can be cited by using the abbreviation "Fed. Cl." In addition, tax decisions of the old U.S. Court of Claims and the new U.S. Court of Federal Claims are available through several secondary published and electronic reporters. U.S. Court of Federal Claims decisions are published in CCH's USTC, RIA's *American Federal Tax Reports 2d* (AFTR2d), and other places.

Examine the following proper primary and secondary citations for decisions of the U.S. Court of Federal Claims. All of the elements of these citations are familiar to us. As is most often the situation, when a decision is issued and published in the same year, one need not be redundant in identifying the given year in the body of the citation because the reader can infer the year from other aspects of the listing. A complete citation of the case would include references to all of the publications, in the form indicated previously.

Court Reporters

West: *Esposito v. U.S.*, 70 Fed. Cl. 558 (2006)

CCH: *Esposito v. U.S.*, 2006-2 USTC ¶150,434 (Fed. Cl.)

RIA: *Esposito v. U.S.*, 97 AFTR2d 2006-1733 (Fed. Cl.)

As a general tax court, the U.S. Court of Federal Claims has generated decisions that cannot easily be anticipated. Practitioners usually should pursue a case in the U.S. Court of Federal Claims when the applicable U.S. District and U.S. Tax

Court decisions are adverse to the taxpayer, or when a nontechnical matter lies at the heart of the taxpayer's case.

Courts of Appeals

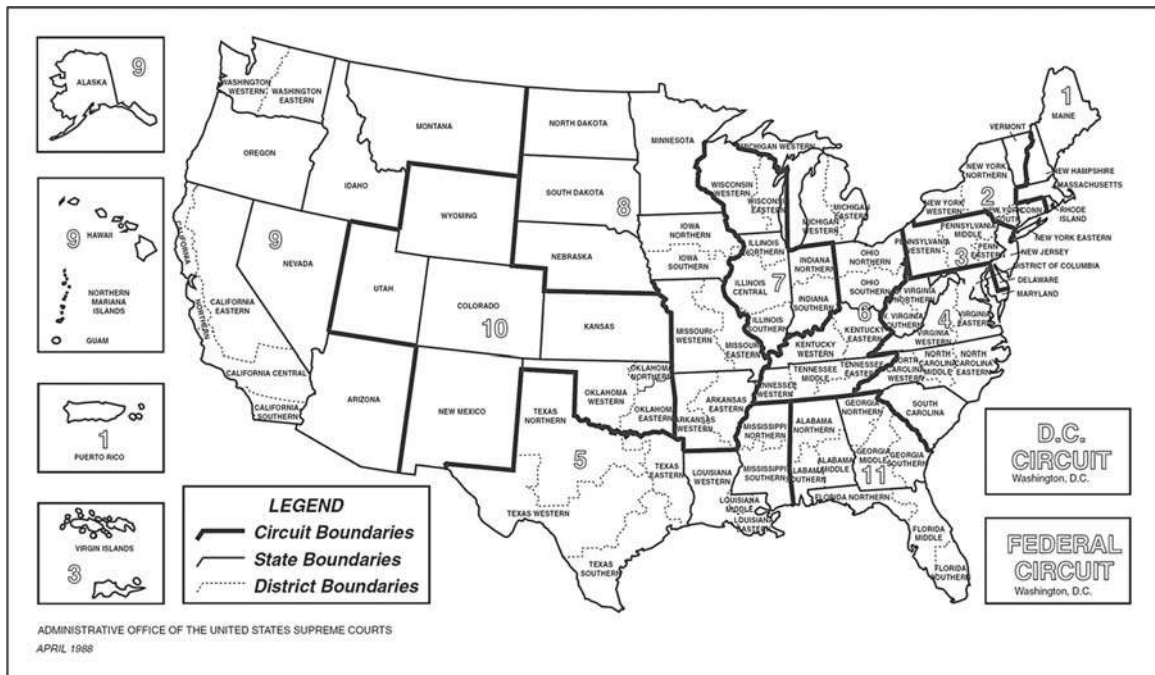
The first level of Federal appellate courts is the U.S. **Courts of Appeals**. Like the District Court and Court of Federal Claims, the Courts of Appeals consider issues in both tax and nontax litigation, although the Courts of Appeals generally will hear only cases that involve a question of law. Seldom will a Circuit Court of Appeals challenge the trial court's findings as to the facts.

Congress has created thirteen Courts of Appeals: eleven are geographical, in that they are responsible for cases that originate in designated states; one is assigned to Washington, D.C.; and one is known as the Court of Appeals for the Federal Circuit. This last court hears tax and other cases that originate only in the Court of Federal Claims. The other Courts of Appeals consider tax and nontax issues brought from the Tax Court or a District Court for an assigned geographical region.

The eleven geographical Courts of Appeals are organized into geographical *circuits*, each of which is assigned a number. Practitioners commonly refer to the circuit courts by this number. For example, the Court of Appeals designated to hear cases that originate in Seattle typically is referred to as the Ninth Circuit Court of Appeals. Exhibit 5-5 shows the jurisdiction of each of the Courts of Appeals. Approximately twenty judges have been appointed to each of the circuit courts. Typically, a three-judge panel hears a Court of Appeals case. Jury trials are not available in these courts.

A Court of Appeals decision carries precedential weight because each circuit is independent of the others and must follow only the decisions of the U.S. Supreme Court. Because the Supreme Court hears only about a dozen tax cases annually,

Exhibit 5-5: Circuit and District Court Jurisdictions of the U.S.



the Court of Appeals, in most situations, represents the final authority in Federal tax matters. Thus, a researcher generally must follow the holding of a tax decision issued by the Court of Appeals for the circuit in which the client works or resides if the controlling facts or issues of law are sufficiently similar.

Decisions by the circuit court in which the taxpayer works or resides should be given great consideration, even if the researcher has found that another circuit court has held in the taxpayer's favor in a similar case. For example, if a taxpayer lives in San Antonio, and the Fifth Circuit has held that an item similar to the taxpayer's does not qualify as a deduction, the deduction most likely should not be claimed, even if the Seventh or Eighth Circuit has held that the deduction is available. Under the *Golsen* rule, the unfavorable Fifth Circuit decision will apply to the taxpayer at the trial-court level, even though the U.S. Tax Court will be forced in this example to render opinions that are inconsistent among taxpayers.

If, in the same example, however, the Fifth Circuit had not yet ruled on the issue, and the favorable Seventh Circuit ruling is available, the researcher may be more comfortable in following the decision of the "outside" circuit. Prior decisions of Courts of Appeals are of great importance in the construction of subsequent decisions by another circuit, and the researcher rightly can place precedential value on the holdings of other circuits in anticipating the proper position for a client.

Therefore, in general, the Court of Appeals decisions most important to a given taxpayer are those issued by the circuit in which he or she works or resides. In addition, however, these observations can be made: Second, Ninth, and D.C. Circuit decisions are especially important, because of numerous innovative, unusual, and controversial judicial interpretations of the tax laws, and because their jurisdictions include the two most populous states in the nation and the nation's capital.



SPOTLIGHT ON TAXATION

Do We Need More Courts?

There is a proposal before Congress to add at least one more circuit to the Courts of Appeals, by splitting up the Ninth Circuit. Because of population migration in the past several decades, the Ninth Circuit is seen by some as "too big," constituting about 20 percent of the U.S. population. Another motivation for such a split-up might be political—the Ninth Circuit is historically the most progressive of the circuits, and this does not always sit well with citizens and their professional advisers in parts of the more conservative Western states.

Locating Court of Appeals Decisions Court of Appeals decisions are reported in several general and specialized tax publications. All of the decisions of the various Courts of Appeals designated for publication are included in West's *Federal Reporter* (F.2d or F.3d). Most tax cases from the Courts of Appeals are published in the *United States Tax Cases* (USTC), and in the *American Federal Tax Reports* (AFTR). The familiar citation conventions are used in the following examples of primary and secondary citations for a Court of Appeals decision.

