CHAPTER 1

Understanding and Working with the Federal Tax Law

LEARNING OBJECTIVES

After completing Chapter 1, you should be able to:
1. Realize the importance of revenue needs as an objective of Federal tax law.
2. Appreciate the influence of economic, social, equity, and political considerations on the development of the tax law.
3. Understand how the IRS, as the protector of the revenue, has affected tax law.
4. Recognize the role of the courts in interpreting and shaping tax law.
5. Identify tax law sources—statutory, administrative, and judicial.
6. Locate and use tax law sources.
7. Be able to carry out tax research.
8. Assess the validity and weight of tax law sources.
9. Make use of various tax planning procedures.

KEY TERMS

Acquiescence  Indexation  Revenue Procedures
Arm’s length concept  Letter rulings  Revenue Rulings
Business purpose concept  Nonacquiescence  Tax benefit rule
Certiorari  Proposed Regulations  Temporary Regulations
Continuity of interest concept  Revenue neutrality  Wherewithal to pay
Determination letters

OUTLINE

I. THE WHYS OF THE TAX LAW
   A. Revenue Needs
      1. The major objective of the Federal tax law is raising revenue to absorb the cost of government operations.
      2. Over the years, budget deficit considerations have emphasized the concept of revenue neutrality.
      3. Revenue neutral changes in the tax law neither reduce nor increase the deficit—the net revenue raised remains the same.
   B. Economic Considerations
      1. Control of the economy
         a. Capital outlays for business property are:
            1. encouraged through shorter asset lives and accelerated methods of depreciation.
            2. discouraged through longer asset lives and slower methods of depreciation.
         b. Tax rate changes often have a more immediate impact on the economy.
      2. Encouragement of certain activities
         a. Technological progress is encouraged by favorable tax provisions concerning the treatment of:
            1. research and development expenditures.
            2. inventors and patents.
         b. A healthy environment is encouraged through amortization of pollution control facilities.
         c. Tax incentives have been provided for energy conservation.
         d. The domestic production activities deduction provides tax incentives for manufacturing.
e. Low income rental housing is encouraged through tax credits.
f. Savings is encouraged by making contributions to private retirement accounts deductible and allowing earnings to accumulate tax-free.

3. Encouragement of certain industries
   a. Farmers are allowed to expense certain soil and water conservation expenditures and defer gain recognition on crop insurance proceeds.
   b. Extractors of gas, oil and some minerals are allowed to use percentage depletion and may expense rather than capitalize some exploration costs.

4. Encouragement of small business
   a. Ordinary loss treatment allowed on sales of certain small business corporation’s stock encourages investments.
   b. The S corporation election allows the corporation to pass through profits and losses to shareholders without a corporate level income tax.
   c. Provisions for corporate reorganization allow corporations to combine without adverse tax consequences.

C. Social Considerations
   1. Congress uses the Tax Code to address social concerns. Examples include:
      a. The refundable earned income credit reduces the number of people on welfare.
      b. Employer paid insurance coverage for employees (a tax-free fringe benefit that encourages private sector financial support for employees and their families in the event of an employee’s illness, injury, or death).
      c. Deferred taxability of private retirement plans encourages saving to supplement social security benefits in post-employment years.
      d. The charitable contribution deduction encourages private sector support for socially desirable programs.
      e. The child and dependent care tax credit encourages taxpayers to work.
      f. Educational credits and the student loan interest deduction encourage higher educational achievement.

D. Equity Considerations
   1. The equity concept (a Congressional measure of tax system “fairness”) appears in various Tax Code provisions.
   2. To alleviate the effect of multiple taxation:
      a. deductions are allowed for state and local income taxes.
      b. credits or deductions are allowed for foreign income taxes paid.
      c. corporations are allowed a deduction for certain dividends received.
   3. The wherewithal to pay concept allows deferral of gain recognition in specific situations where a taxpayer’s economic position has not significantly changed.
   4. The annual accounting period concept is modified in certain instances to simplify the computation of taxable income.

E. Political Considerations
   1. Special interest legislation is an inevitable product of our political system; certain groups influence Congress to promote the enactment of laws providing special tax treatment for their particular business or interest.
   2. Political expediency refers to tax provisions developed in response to popular opinion at the time of enactment.
   3. State and local law also influences the Federal tax law. The Federal tax benefit that resulted from taxpayers living in community property states (v. common law states) forced the Congress to change the tax law.