Court Reporters

West: *Hansen v Comm.*, 471 F.3d 1021 (CA-9, 2006)

RIA: *Hansen v Comm.*, 98 AFTR2d 2006-8234 (CA-9)

CCH: *Hansen v Comm.*, 2007-1 USTC ¶ 50, 167 (CA-9, 2006)

In the citations to *Hansen*, the CCH reporter first published this 2006 decision in its first 2007 volume. Thus, the year of issuance must be listed in parentheses. The appeal was from a 2004 Tax Court decision involving a 1991 tax return.

A tax decision from the Court of Appeals is reproduced in Exhibit 5-6.

Exhibit 5-6: Court of Appeals Decision

Cziraki, Imre and Gizella v. Commissioner, 87 AFTR2d 2001-308; 2001-1 USTC ¶ 50,141.

Appeal from a Decision of the United States Tax Court

Before: GOODWIN, HUG, and PREGERSON, Circuit Judges.

Imre and Gizella Cziraki (the "Czirakis") appeal the tax court's decision denying their casualty loss deduction in the amount of \$220,000 for the 1992 tax year for damage to a dirt road on their farm land. Specifically, the Czirakis challenge the tax court's determination that this road was a "single identifiable property" (SIP) as this limits their casualty loss deduction to the road's basis. We have jurisdiction to review the final order of the tax court under 26 U.S.C. Section 7482, and we affirm. Because the parties are familiar with the factual and procedural history of the case, we will not repeat it here except as necessary to explain the disposition.

The question of whether a dirt road is a SIP or is part of the surrounding land is untechnical and factual and, thus, subject to our review for clear error. See *Condor Int'l. Inc. v. CIR*, 78 F.3d 1355, 1358 (9th Cir. 1996). Tax deductions are a matter of legislative grace, and as such the burden of proving a deductible loss and its amount is always upon the taxpayer. *Clapp v. Commissioner*, 321 F.2d 12, 14 (9th Cir. 1963). A casualty loss deduction is allowed under I.R.C. Section 165(a) for "any loss sustained during the taxable year and not compensated for by insurance or otherwise." In this context, the amount of loss taken into account is the lesser of (1) the difference between the fair market value of the property immediately before and after the casualty or (2) the taxpayer's adjusted basis of the property. I.R.C. Section 165(b); Income Tax Regs. Section 1.165-7(b)(1). A loss incurred in a trade or business is determined in this manner, but by reference to the "single identifiable property" damaged or destroyed. Income Tax Regs. Section 1.165-7(b)(2).

The Czirakis maintain that the dirt road had no basis and rather than being a SIP it was inextricably part of the land and so their casualty loss deduction for damage to the road should be limited by their basis in the land. The tax court characterized the dirt road as a SIP and accordingly limited the Czirakis' deduction to the basis in that road. In doing so, the tax court considered the time, effort, expense and resources spent on constructing the road. The court also correctly considered that a taxpayer may not borrow basis from unharmed property to increase the amount of a loss deduction for injury to other property. See *Rosenthal v. Commissioner*, 416 F.2d 491, 497-98 (2d Cir. 1969).

The tax court's finding that the dirt road was a SIP was not clearly erroneous. Accordingly, the decision of the tax court is AFFIRMED.

ENDNOTES

1. This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.
2. The Czirakis also contend that the tax court erred in commingling the basis in the dirt road and an adjacent asphalt road. If they are correct, then their entire deduction would be disallowed. Having noted that the Czirakis may have received a deduction to which they were not entitled, the Commissioner did not appeal the decision to allow the \$6,844 deduction. Assuming the Czirakis prefer the limited deduction to no deduction at all, we leave the tax court's decision undisturbed.

Supreme Court

The U.S. **Supreme Court** is an appellate court and the highest court in the nation. Article III of the Constitution created the Supreme Court and extended to it judicial power “to all cases of law and equity, arising under this Constitution, the laws of the United States, and treaties. . . .” Thus, concerning all areas of Federal law, the Supreme Court is the final level of appeal and the sovereign legal authority.

The Supreme Court meets and hears cases only in Washington, D.C. If a taxpayer wants to have his or her case heard by the Supreme Court, the taxpayer and counsel must travel to the nation’s capital to present the arguments. The Supreme Court is a nine-justice panel; all nine judges hear every case that the Court agrees to consider. The Court does not conduct jury trials.

A U.S. citizen has no automatic right to have his or her case heard by the Supreme Court. Permission to present the case must be requested by a **writ of certiorari**. If the Court decides to hear the case, then “certiorari is granted”; if the Court refuses, then “certiorari is denied.” One must treat a Supreme Court decision as having the full force of the law; although Congress might repeal the challenged statute or the Federal administration might refuse to fund or enforce the underlying law and related activities, neither the citizen nor the government can appeal a Supreme Court decision.

As we have discussed, however, certiorari is granted in very few tax cases. Only about a dozen appeals relating to tax issues—state, local, and Federal; income, property, sales, estate, and gift; individual, corporate, and fiduciary—are heard by the Supreme Court in a typical year. In most cases, those petitions granted involve an issue at conflict among the Federal circuits or a tax issue of major importance. For instance, the Court might hear a client’s case concerning the inclusion in gross income of life insurance proceeds, if many similar cases had been brought before the various federal courts and tremendous tax liabilities were under dispute, or if two or more of the circuits had issued inconsistent holdings on the matter.

In denying the petition for certiorari, the Supreme Court is not “upholding,” or in any way confirming, a lower court decision. Rather, the Court simply does not find the appealed case to be interesting or important enough to consider during its limited sessions. The lower court’s decision does stand, but one cannot infer that the decision necessarily is correct or that it should be followed in the future by other taxpayers whose situations are similar. These matters of open-fact tax planning must be analyzed using the tax researcher’s professional judgment.



SPOTLIGHT ON TAXATION

The Supreme Court’s Love Affair with Tax Law

If [a United States Supreme Court Justice is] in the doghouse with the Chief [Justice], he gets the crud. He gets the tax cases . . .

—Harry Blackmun, Supreme Court Justice

Locating Supreme Court Decisions At least four different general and specialized reporters publish all of the tax-related Supreme Court decisions. CCH includes such cases in the *United States Tax Cases* service (USTC), and RIA publishes them in the *American Federal Tax Reports* (AFTR, AFTR2d, or AFTR3d). The GPO publishes the *United States Supreme Court Reports*, which contains all of the tax and

nontax decisions of the Court. In common citation convention, references to this service are abbreviated as “U.S.” In addition, West Publishing includes all Supreme Court decisions in the *Supreme Court Reporter* (S.Ct.).

In the following examples of proper citations, one can infer from the GPO and West citations that the case was heard by the Supreme Court, and any further reference to that forum (e.g., as United States Supreme Court (USSC) would be redundant). In addition, if a case involves an issue of pre-1954 Code tax law, the first series of the AFTR service would be cited. Exhibit 5-7 is an example of a tax decision of the Supreme Court.

Court Reporters

GPO:	<i>Chickasaw Nation v. U.S.</i> , 534 U.S. 84 (2001)
West:	<i>Chickasaw Nation v. U.S.</i> , 122 S.Ct. 528 (2001)
RIA:	<i>Chickasaw Nation v. U.S.</i> , 88 AFTR2d 2001-6967 (USSC)
CCH:	<i>Chickasaw Nation v. U.S.</i> , 2001-2 USTC ¶150,765 (USSC)

Exhibit 5-7: Supreme Court Decision Syllabus Excerpt

The Indian Regulatory Gaming Act (Gaming Act) provides, as relevant here, that Internal Revenue Code (Code) provisions “(including [§]1441, 3402(q), 6041, and 6050I, and chapter 35 ...) concerning the reporting and withholding of taxes” with respect to gambling operations shall apply to Indian tribes in the same way as they apply to States. 25 U.S.C. 2719(d)(i). Chapter 35 imposes taxes from which it exempts certain state-controlled gambling activities, but says nothing about tax reporting or withholding. Petitioners, the Choctaw and Chickasaw Nations, claim that the Gaming Act subsection’s explicit parenthetical reference exempts them from paying those chapter 35 taxes from which the States are exempt. Rejecting that claim, the Tenth Circuit held that the subsection applies only to Code provisions concerning tax withholding and reporting.

Held: Section 2719(d)(i) does not exempt tribes from paying the gambling-related taxes that chapter 35 imposes. pp. 3-11.

(a) The subsection’s language outside the parenthetical says that the subsection applies to Code provisions concerning reporting and withholding, and the other four parenthetical references arguably concern reporting and withholding. The Tribes nonetheless claim that the subsection’s explicit parenthetical reference to chapter 35 expands the Gaming Act’s scope beyond reporting and withholding provisions—to the tax-imposing provisions that chapter 35 contains—and at the very least gives the subsection an ambiguity that can be resolved by applying the canon that statutes are to be construed liberally in favor of Indians with ambiguous provisions interpreted to their benefit. Rejecting their argument reduces the chapter 35 phrase to surplusage, but there is no other reasonable reading of the statute. Pp. 3-4.

(b) The statute’s language is too strong to give the chapter 35 reference independent operative effect. The unambiguous language outside the parenthetical says without qualification that the subsection applies to “provisions ... concerning the reporting and withholding of taxes”; and the language inside the parenthetical, prefaced with the word “including,” literally says the same, since to “include” means to “contain.” The use of parentheses emphasizes the fact that that which is within is meant simply to be illustrative. To give the chapter 35 reference independent operative effect would require seriously rewriting the rest of the statute. One would have to read “including” to mean what it does not mean, namely, “including ... and.” To read the language outside the parenthetical as if it referred to (1) Code

continued

Exhibit 5-7: (continued)

provisions concerning tax reporting and withholding and (2) those “concerning ... wagering operations” would be far too convoluted to believe Congress intended it. There is no reason to think Congress intended to sweep within the subsection’s scope every Code provision concerning wagering. The subject matter at issue—tax exemption—also counsels against accepting the Tribes’ interpretation. This Court can find no comparable instance in which Congress legislated an exemption through a parenthetical numerical cross-reference. Since the more plausible role for the parenthetical to play in this subsection is that of providing an illustrative list of examples, common sense suggests that “chapter 35” is simply a bad example that Congress included inadvertently, a drafting mistake. Pp. 4-6.

(c) The Gaming Act’s legislative history on balance supports this Court’s conclusion. And the canons of interpretation to which the Tribes point—that every clause and word of a statute should be given effect and that statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit—do not determine how to read this statute. First, the canons are guides that need not be conclusive. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115. To accept these canons as conclusive here would produce an interpretation that the Court firmly believes would conflict with congressional intent. Second, specific canons are often countered by some maxim pointing in a different direction. *Ibid.* The canon requiring a court to give effect to each word “if possible” is sometimes offset by the canon permitting a court to reject words as mere surplusage if inadvertently inserted or if repugnant to the rest of the statute. Moreover, the pro-Indian canon is offset by the canon warning against interpreting federal statutes as providing tax exemptions unless the exemptions are clearly expressed. Given the individualized nature of this Court’s previous cases, one cannot say that the pro-Indian canon is inevitably stronger, particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue. Pp. 6-11.

208 F.3d 871 (first judgment); 210 F.3d 389 (second judgment), affirmed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and STEVENS, KENNEDY, and GINSBURG, JJ., joined, and in all but Part II-B of which SCALIA and THOMAS, JJ., joined. O’CONNOR, J., filed a dissenting opinion, in which SOUTER, J., joined.

CASE BRIEFS

Most court reporters contain a brief case summary at the beginning of a case called a **headnote**. Headnotes are usually inserted by the court reporter editors. They are useful to the researcher by helping to quickly determine if a particular case is of interest. A court case may contain several issues; therefore, there may be several headnotes for any one case. In addition to using headnotes, tax researchers have found that the construction of a concise **case brief** is of great value to them, both when they return to a client’s research problem or planning environment after a period of time passes and in using the given case in constructing a research analysis for another client. The reader should be careful, though, to distinguish this concise research tool from the case briefs required as part of the procedure of most court hearings. The latter is a lengthy collection of documents that includes a detailed analysis of all parts of the litigants’ arguments.

A proper tax research case brief presents in summary fashion, ideally not exceeding one page, the facts, issue(s), holding, and analysis of the chosen court case. From such a brief, the researcher can discover in a very short period whether the

Exhibit 5-8: Court Case Brief Illustrated

CITATION	<i>U.S. v. Stephen W. Bentson</i> , 947 F.2d 1353; 92-1 USTC ¶ 50,048; 68 AFTR2d 5773 (CA-9, 1991).
ISSUE(S)	(1) Does the IRS's failure to comply with the Paperwork Reduction Act (PRA) preclude a taxpayer from being penalized for failing to file a tax return and cause charges against him to be dismissed? (2) Could the IRS penalties be avoided because the Form 1040 had not been published in the <i>Federal Register</i> ? (3) Could the IRS penalties be avoided because of a lack of proof that Bentson had failed to file returns?
FACTS	For the tax year 1982, Bentson filed a "protest tax return." He refused to supply information other than his name, address, social security number, and signature. The rest of his Form 1040 was filled with asterisks, and he attached a statement asserting that to supply other information violated his Fifth Amendment constitutional right. No tax returns could be located for 1983 and 1984. Bentson was charged by the IRS with three counts of willful failure to file tax returns. A District Court bench trial was held. After the close of the government's case, Bentson moved for dismissal, relying on <i>U.S. v. Kimball</i> , 896 F.2d 1218, vacated, 925 F.2d 356 (CA-9, 1991).
HOLDING	The District Court granted Bentson's motion as to the first count only. He was found guilty on two counts and sentenced to eight months incarceration followed by three years' probation, and a \$2,000 fine. The Ninth Circuit affirmed the lower court's decision.
ANALYSIS	(1) Bentson argued the IRS failed to comply with the Paperwork Reduction Act and relied on the original <i>U.S. v. Kimball</i> . This decision was reversed in 1991 (see 925 F.2d 356). The Ninth Circuit held that the public protection provision of the Paperwork Reduction Act is not a defense to prosecution. (2) Bentson argued that Form 1040 and the instructions constitute a "rule" for purposes of the Administrative Procedures Act (APA) and therefore must be published in the <i>Federal Register</i> to be valid. The Ninth Circuit ruled this argument had no merit. (3) Bentson argued the IRS had not proved he did not file tax returns for 1983 and 1984. This argument was rejected because Bentson had already made a binding judicial admission to the contrary.

full text of the case is of further use in the present analysis. If the briefed case does warrant further examination, the researcher can locate it (or any other cases that are cited in the brief itself) very quickly.

Study carefully the format of the case brief in Exhibit 5-8. Notice that the indicated tax research issues correspond with each of the analyses and holdings of the court, as indicated by the numbers of the brief's outline format. Finally, notice that citations to other cases, or to administrative proclamations, are complete and somewhat detailed, helping to facilitate further research.

THE INTERNET AND JUDICIAL SOURCES

The Internet and the World Wide Web provide another way for tax researchers to access judicial sources of tax law. Many law schools, journals, tax publishers, and individuals have set up their own home pages (web sites) on the Internet. While not as user friendly as a commercial service, these home pages allow anyone with access to the Internet to locate many court decisions. Examples of some of these home pages that have links to other judicial sources are as follows.

Emory U. School of Law	http://www.law.emory.edu
Cornell U. School of Law	http://www.law.cornell.edu
U. of Texas School of Law	http://www.utexas.edu/law
Practitioners Publishing Co.	http://www.ppc.com
Will Yancey's Home Page	http://www.willyancey.com

Computer Tax Service Example

The tax researcher can use a computerized tax service to find court cases of interest. If the researcher knows the case name or citation, he or she can enter it directly and obtain a copy of the case. However, if the case name or citation is not known, the researcher can use a computer query to find cases that have addressed the issue at hand.