F. Influence of the Internal Revenue Service
   1. The IRS as protector of the revenue has been instrumental in securing passage of legislation designed to close tax loopholes.
   2. Administrative feasibility of the tax laws is aided by provisions which place taxpayers on a pay-as-you-go basis and impose interest and penalties on taxpayers for noncompliance.
G. Influence of the Courts
1. Judicial concepts relating to tax law serve as guides in applying various tax provisions. Examples include the substance over form, continuity of interest, and business purpose doctrines.
2. Congress may incorporate key court decisions into Federal tax law.

II. WORKING WITH THE TAX LAW—TAX SOURCES
A. Statutory Sources of the Tax Law
1. Origin of the Internal Revenue Code
   a. The Internal Revenue Code of 1939 arranged all Federal tax provisions enacted by Congress prior to that time in a separate part of the Federal statutes.
   b. The Internal Revenue Code of 1954 was a revision of the 1939 Code.
   d. Statutory amendments to the tax law, such as the American Recovery and Reinvestment Tax Act of 2009 are integrated into the existing Code.
2. The Legislative Process
   a. Tax legislation generally originates in the House of Representatives, where the enactment process is accomplished in a step-by-step manner, normally starting in the House of Representatives, proceeding to the Senate, and then to the President for signature (see page 1–18 of your text for a visual representation of this process).
   b. Tax bills may originate in the Senate as riders to other legislation.
   c. When the House and Senate versions of a bill differ, the Joint Conference Committee attempts to resolve the differences.

B. Administrative Sources of the Tax Law
1. Treasury Department Regulations
   a. Regulations provide taxpayers with guidance on the meaning and application of the Code.
   b. Regulations are usually first issued in proposed form before finalization to permit comment from taxpayers.
   c. Temporary Regulations are issued when immediate guidance is critical.
   d. Temporary Regulations are simultaneously issued as Proposed Regulations and automatically expire within three years.
   e. Final Regulations are issued as Treasury Decisions.
2. Revenue Rulings and Revenue Procedures
   a. A Revenue Ruling provides interpretation of the tax law as it applies to a particular set of circumstances.
   b. Revenue Procedures deal with the internal management practices and procedures of the IRS.
3. Other Administrative Pronouncements
   a. Treasury Decisions are issued to make known Final Regulations, to change existing Regulations, and to announce the Government’s position on selected court decisions.
   b. Technical Information Releases are issued to announce the publication of various IRS pronouncements.
   c. A letter ruling is issued, upon a taxpayer’s request, to describe how a proposed transaction will be treated for tax purposes.
      1. A letter ruling generally applies only to the requesting taxpayer.
      2. The issuance of letter rulings is limited to restricted, preannounced areas.
   d. A technical advice memorandum is issued in response to a request of IRS personnel during an audit and gives the IRS’s position on a specific issue.
   e. A determination letter is issued at the request of a taxpayer to provide guidance concerning the tax laws that are applicable to a completed transaction.

C. Judicial Sources of the Tax Law
1. The Judicial Process
   a. If no satisfactory settlement has been reached with the IRS, the dispute can be taken to Federal court (see Figure 1.1).
   b. The case is first considered by a court of original jurisdiction, including:
      1. Federal District Court.
      2. U.S. Court of Federal Claims.
      3. Tax Court (including its Small Cases Division).
c. Any appeal is taken to the appropriate appellate court, including:
   1. Court of Appeals of appropriate jurisdiction.
   2. Court of Appeals for the Federal Circuit.
   3. Supreme Court.

2. Judicial Decisions
   a. American law is frequently made by judicial decisions. Under the doctrine of stare decisis, each case has precedential value for future cases having the same controlling set of facts.
   b. The Tax Court hears only tax cases and issues two types of decisions.
      1. Regular decisions involve issues not previously resolved by the Court.
      2. Memorandum decisions involve application of already established principles of law.
   c. If the IRS loses in a decision, it usually indicates agreement (acquiescence) or disagreement (nonacquiescence).

III. WORKING WITH THE TAX LAW – LOCATING TAX SOURCES
A. Commercial Tax Services
   1. Substantial changes in commercial tax services have occurred over the past few years.
   2. Services no longer can be classified as annotated (i.e., organized by the Internal Revenue Code) or topical (i.e., organized by major topics).
   3. Virtually all commercial tax services are available electronically and electronic research is the norm in most tax practices.

B. Using Online Services
   1. How to use an online service differs by the service provider.
   2. Keyword searches are the norm.
   3. Some suggestions for making efficient searches include the following:
      a. Choose key words carefully,
      b. Take advantage of connectors to place parameters on the search and restrict the output,
      c. Be selective in choosing a database,
      d. Consider using the table of contents or index.

C. Noncommercial Online Sources
   1. The Internet provides a vast source of information.
   2. A wide variety of tax law sources are found in home pages and newsgroups.
   3. Exhibit 1.2 provides a list of potentially useful web sites.