Your client is involved in a dispute with the IRS over the valuation for estate tax purposes of a closely held business. In the process of getting ready to go to the Tax Court on this matter, you decide to hire an expert witness to justify the client's valuation of the business. During the interviews, one of the experts says that she will use the Capital Asset Pricing Model (CAPM) as the basis for her valuation. You are not sure what the CAPM is and how the courts will react to it. You therefore execute a computer search using RIA Checkpoint to see if there is any information available on the use of the CAPM in tax valuation. Exhibit 5-9 shows an example of a search query that could be used to find any court cases that have discussed the CAPM. Exhibit 5-10 shows a listing of Tax Court Regular and Memo decisions discussing the use of CAPM in valuing a closely held businesses. After reviewing these cases, you would conclude that there is a lot of controversy about using the CAPM in nonpublicly traded valuation situations. As a result, you should prepare your client's case using another method of valuation or be prepared to defend your use of the CAPM.

Exhibit 5-9: RIA Checkpoint CAPM Search Query

The screenshot displays the RIA Checkpoint web interface within a Mozilla Firefox browser. The search query is "capital asset pricing model". The interface is divided into several sections:

- Search Practice Area:** Set to "Federal".
- Keyword Search:** The search term "capital asset pricing model" is entered in the "Enter Keywords:" field.
- Choose Sources from:** Set to "All Federal".
- Editorial Materials:** Includes options for Citator 2nd (RIA), Federal Tax Handbook (RIA), Federal Tax Coordinator (RIA), Form/Line Finders (RIA), Tables & Rates (RIA), Tax Alerts (RIA), Tax Planning and Practice Guides (Special Studies) (RIA), United States Tax Reporter - Annotations (RIA), and United States Tax Reporter - Explanations (RIA).
- News/Current Awareness:** Includes options for Cummings' Corporate Tax Insights (RIA), Federal Taxes Weekly Alert Newsletter (RIA), WG&L Journals, and RIA Tax Watch.
- Primary Source Materials:** Includes options for Internal Revenue Code, Treasury Regulations, Committee Reports (RIA), Federal Tax Cases (RIA), IRS Publications (RIA), IRS Rulings and Releases (RIA), U.S. Tax Treaties in Force (RIA), and various legislative analyses.
- Legislation (Editorial Analysis and Source Material):** Includes options for Complete Analysis of the Small Business and Work Opportunity Tax Act of 2007, Complete Analysis of the Tax Provisions of the Tax Relief and Health Care Act of 2006 (RIA), Complete Analysis of the Pension Protection Act of 2006 (RIA), Complete Analysis of the Tax Increase Prevention and Reconciliation Act of 2005 (RIA), and New Law Special Studies (1999 - Current Year) (RIA).

The interface also includes navigation tabs (Home, Research, Newsstand, Tools, Practice Development) and a search bar with "Search" and "Clear All" buttons.

Exhibit 5-10: RIA Checkpoint CAPM Search Result (T.C. Memo Decisions)

The screenshot shows a web browser window displaying the RIA Checkpoint search results page. The page title is "Documents from: Tax Court & Board of Tax Appeals Memorandum Decisions (1928 - 2006) (RIA)". The search results list several tax court memoranda, including:

- Wechsler & Co., Inc., TC Memo 2006-173, Code Sec(s). 162, 08/17/2006**: publicly traded broker-dealers and finds the returns provided by petitioner to be satisfactory to a hypothetical investor. He also uses a financial tool, the capital asset pricing model, to determine the return an investor would expect for an investment in petitioner's common stock. He determines that the expected return on
- Estate of Josephine T. Thompson, et al. v. Comm., TC Memo 2004-174, Code Sec(s). 2031; 6662, 07/26/2004**: estimated 1998-2002 net cashflow. Respondent's expert's discount rate for each year was based on his estimate of TPC's cost of equity, calculated under the capital asset pricing model, and involved the following elements: (1) A risk-free rate of return of 5.933 percent, equal to the U.S. government long
- Brewer Quality Homes, Inc., TC Memo 2003-200, Code Sec(s). 162, 07/10/2003**: 16.77 percent are pretax values. The 16.77 percent, however, contemplates that the values will be after-tax values. Hakala chose to use the Capital Asset Pricing Model (hereinafter sometimes referred to as CAPM) to estimate petitioner's cost of capital. He states that CAPM is "A [pg. 1082 standard method
- Estate of Paul Mitchell, TC Memo 2002-98, Code Sec(s). 2031, 04/9/2002**: model would be expected to produce a minority value. Id. at 194-195. Under a discounted cashflow analysis, a discount rate based on a traditional capital asset pricing model relates to marketable, minority ownership in the investment to be valued. Issues of control and lack of marketability are usually treated separately
- Estate of Richie C. Heck, TC Memo 2002-34, Code Sec(s). 2031, 02/5/2002**: be objectionable to respondent, since respondent has proposed that we find a higher, 16.71-percent cost of equity capital. Dr. Bajaj relied on the capital asset pricing model (which takes into account exclusively systematic (or market) risk) to compute the cost of equity capital, while Dr. Spiro relied on the
- Estate of Marcia P. Hoffman, et al., TC Memo 2001-109, Code Sec(s). 2031; 2033, 05/09/2001**

The page also includes a sidebar with search tools, a "Table of Contents" link, and a "Page 1 of 1" indicator. The browser's address bar shows the URL: <http://checkpoint.ria.com:libproxy.sdsu.edu/app/Checkpoint?uid=15d9dd1f5218&n=mainF5&sup=768472>.

SUMMARY

The tax practitioner must possess a working knowledge of the federal court system to address tax research problems. The researcher must understand the role of the courts in generating Federal tax law, the relationship of the courts to one another, the Constitution, and the jurisdiction of each court, where to locate an appropriate decision, and how to interpret that decision.

Exhibit 5-11 offers a summary of some of the attributes of the trial-level and appeals courts discussed in this chapter. Because of differences among courts, the tax adviser may be inclined to choose one of the trial-level courts over the others to accommodate the special needs or circumstances of the client.

Exhibit 5-12 summarizes the decisions available in each of the tax case reporter services discussed in this chapter. With the variety of tax publications available, choices must be made so that the practitioner's tax research budget can be used effectively, without sacrifice of his or her ability to solve the client's problems.

Finally, a number of observations concerning citation conventions can be made. Review the citation examples given in this chapter to verify the list shown in Exhibit 5-13 and to add your own observations to it.

Exhibit 5-11: The Judicial Obstacle Course: Selected Attributes of Trial-Level Courts

Item	Tax Court	District Court	Court of Federal Claims
Jurisdiction	Tax cases only	Legal issues based on entire <i>U.S. Code</i>	Monetary claims against U.S. government
Judges	Tax law specialists	Tax law generalists	Tax law generalists
Domain	National court, but judges travel	Limited geographical area	National court, but judges travel
Jury trial available?	No	Yes, if question of fact	No
Number of judges	One, reviewed by chief judge; <i>en banc</i> hearing for certain issues	One	One to five hearing case
Small Cases Division	Yes	No	No available?
Payment of tax	Trial, then payment	Payment, then trial	Payment, then trial
Precedents court must follow	Supreme Court; pertinent circuit court; Tax Court	Supreme Court; pertinent circuit court; own District court	Supreme Court; Federal Circuit Court; Court of Federal Claims

Exhibit 5-12: Court Decision Reporter Summary**I. BY REPORTER**

Publisher, Common	Reporter, Common	Decisions Included
<i>Primary Reporters</i>		
T.C. (B.T.A.)	GPO	Regular Tax Court (BTA) decisions
TCM	CCH	Tax Court Memorandum decisions
RIA T.C. Mem. Dec.	RIA	Tax Court Memorandum decisions
F.Supp	West	District court decisions
Fed. Cl.	West	Court of Federal Claims decisions
F.3d (F.2d)	West	Court of Appeals and pre-1982 Court of Claims decisions
U.S.	GPO	All Supreme Court decisions
S.Ct.	West	All Supreme Court decisions
<i>Secondary Reporters</i>		
USTC	CCH	Tax cases from all Federal courts except the Tax Court
AFTR series	RIA	Tax cases from all Federal courts except the Tax Court

II. BY COURT

Court	Publisher	Citation	Reporter
<i>Supreme Court</i>			
All cases	West	S.Ct.	<i>Supreme Court Reporter</i>
	GPO	U.S.	<i>U.S. Supreme Court Reports</i>

continued

Exhibit 5-12: (continued)