IV. WORKING WITH THE TAX LAW – TAX RESEARCH
A. Identify the Problem
   1. Gather all of the facts that might have a bearing on the problem.
   2. Refine the problem and determine the tax consequences of each possibility.

B. Locate the Appropriate Tax Law Sources
   1. Various tax services provide access to tax law and provide commentary.
   2. Key words derived from the facts are used to explore tax services.
   3. Make sure your information is up to date.

C. Assess the Validity of Tax Law Sources
   1. Assess the relevance of the tax law source in light of the facts and circumstances of the problem at hand.
   2. Assess the weight of the tax law source in light of the facts and circumstances of the problem at hand.
   3. Different sources have varying degrees of authority.

D. Arrive at the Solution or at Alternative Solutions

E. Communicate Tax Research
   1. Present a clear statement of the issue.
   2. Provide a short review of the factual pattern that raised the issue.
   3. Provide a review of the pertinent tax law sources.
   4. Describe any assumptions made in arriving at the solution.
   5. State the recommended solution and the reasoning to support it.
   6. List the references consulted.
V. WORKING WITH THE TAX LAW—TAX PLANNING
   A. The main purpose of effective tax planning is to reduce the taxpayer’s total tax bill.
   B. In tax planning, one must recognize the significance of taxes – but tax avoidance should not override sound business judgment.
   C. Components of tax planning include tax avoidance, income deferral, income shifting, gain reclassification, entity choice, preserving form, and consistency.
   D. Tax planning usually involves a proposed transaction and is based on the law in effect when the research was performed. Following up (e.g., to see if a law change has occurred) is imperative once a course of action has been chosen.

VI. TAXATION ON THE CPA EXAMINATION
   A. Taxation is included as part of the 3-hour Regulation section of the exam.
   B. The exam includes both multiple choice questions (3 sections of 24 to 30 questions each) and small case studies (simulations).
   C. Simulations can include spreadsheet analysis and return completion problems.
TEST FOR SELF-EVALUATION—CHAPTER 1

True or False

Indicate which of the following statements is true or false by circling the correct answer.

T  F  1. Revenue Procedures are official IRS statements of internal management practices and procedures that either affect the rights or duties of taxpayers or other members of the public, or concern matters of public knowledge.

T  F  2. Nonacquiescence by the Commissioner of Internal Revenue to an adverse decision in a regular Tax Court case means the Internal Revenue Service will NOT accept the decision and will NOT follow it in cases involving similar facts.

T  F  3. A Memorandum Decision is a report of a Tax Court decision thought to be of lesser value as a precedent because the issue has been decided many times.

T  F  4. An income tax case not resolved at an appeals conference can proceed to the United States Tax Court without the taxpayer paying the disputed tax, but generally, the United States District Court and United States Court of Federal Claims hear tax cases ONLY after the tax is paid and a claim for credit or refund is filed by the taxpayer and is rejected by the IRS or the IRS has not acted on the taxpayer’s claim within six months from the date of filing the claim for refund.

T  F  5. All courts except the Tax Court are bound by legislative regulations.

T  F  6. Proposed regulations automatically replace the temporary regulations.

T  F  7. Revenue rulings are the published interpretations of the IRS concerning the application of tax law to a specific set of facts.

T  F  8. The courts are not bound by interpretive Treasury Regulations.

T  F  9. Decisions of the courts other than the Supreme Court are binding on the Commissioner of Internal Revenue only for the particular taxpayer and for the years litigated.

T  F  10. If the Supreme Court determines that various lower courts are deciding a tax issue in an inconsistent manner, it may review a decision and resolve the contradiction.

Fill in the Blanks

Complete the following statements with the appropriate word(s) or amount(s).

1. ____________________, ____________________, ____________________, and ____________________ play a significant role in the development of Federal tax law.

2. ____________________, ____________________, and ____________________ are examples of political considerations.

3. The courts have influenced and formulated tax law through the two techniques of ________________ and ________________.

4. If the IRS loses in a Regular decision of the Tax Court, it will indicate ________________ or ________________ with the result reached by the Court.

5. Appeal to the U.S. Supreme Court is by ________________.

6. ________________ are issued at the request of taxpayers and provide guidance concerning the application of tax law to completed transactions.

7. Tax reform legislation which does not change net revenues raised is ________________.

8. The ________________ concept applies to situations in which a taxpayer’s economic position has not significantly changed; gain recognition is postponed.

9. ________________ is the method whereby one determines the best solution or series of solutions to a particular problem with tax ramifications.