Tax only	CCH RIA	USTC AFTR series	<i>U.S. Tax Cases</i> <i>American Federal Tax Reports</i> <i>Kleinrock's Tax Cases</i>
<i>Court of Appeal</i>			
All cases	West	F.3d (F.2d)	<i>Federal Reporter, 3d (2d) series</i>
Tax only	CCH RIA	USTC AFTR series	
<i>Tax Court</i>			
Regular	GPO	T.C.	<i>Tax Court of the U.S. Reports</i>
Memo	CCH RIA	TCM RIA T.C. MemDec.	<i>Tax Court Memorandum Decisions</i> <i>RIA Tax Court Memorandum Decisions</i>
<i>District Courts</i>			
All cases	West	F.Supp.	<i>Federal Supplement Series</i>
Tax only	CCH RIA	USTC AFTR series	
<i>Court of Federal Claims</i>			
All cases post-1982	West	Fed. Cl.	<i>U.S. Court of Federal Claims</i>
Tax only	CCH RIA	USTC AFTR series	

Exhibit 5-13: Citation Conventions and Observations

- The common form of a citation is as follows: case name–volume–number–reporter–page number–court–year.
- The AFTR second series began with 1954 IRC cases.
- The B.T.A. became the U.S. Tax Court in 1943.
- The U.S. Court of Claims became the U.S. Claims Court in 1982, and the U.S. Court of Federal Claims in 1992.
- *Unless* the case was published in a year different from that in which it was heard, the USTC volume number (and many AFTR page numbers) includes a reference to the year, so the year need not be repeated in the citation.
- The S.Ct. and U.S. citations imply that the case was heard in the Supreme Court, so the court abbreviation need not be repeated in the citation.
- The government need not be mentioned in a typical Tax Court citation.
- Although they are not published in a printed court reporter, U.S. Tax Court Small Case Summary Opinions are available after 2000 on computer tax services (e.g., RIA and CCH).

TAX TUTOR

Reinforce the tax research information covered in this chapter by completing the online tutorials located at the *Federal Tax Research* web site: <http://academic.cengage.com/taxation/raabe>

KEY WORDS

By the time you complete this chapter, you should be comfortable discussing each of the following terms. If you need additional review of any of these items, return to the appropriate material in the chapter or consult the glossary to this text.

AFTR

Board of Tax Appeals

Case brief

Court of Federal Claims

Courts of Appeals

District Courts

En banc

Golsen rule

Headnote

Memorandum decision

Permanent citation

Regular decision

Small Cases Division

Supreme Court

Tax Court

Temporary citation

USTC

Writ of certiorari

DISCUSSION QUESTIONS

1. Who can initiate a court case that deals with a tax matter—the taxpayer or the IRS?
2. Explain the general organization of the federal court system for cases concerning Federal tax issues.
3. May a taxpayer take his or her tax case directly to the Supreme Court?
4. Who has the burden of proof in most cases involving the tax law? Why?
5. The U.S. Tax Court hears only certain types of cases. Identify those cases.
6. The U.S. Tax Court has undergone an evolution since it was founded. What happened to its structure in 1926, 1943, and 1969, respectively?
7. How many judges sit on the U.S. Tax Court? What is the length of time of the appointment of each judge?
8. The U.S. Tax Court is a national court that meets in Washington, D.C. Does this mean that the taxpayer and his or her attorney must travel to Washington to have a case heard?
9. May a taxpayer have a jury trial in the U.S. Tax Court?
10. What does the term “*en banc*” mean?

11. Distinguish among a Regular, Memorandum, and Summary decision of the Tax Court.
12. The U.S. Tax Court is a national court that hears cases of taxpayers who may appeal to various geographical Courts of Appeals. How does the Tax Court reconcile the opposite holdings of two or more of these Courts of Appeals for taxpayers who work or reside in different parts of the country?
13. What is the Small Cases Division of the U.S. Tax Court? What is the maximum amount of the deficiency that can be the subject of a Small Cases hearing? Comment on the trial procedures in the Small Cases Division.
14. Where are regular Tax Court decisions published? Illustrate the elements of both a temporary and a permanent regular Tax Court citation. Explain what each part of the citation means.
15. Tax Court Memorandum decisions are not published by the Federal government. However, commercial reporters include these decisions. Illustrate the elements of both a temporary and a permanent citation for a Tax Court Memorandum decision, using both the CCH and RIA reporters. Explain what each part of the citation means.
16. What is the jurisdiction of a U.S. District Court?
17. Can Tax Court Summary Opinions be cited as precedent? Discuss.
18. Must the taxpayer pay the disputed tax deficiency to the government before his or her case will be heard in a District Court? In the U.S. Court of Federal Claims? In the U.S. Tax Court?
19. Which of the trial courts is most appropriate for a taxpayer who wishes to limit the judicial review of the relevant year's tax return to the specific issue(s) involved in the case?
20. Which of the trial courts would best serve a taxpayer litigating an issue of a technical tax nature? Why?
21. Is a Federal District Court a national court? How many judges hear a case brought before a Federal District Court?
22. Name the three court case reporters that publish tax and nontax District Court decisions. Illustrate the elements of a citation that might be found in each reporter. Explain what each part of the citation means.
23. Differentiate between a primary and a secondary case citation.
24. What type of cases are heard by the U.S. Court of Federal Claims?
25. How many judges are appointed to the U.S. Court of Federal Claims?
26. Is the U.S. Court of Federal Claims a national court? Must a taxpayer go to Washington, D.C., to present a case to this U.S. court?
27. Name the three court case reporters that publish U.S. Court of Federal Claims decisions. Illustrate the elements of a citation that might be found in each reporter. Explain what each part of the citation means.

28. Are the U.S. Courts of Appeals national courts? What type of cases do they hear?
29. Identify the circuit court that would hear the case of a taxpayer who lives or works in each of the following areas.
 - a. Texas
 - b. New York
 - c. California
 - d. Colorado
 - e. Illinois
 - f. A case that is appealed from the U.S. Court of Federal Claims
30. Identify the circuit court that would hear the case of a taxpayer who lives or works in each of the following areas.
 - a. Florida
 - b. Ohio
 - c. North Carolina
 - d. Puerto Rico
 - e. Guam
31. Identify the circuit court that would hear the case of a taxpayer who lives or works in each of the following areas.
 - a. Arizona
 - b. Alabama
 - c. Vermont
 - d. South Carolina
 - e. Alaska
32. Each Court of Appeals has approximately twenty judges. How many of these judges hear a typical case?
33. Name the three court case reporters that publish Court of Appeals decisions. Illustrate the elements of a citation that might be found in each reporter. Explain what each part of the citation means.
34. Can a taxpayer have a jury trial before a Court of Appeals?
35. What is the highest court in the United States? What is its jurisdiction? Where does it hear cases?
36. How does one petition the Supreme Court to hear one's tax case?
37. How many justices are appointed to the Supreme Court? How many hear each case?
38. Why does the Supreme Court hear so few tax cases?
39. Differentiate between the Supreme Court's overturning of a lower court's decision, and its denial of a writ of certiorari.
40. Name the four court case reporters that publish Supreme Court decisions. Illustrate the elements of a citation that might be found in each reporter. Explain what each part of the citation means.

41. Is it possible for a taxpayer to have a jury trial before any of the trial courts? Before a Court of Appeals? Before the U.S. Supreme Court?
42. Discuss the precedential value of a Court of Appeals decision. Which Court of Appeals decisions are most important to a specific taxpayer?
43. In the (fictitious) citation *Gomez v. U.S.*, 104 T.C. 123 (2009), what does the “104” stand for? The “T.C.”? The “123”?
44. Which court would have issued the (fictitious) *O’Dell v. U.S.*, 98 TCM 86 (2009) decision? What does each element in the citation mean?
45. In the citation *Simons-Eastern v. U.S.*, 354 F.Supp. 1003 (D.Ct., Ga, 1972), the “F.Supp.” tells the tax researcher that the decision is from which court?
46. *By using only the citation*, state which court issued each of the following decisions. If you cannot determine which court by looking at the citation only, say so.
 - a. *Davis v. U.S.*, 43 Fed. Cl. 92 (1999)
 - b. *D.C. Crummey v. U.S.*, 68-2 USTC ¶ 12,541
 - c. *U.S. v. Goode*, 86 AFTR2d 2000-7273
 - d. *James v. U.S.*, 81 S.Ct. 1052 (1961)
47. What is a case headnote? How might it be useful to the tax researcher?
48. *By using only the citation*, state which court issued each of the following decisions. If you cannot determine which court by looking at the citation only, say so.
 - a. *Douglas, Christopher*, T.C. Memo 1994-519
 - b. *Takaba, Brian G.*, 119 T.C. 285
 - c. *Botts, Roy R.*, T.C. Summary Opinion 2001-182
 - d. *American Airlines, Inc.*, 40 Fed.Cl. 712

EXERCISES

49. Locate the court case *Central Labor’s Pension Fund v. Heinz*, 541 U.S. 739 (2004). Using only the headnotes answer the following questions.
 - a. What was the issue(s) addressed by the Court?
 - b. What was the ruling of the court?
50. Locate the court case *Alemasov and Popov*, TC Memo. 2007-130. Using only the headnotes answer the following questions.
 - a. What was the issue(s) addressed by the Court?
 - b. What was the ruling of the court?
51. Locate the court case *Zimmerman, et al. v. United States*, 2001-1 USTC ¶50,107, 86 AFTR2d 2000-6701. Using only the headnotes answer the following questions.
 - a. What was the issue(s) addressed by the Court?
 - b. What was the ruling of the court?

52. Locate the court case *Anderson Columbia, Inc. V. U.S.*, 54 Fed. Cl. 756 (2002). Using only the headnotes answer the following questions.
 - a. What was the issue(s) addressed by the Court?
 - b. What was the ruling of the court?
53. Find the court decision located at 100 T.C. 32.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. In what year was the case decided?
 - d. What was the issue(s) involved?
54. Find the court decision located at 126 T.C. 47.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. In what year was the case decided?
 - d. What was the issue(s) involved?
55. Find the court decision located at T.C. Memo. 2001-71.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. In what year was the case decided?
 - d. What was the issue(s) involved?
56. Find the court decision located at T.C. Memo. 1992-204.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. What tax year(s) is in question and in what year was the case decided?
 - d. What Code section(s) was at issue?
 - e. What was the issue(s) involved?
 - f. Which party prevailed in the decision?
57. Find the court decision located at T.C. Summary Opinion 2003-168.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. What tax year(s) is in question and in what year was the case decided?
 - d. What Code section(s) was at issue?
 - e. What was the issue(s) involved?
 - f. Which party prevailed in the decision?
58. Find the court decision located at T.C. Summary Opinion 2006-20.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. What tax year(s) is in question and in what year was the case decided?
 - d. What Code section(s) was at issue?
 - e. What was the issue(s) involved?
 - f. Which party prevailed in the decision?
59. Find the court decision located at 2007-1 USTC ¶50,210.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. What tax year(s) is in question and in what year was the case decided?
 - d. What Code section(s) was at issue?
 - e. What was the issue(s) involved?
 - f. Which party prevailed in the decision?

60. Find the court decision located at 67 AFTR2d 91-718.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. What tax year(s) is in question and in what year was the case decided?
 - d. What Code section(s) was at issue?
 - e. What was the issue(s) involved?
 - f. Which party prevailed in the decision?
61. Find the court decision located at 98 AFTR2d 2006-8309.
 - a. What court heard the case?
 - b. Who was the judge(s)?
 - c. What tax year(s) is in question and in what year was the case decided?
 - d. What Code section(s) was at issue?
 - e. What was the issue(s) involved?
 - f. Which party prevailed in the decision?
62. If your last name begins with the letters A–L, read and brief the following cases.
 - a. *Sorensen*, T.C. Memo. 1994-175
 - b. *Keller*, 84-1 USTC ¶ 9194.
If your last name begins with the letters M–Z, read and brief the following cases.
 - c. *Washington*, 77 T.C. 601
 - d. *Tellier*, 17 AFTR2d 633
63. If your last name begins with the letters A–L, read and brief the following cases.
 - a. *Rownd*, T.C. Memo. 1994-465
 - b. *Arnes*, 93-1 USTC ¶ 50,016.
If your last name begins with the letters M–Z, read and brief the following cases.
 - c. *Willie Nelson Music Co.*, 85 T.C. 914
 - d. *Independent Contracts, Inc.*, 73 AFTR2d 94-1406
64. Read and brief the following cases.
 - a. *Gregory v. Helvering*, 55 S.Ct. 266 (1935)
 - b. *Hunt*, T.C. Memo. 1965-172
65. Read and brief the following cases.
 - a. *Fulcher, Douglas R.*, T.C. Summary Opinion 2003-157
 - b. *The Boeing Company and Consolidated Subs.*, 91 AFTR 2d 2003-1088 (123 S.Ct. 1099)
66. Read and brief the following cases.
 - a. *Thornton v. Commissioner*, 2003-2 USTC ¶50,695
 - b. *Stamoulis v. Commissioner*, T.C. Summary Opinion 2007-38
67. Use a tax service to give two parallel citations for the *U.S. v. D'ambrosia*, a Seventh Circuit Court of Appeals case decided in 2002. Using only the headnote(s), what was the issue(s) in this case?
68. Use a tax service to give three parallel citations for the *Baral v. U.S.*, a Supreme Court case decided in 2000. Using only the headnote(s), what was the issue(s) in this case?

69. Use a tax service to give three parallel citations for the *Falstone, Inc. v. Commissioner*, a Ninth Circuit Court of Appeals case decided in 2003. Using only the headnote(s), what was the issue(s) in this case?

RESEARCH CASES

70. Snidely Limited spent \$1 million this year to upgrade its manufacturing plant, which had received several warnings from the state environmental agency about releasing pollution into the local river. Late in the year, Snidely received an assessment of \$700,000 for violating the state's Clean Water Act. After he negotiated with the State, which cost \$135,000 in legal fees, Snidely promised to spend another \$200,000 next year for more pollution control devices, and the fine was reduced to \$450,000. How much of these expenditures can Snidely Limited deduct for tax purposes?

Partial list of research material: §162; Rev. Rul. 76-130, 1976-1 C.B. 16; *Tucker*, 69 T.C. 675.

71. Last year, only four of thirty-two professional basketball teams turned a nominal accounting profit. Betty purchased such a team this year. Her taxable loss therefrom properly was determined to be \$950,000. Can she deduct this loss?

Partial list of research material: §183; Reg. §1.183-2; *Brannen*, 722 F.2d 695.

72. Herbert, a collector of rare coins, bought a 1916 Spanish Bowlero for \$2,000 in 1984. He sold the coin for \$4,500 in January. Herbert retired from his loading dock job in June and began actively buying and selling rare coins. By December, Herbert's realized gain from such activities was \$21,500. What type of taxable income was January's \$2,500 gain?

Partial list of research material: §1221; Rev. Rul. 68-634, 1968-2 C.B. 46; *Franke*, 56 TCM 1156 (1989).

73. Steve is an usher at his local church. Can he deduct commuting expenses for the Sundays that he is assigned to usher for church services?

Partial list of research material: §170; Rev. Rul. 56-508, 1956-2 C.B. 126; *Churukian*, 40 TCM 475 (1980).

74. A new member of the San Diego Chargers wants the team to transfer \$1,000,000 into an escrow account, in his name, for later withdrawal. The player suggests this payment in lieu of the traditional signing bonus. When is this income taxable to him?

Partial list of research material: §451; Rev. Rul. 70-435, 1970-2 C.B. 100; *Drysdale*, 277 F.2d 413.

75. Professor Stevens obtained tenure and promotion to full professor status many years ago. Yet, he continues to publish research papers in scholarly journals to satisfy his own curiosity and to maintain his professional prestige and status within the academic community. Publications are also necessary in order for Professor Stevens to receive pay raises at his university. This year, Dr. Stevens

spent \$750 of his own funds to travel to southern Utah to collect some critical pieces of data for his work. What is the tax treatment of this expenditure?

Partial list of research material: §162; Zell, 85-2 USTC ¶ 9698; *Smith*, 50 TCM 904.