10. ________________ is the minimization of tax payments through legal means.

11. The key components of tax planning include ____________________, ____________________, and ____________________.
Multiple Choice

Choose the best answer for each of the following questions.

_____ 1. Which of the following statements is correct with respect to procedures of the Small Cases Division of the United States Tax Court?
   a. The amount in the case must be $5,000 or less for any one tax year or period.
   b. Small Case decisions establish precedent for other Tax Court cases.
   c. Small case procedures require the taxpayer and the IRS to submit briefs presenting their positions on the issues (they follow the same process as regular Tax Court cases).
   d. The Tax Court decision is final and the taxpayer cannot appeal.

_____ 2. With respect to trial courts, all of the following statements are correct except:
   a. There is only one Tax Court and only one Court of Federal Claims, but there are many District Courts.
   b. Each District Court has only one judge, the Court of Federal Claims and the Tax Court have multiple judges.
   c. The only court where a taxpayer can obtain a jury trial is the Court of Federal Claims.
   d. The Tax Court hears only tax cases; the other trial courts hear both tax and nontax cases.

_____ 3. With regard to Revenue Rulings and Revenue Procedures, all of the following statements are correct except:
   a. A Revenue Ruling is a published official interpretation of tax law by the IRS that sets forth the holding of the IRS as to how the tax law applies to a particular set of facts.
   b. Revenue Rulings have the force and effect of Treasury Regulations.
   c. A Revenue Procedure is a published official statement of practice or procedure that either affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code and related statutes and regulations or, if not necessarily affecting the rights and duties of the public, should be a matter of public knowledge.
   d. Revenue Procedures are directive and not mandatory so that a taxpayer has no vested right to the benefit of the procedures when the IRS deviates from its internal rules.

_____ 4. Which of the following statements best describes the applicability of a constitutionally valid Internal Revenue Code (IRC) section on the various courts?
   a. Only the Supreme Court is not bound to follow the IRC section. All other courts must follow the legislative provision.
   b. Only the Tax Court is bound to follow the IRC section, all other courts may waiver from the legislative provision.
   c. Only trial courts are bound by the IRC section, the appellate courts (including the Supreme Court) may waiver from it.
   d. All courts are bound by the IRC section.

_____ 5. All of the following statements with respect to classes of regulations are correct except:
   a. All regulations are written by the Office of the Chief Counsel, IRS, and approved by the Secretary of the Treasury.
   b. Public hearings are not held on temporary regulations.
   c. Although IRS employees are bound by the regulations, the courts are not.
   d. A public comment period is not provided for proposed regulations.
6. Which of the following is not one of the three classes of Treasury Regulations?
   a. Temporary
   b. Judicial
   c. Final
   d. Proposed

7. Which of the following statements is false?
   a. The Tax Court will issue either a regular report or a memorandum decision depending upon the issues involved and the relative value of the decision being made.
   b. The Commissioner of Internal Revenue may issue a public acquiescence or nonacquiescence on District or Court of Federal Claims court cases.
   c. Interpretative regulations are issued under the general authority of Internal Revenue Code and legislative regulations are issued under the authority of the specific Internal Revenue Code section to which they relate.
   d. The government prints the regular and memorandum Tax Court decisions in bound volumes.

8. Federal tax legislation generally originates in what body?
   a. The Internal Revenue Service.
   b. The Senate Finance Committee.
   c. The House Ways and Means Committee.
   d. The floor of the Senate.
   e. None of the above.

9. With regard to Treasury Regulations, all of the following statements are correct except:
   a. A taxpayer taking a position contrary to a finalized Regulation is required to disclose this fact in their tax return (by filing Form 8275).
   b. Until final regulations are issued, unexpired temporary regulations have the same force and effect of law as final regulations.
   c. New regulations and changes in existing regulations usually are issued in proposed form before they are finalized. This provides an opportunity for interested parties to comment on the Regulations.
   d. Interpretative regulations, which explain the IRS’s position on the various sections of the Code, are NOT accorded great weight by the courts.