76. The local electric company requires a \$200 refundable deposit from new customers, in lieu of a credit check. Landlord Pete pays this amount for all of his new-to-town tenants. Can he deduct the \$200 payments on his tax return?

Partial list of research material: §162; Hopkins, 30 T.C. 1015; *Waring Products*, 27 T.C. 921.

77. High-Top Financing charges its personal loan holders a 2 percent fee if the full loan principal is paid prior to the due date. What is the tax effect of this year's \$50,000 of prepayment penalties collected by High-Top?

Partial list of research material: §61; *Hort*, 41-1 USTC ¶ 9354.

78. Cecilia died this year, owning mutual funds in her IRA worth \$120,000. Under the terms of the IRA, Cecilia's surviving husband, Frank, was the beneficiary of the account, and he took a lump-sum distribution from the fund. Both Cecilia and Frank were age fifty-seven at the beginning of the year.
- How does Frank account for the inheritance, assuming that he rolls it over into his own IRA in a timely manner?
 - Would your answer change if Frank were Cecilia's brother?

Partial list of research material: §408; Rev. Rul. 92-47, 1992-1 C.B. 198; *Ar- onson*, 98 T.C. 283 (1992).

79. During a properly declared U.S. war with Outer Altoona, Harriet, a single taxpayer, was killed in action. Current-year Federal taxable income to the date of Harriet's death totaled \$19,000, and Federal income tax withholding came to \$2,300.

- What is Harriet's tax liability for the year of her death?
- What documentation must accompany her final Form 1040?

Partial list of research material: §692; Rev. Proc. 85-35, 1985-2 C.B. 433; *Ham- pton*, 75-1 USTC ¶ 9315.

80. Jerry Baker and his wife Hammi believe in the worship of the "Sea God." This is a very personal religion to Jerry and Hammi. To practice their beliefs, the Bakers want to take a two-week trip to Tahiti this year to worship their deity. The cost (airfare, hotels, etc.) of this religious "pilgrimage" is \$5,250. Jerry wants to know if he can deduct the cost of this trip as a charitable deduction on the joint Form 1040, Schedule A.

Partial list of research material: §170 and *Kessler*, 87 T.C. 1285 (1986).

81. Willie Waylon is a famous country-and-western singer. As an investment, Willie started a chain of barbecue restaurants called Willie's Wonderful Ribs. Willie's friends and associates invested \$500,000 in this venture. The restaurant chain failed, and the investors lost all their money. Because of his visibility and status in the entertainment community, Willie felt that he personally had

to make good on the losses suffered by the investors, to protect his singing and business reputation. Consequently, he personally paid \$500,000 to reimburse the investors for their losses. What are Willie's tax consequences (if any) from the reimbursement?

Partial list of research material: §162 and *Lobrke*, 48 T.C. 679.

82. Paul Preppie is an accountant for the Very Big (VB) Corporation of America, located in Los Angeles, California. When Paul went to work for VB, he did not have a college degree. VB required that Paul earn a B.S. degree in accounting, so he enrolled in a local private university's night school and obtained the degree. VB Corporation does not reimburse employees for attending night school, and because Paul attended a private university, the tuition and other costs were relatively expensive. Can Paul deduct any of the \$5,500 he paid in tuition and other costs during the current tax year? Prepare (in good form) a research memorandum to the file (See Chapter 2 for an illustration of the structure of a tax memo.)
83. Several years ago, Carol Mutter, a cash-basis taxpayer, obtained a mortgage from Weak National Bank to purchase a personal residence. In December 2009, \$8,500 of interest was due on the mortgage, but Carol had only \$75 in her checking account. On December 31, 2009, she borrowed \$8,500 from Weak Bank, evidenced by a note, and the proceeds were deposited in her checking account. On the same day, Carol issued a check in the identical amount of \$8,500 to Weak Bank for the interest due. Is the interest expense deductible for the 2009 tax year? Prepare (in good form) a research memorandum to the file. (See Chapter 2 for an illustration of the structure of a tax memo.)
84. Phyllis maintained an IRA account at the brokerage firm ABC. On February 11 of the current year, she requested a check for the balance of her account. She received the check made out in her name and deposited it the same day in a new IRA account at the brokerage firm XYZ. Phyllis then requested a check on May 8 from XYZ, which was deposited in another new IRA account thirty-five days later. Is the May 8 distribution taxable to Phyllis? Prepare in good form a research memorandum to the file. (See Chapter 2 for an illustration of the structure of a tax memo.)
85. Crystal Eros is a devout Pyramidist and a member of the Religious Society of Yanni, a Pyramidist organization. She adheres to the fundamental tenets of Pyramidist theology, including the belief that the Spirit of God is in every person and that it is wrong to kill or otherwise harm another person. Crystal's faith dictates that she not voluntarily participate, directly or indirectly, in military activities. Because Federal income taxes fund military activities, Crystal believes that her faith prohibits her from paying such taxes. Is there any legal substantiation for Crystal's position? Prepare (in good form) a research memorandum to the file. (See Chapter 2 for an illustration of the structure of a tax memo.)
86. Last year, your client, Robert Dinero, mailed an automatic extension for his tax return on April 15. He enclosed a check for \$10,000 with the extension request. The IRS cashed the check on April 28. Later, the IRS assessed Robert late filing penalties of \$2,900 because they claim he did not mail the extension

request on time. On the same date, Robert mailed an income tax extension request and check to the state of California. The California check was cashed on April 16. You requested that the IRS send you a copy of the extension request envelope showing the postmark; however, the IRS has lost it. The IRS recently attached Robert's bank account for the \$2,900, thereby seizing the funds directly. You have known Robert for years, and he could be described as a good, law-abiding, taxpaying citizen. He always pays his taxes on time, has never been in trouble with the IRS, and is not a tax protester. Robert asks you to recommend whether he should engage a tax attorney and sue for a refund, knowing that the legal fees for such an action will probably exceed \$10,000. After appropriate research, write a letter to Robert explaining your findings. His address is 432 Lucre Street, Tecate, CA 91980.

87. Your client, Luther Lifo, is an auditing professor who runs a CPA review course. He comes to you with the following tax questions.

Question One. Luther teaches CPA review courses on either a guaranteed or nonguaranteed basis. Under the guaranteed program, students pay higher tuition and, if they fail the CPA examination, are entitled to a full refund within two weeks of the release of the results. The CPA review course contracts require him to place the tuition in a set-aside escrow account until the students pass the exam; he established the savings account as a trust account for this purpose. The registration fee and tuition must be paid in full before the classes begin. Thus, students enrolled in the class that started in January 20x1 paid their tuition in December 20x0. In 20x0, Luther deposited registration fees and tuition, including \$30,000 in guaranteed tuition payments for the winter 20x1 courses, into a checking account. Also during 20x1, he paid refunds to guaranteed students who failed the 20x1 exams from that account. Does Luther report the \$30,000 as income in 20x0 or 20x1? How are the refunds paid in 20x1 treated for tax purposes? State the authority for your conclusion.

Question Two. Luther is a majority shareholder in a corporation that owns an office building. He leases space in the building for use in his CPA review course. Luther pays approximately \$20 per square foot in annual rent. The corporation leases the remaining space in the building to a LSAT, GMAT, SAT, and GRE review course run by other taxpayers for approximately \$10 per square foot. Luther's main intent in negotiating the discounted lease was to secure the additional traffic generated by the other review courses in order to enhance the potential revenue for the CPA review course. What is the amount of rent that Luther can deduct in connection with the CPA review course? State the authority for your conclusion.

After appropriate research, write a letter to Luther explaining your findings. The address is 321 Fifo Street, Temecula, CA 91980.

88. Austin Towers is a convicted former spy for the former Soviet Union. Austin received a communication from a Soviet agent that \$2 million had been set aside for him in an account upon which he would be able to draw. Austin was told that the money was being held by the Soviet Union, rather than in an independent or third-party bank or institution, on the petitioner's behalf. Over the next few years, Austin drew approximately \$1 million from the account. During that period, Austin filed annual tax returns with his wife showing taxable income of approximately \$65,000 per year. Conduct appropriate research to determine Austin's tax liability for the \$1 million in spy fees. After appro-

priate research, write a letter to Austin explaining your findings. His address is Lompoc Federal Prison, Cell #123, Lompoc, CA 93401.