10. The concept of equity appears to explain all of the following provisions of the tax law, except:
    a. Anita has had three surgeries this year and is allowed a deduction for her paid extraordinary, unreimbursed, medical expenses.
    b. This year, Kerrie’s house was destroyed by fire, thereby allowing Kerrie a deduction for her extraordinary casualty loss.
    c. Keith has taxable income that is exactly 3 times more than Edward’s taxable income. Even though Keith and Edward are both single, Keith pays a tax that is more than 3 times the amount of tax that Edward pays.
    d. This year, John realized a gain on the sale of his house. In exchange for his house, John accepted a promissory note (secured by his house) for the entire purchase price. John will begin receiving principal and interest payments next year. John may defer any gain realized on the sale of his house until John begins receiving principal payments (next year).
    e. This year, Laura is allowed to deduct the interest paid to a financial institution on $300,000 of indebtedness (secured by her principal residence), the proceeds of which were used to acquire her principal residence.
11. If a taxpayer with a statutory notice of deficiency wishes his/her case heard by a court before paying the tax, which court would the taxpayer petition?
   a. United States Tax Court  
   b. United States Court of Federal Claims  
   c. United States District Court  
   d. United States Court of Appeals

12. With regard to terminology relating to court decisions, all of the following statements are correct except:
   a. Decision: the court’s formal answer to the principal issue in litigation, has legal sanction and is enforceable by the authority of the court.
   b. Remanded: an appellate court’s choice to return the case to a lower court for additional fact finding.
   c. Acquiescence: a comment by the Internal Revenue Service on adverse regular Tax Court decisions indicating that the IRS will follow the Court’s decision in cases involving similar facts.
   d. Writ of Certiorari: a petition issued by the lower appellate court to the Supreme Court to hear a case that is NOT subject to obligatory review by the Supreme Court.
SOLUTIONS TO CHAPTER 1 QUESTIONS

True or False

1. T (p. 1–21)
2. T (p. 1–30)
3. T (p. 1–28)
4. T (p. 1–25)
5. F (p. 1–41; no exceptions, truly possess the force and effect of law)
6. F (p. 1–21; temporary regulations are simultaneously issued as proposed regulations)
7. F (p. 1–21; interpretive holdings)
8. T (p. 1–40)
9. T (p. 1–23)
10. T (p. 1–27)

Fill in the Blanks

1. Economic, social, equity, political factors (p. 1–2)
2. Special interest legislation, political expediency, and state and local influences (p. 1–10)
3. Formulating judicial concepts, making key decisions (p. 1–14)
4. Acquiescence, nonacquiescence (p. 1–30)
5. Writ of certiorari (p. 1–27)
6. Determination Letters (p. 1–23)
7. Revenue neutral (p. 1–3)
8. Wherewithal to pay (p. 1–7)
9. Tax research (p. 1–35)
10. Tax avoidance (p. 1–45)
11. Tax avoidance, income deferral, income shifting, gain reclassification, entity choice, preserving form, and consistency

Multiple Choice

1. d (p. 1–23) The U.S. Tax Court also has the Small Cases Division. The subject matter jurisdiction of the Small Claims Division covers deficiencies (including penalties) and overpayments of not more than $50,000. A taxpayer must have approval from the Tax Court to be heard by the Small Cases Division. These cases set no precedent for other courts. The hearing is informal and does not require the preparation of briefs. Any decision is final and cannot be appealed.
2. c (p. 1–25; jury trials are only available in a District Court)
3. b (p. 1–21; Revenue Rulings do not have the same force and effect as Regulations; they deal with more restrictive problems)
4. d (p. 1–22) All Federal courts (and Federal administrative agencies) are bound to Federal tax law, unless the law is unconstitutional. The courts interpret and apply the Federal tax law.
5. d (p. 1–21) Treasury Regulations are first published in the Federal Register as proposed regulations to allow the opportunity for public comment. Proposed regulations are issued at least 30 days before final regulations are issued. These regulations do not have the force and effect of law and they expire after 3 years.
6. b (p. 1–21; the three classes of Treasury Regulations are temporary, proposed, and final)
7. d (p. 1–29; the government does not print Memorandum decisions, although a number of tax research services provide these decisions in printed form. Memorandum decisions are available on the U.S. Tax Court web site)
8. b (p. 1–17; generally, tax legislation originates in the House and is first considered in the House Ways and Means Committee)
9. d (p. 1–21, 41; an interpretive regulation generally has the force and effect of law, unless it is found to be inconsistent with the statute for which it is written)
10. e (p. 1–5) The deductibility of residence interest can better be explained as a social or economic policy (not equity). Congress believes that home ownership is a positive societal virtue, so subsidizing home ownership is a public policy goal. The other options each represent a provision whose enactment arose out of an equity concern of either (1) a taxpayer’s ability to pay or (2) a taxpayer’s wherewithal to pay.

11. a (p. 1–25; The U.S. Tax Court)

12. d (p. 1–27; order issued by the Supreme Court) A taxpayer does not have an automatic right to have the Supreme Court hear their case. Instead, the taxpayer must request that the Supreme Court issue a Writ of Certiorari. The writ is a demand by the Supreme Court to a lower court for the lower court to send the case up to the Supreme Court.