89. The Reverend Shaman Oracle is an ordained minister in the Church of Prophetic Prophecy in Palm Desert, California. In the current year, Shaman receives payments from the church for his services of \$150,000. Of this amount, the church designates \$60,000 for compensation and \$90,000 as a housing allowance. Shaman and his wife own a home and have actual expenditures during the year for the home of \$72,000. The house is located in a well-established rental market, and the fair rental value of the home for the current year is \$55,000. Shaman wants to know how he and his wife should report these amounts on their current year's tax return. After appropriate research, write a letter to Shaman explaining your findings. His address is P.O. Box 1234, Palm Desert, California 92211.
90. Your client, Teddy Chow and his wife Abby, filed a lawsuit to recover damages for personal injuries Teddy sustained in a 2000 auto accident. In 2004, a jury awarded Teddy \$1,620,000 in damages. In addition, delay damages in the amount of \$1,080,000 were then added to that award, resulting in a total judgment of \$2,700,000. The defendants appealed the award, and while the appeal was pending, the parties reached a settlement, which provided for payment to Teddy of \$2,550,000. In 2009, after attorney's fees of \$850,000 were subtracted, Teddy received \$1,700,000. Teddy wants to know how these amounts are treated for tax purposes. After appropriate research, write a letter to Teddy and Abby explaining your findings. Their address is 654 Hops Street, Golden, CO 78501.
91. Cabrito Ranch, Inc. is a family ranch owned and operated by two brothers, Billie and Bubba Cabrito. The corporation made in-kind bonus payments in the form of goats to its two officers (Billie and Bubba) in exchange for their performance of agricultural labor. The two brothers are the only employees to receive goat bonuses. The transfers of the goats to the officers occurred within days of the date Cabrito Ranch would have sold the goats within the ordinary course of its business. The two officers/brothers did not market their bonus goats separately from other Cabrito Ranch goats; rather, the bonus goats were loaded onto the same trucks and sold to the same goat buyer on the same terms as other Cabrito Ranch goats. The officer/brothers' goats were sold for \$70,000 (\$35,000 to each brother). Cabrito Ranch wants to know how to treat the cash from the goat bonuses for FICA purposes. After appropriate research, write a letter to Billie and Bubba explaining your findings. Their address is 247 Angora Road, Mohair, TX 77501.
92. Gwen Gullible was married to Darrell Devious. They were divorced two years ago. Three years ago (the year before their divorce), Darrell received a \$250,000 retirement plan distribution, of which \$50,000 was rolled over into an IRA. At the time, Gwen was aware of the retirement funds and the rollover. The distribution was used to pay off the couple's mortgage, purchase a car, and for living expenses. Darrell prepared the couple's joint return, and Gwen asked him about the tax ramifications of the retirement distributions. He told her he had consulted a CPA and was advised that the retirement plan proceeds used to pay off a mortgage were not taxable income. Gwen accepted that explanation and signed the return. In fact, Darrell had not consulted a CPA.

One year ago (after the divorce), Gwen received a letter from the IRS saying they had not received the tax return for the last full year of marriage. On advice from a CPA, Gwen immediately filed the return (she had a copy of the unfiled return). The Internal Revenue Service notified Gwen that no estimated payments on the retirement distribution had been paid by Darrell, and that she owed \$60,000 in tax, plus penalties and interest. The deficiency notice provided that the retirement distribution, less the amount rolled, was income to the couple. After appropriate research, prepare (in good form) a research memorandum to the file. (See Chapter 2 for an illustration of the structure of a tax memo.) Then write a letter to Gwen explaining your findings. Her address is 678 Surprise Street, Houston, TX 77019.

93. Pealii Loligo owned and operated three “House of Calamari” restaurants from 1998 through 2000. His wife, Cleopatra Decacera, assisted with the management of the restaurants.

In May 1999, Ms. Decacera and Mr. Loligo purchased a \$900,000 home. In relation to this home purchase, in 1996 and 2000 they signed mortgage loan applications indicating joint annual incomes of \$235,000 and \$321,000, respectively. On their 1998 joint Federal income tax return, however, Ms. Decacera and Mr. Loligo reported that they earned no salaries and had net losses of \$55,000; and on their 1999 joint tax return, they reported that Mr. Loligo earned a salary of \$23,000, and that they had net losses of \$77,000.

During 1998–2000, Ms. Decacera and Mr. Loligo paid approximately \$70,000 for home furnishings, \$30,000 for a swimming pool, and \$40,000 for Ms. Decacera’s jewelry. In addition, they leased two Mercedes-Benz automobiles and took Ms. Decacera’s parents on vacations to Florida and Nevada.

In 2003, Decacera and Loligo were indicted and charged with filing false tax returns in 1998–2000. Loligo pled guilty, while Decacera signed a deferred prosecution agreement and admitted filing false returns. The couple divorced in 2005, and in 2006, the IRS issued a deficiency notice for the 1998–2000 taxes. In September 2006, Ms. Decacera filed a petition in which she requested relief from joint and several liability for 1998–2000 income taxes. During January 2007, Mr. Loligo filed his “notice of intervention.” In July, an IRS Appeals officer determined that Ms. Decacera did not qualify for Innocent Spouse relief under §6015(f).

After appropriate research, prepare in good form a research memorandum to the file. (See Chapter 2 for an illustration of the structure of a tax memo.) Then write a letter to Cleopatra explaining your findings. Her address is 4567 Whome Lane, Escondido, CA 92069.

94. Ned Naive (see research question Chapter 2, #84) operated several franchised stores, and at the home office’s suggestion, consolidated its payroll and accounting functions with Andy the Accountant. Andy is not a CPA. Last year, Andy began embezzling taxpayer’s escrowed tax withholdings and failed to remit required amounts for the four quarters. The IRS assessed Ned \$10,000 in penalties for failing to make the proper withholding deposits during the year. After appropriate research, prepare (in good form) a research memorandum to the file. (See Chapter 2 for an illustration of the structure of a tax memo.) Then write a letter to Ned explaining your findings. His address is 4567 Brainless Street, Phoenix, AZ 91234.

95. Phred Phortunate (from Chapter 2), won his state lotto two years ago. His lotto ticket was worth \$10,000,000, which was payable in twenty annual installments of \$500,000 each. Phred paid \$1.00 for the winning ticket. The lotto in Phred's state does not allow winners to receive their payout in a lump-sum. Phred wanted all of his money now, so he assigned his future lotto winnings to a Happy Finance Company for a discounted price of \$4,500,000. Assignment of lotto winnings is permitted by Phred's state lotto. Phred filed his tax return and reported the assignment of the lotto winnings as a capital gain (\$4.5M-\$1.00) taxable at a 15 percent rate. After appropriate research to determine if Phred correctly reported his lotto winnings assignment, prepare (in good form) a research memorandum to the file. (See Chapter 2 for an illustration of the structure of a tax memo.) Then write a letter to Phred explaining your findings. His address is 2345 Ecstatic Street, White River Jct., VT 05001.
96. Your client, Gary Gearbox, wholly owned and worked full time for a C corporation in the business of repairing autos. His wife, Tammy, wholly owned and worked full time for another C corporation that provided mobile auto windshields repairs. Both corporations' offices were located in the Gearboxes' home. The corporations paid the Gearboxes rent for the use of this office space. In addition to renting this portion of their home, the Gearboxes also owned five rental properties. On their last three tax returns, the Gearboxes reported net income from leasing office space to their C corporations of \$40,000, \$24,000, and \$22,000, respectively. During these years, the combined losses from the five other rental properties exceeded the income derived from their office leases. On their last three tax returns, the Gearboxes offset the losses from the rental properties against the income from the office leases and, as a result, paid no tax on the rental income paid to them by their corporation. After appropriate research to determine if Gary and Tammy correctly reported their rental income, prepare (in good form) a research memorandum to the file. Then write a letter to the Gearboxes explaining your findings. Their address is 7895 NASCAR Way, Anytown, Anystate 78501.