

TAX AUTHORITIES AND OTHER GOOD THINGS TO KNOW

1. Code.

Cite as “Internal Revenue Code of 1986, as amended” or “I.R.C. § ___” or, in text, as “Code section ___.” This is title 26 (the Internal Revenue Title) of the U.S. Code. Previous codified versions are the 1954 Code (which had the same section numbers as the 1986 Code) and the 1939 Code (which had different section numbers).

Note: Look at the table of contents to see how the Code is divided into subtitles, chapters, and subchapters. Example:

Subtitle A. Income Taxes

Chapter 1. Normal Taxes and Surtaxes (§§ 1 - 1399)

Subchapter C. Corporate Distributions and Adjustments (§§ 301-385)

2. Regulations.

Cite as “Treas. Reg. § ___” or, in text, as “Treasury Regulations section ___.”

Note: The number before the decimal point denotes the Subtitle of the Code the section falls within. Examples:

§ 1. ___ means income tax.

§ 25. ___ means gift tax.

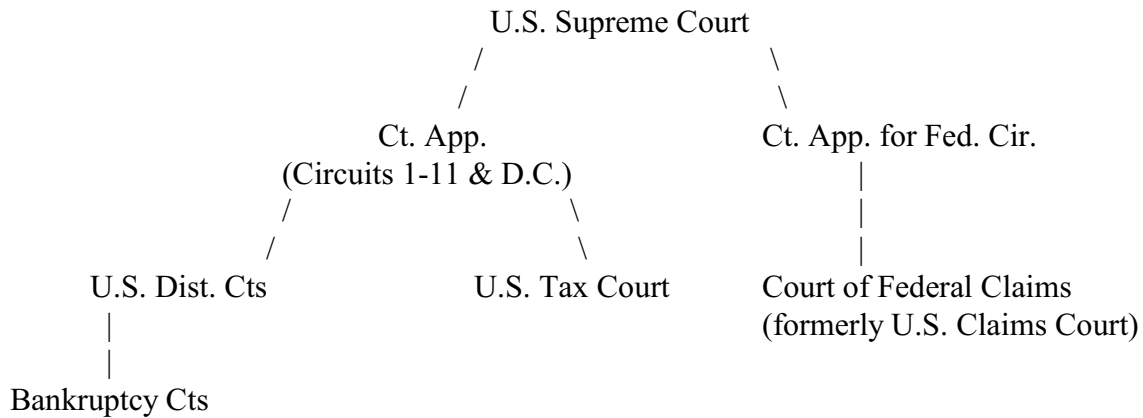
§ 301. ___ means administrative provisions.

Regulations are written and updated as and when the Internal Revenue Service’s Office of Chief Counsel and the Treasury Department’s Office of Tax Policy can spare the resources (and can agree on the policy calls). Regulations expand on or interpret statutory language, and often provide examples; aside from their legal effect, they can be very helpful in understanding a statute.

Caveat #1: DO NOT ASSUME THAT THE CURRENT VERSION OF A REGULATION REFLECTS THE CURRENT VERSION OF THE STATUTE!

Caveat #2: Regs are often first issued in proposed form. While theoretically not authority, proposed regs can and do sit around for years as the only Treasury interpretation of a Code section. See, e.g., regulations proposed on June 5, 1979 under the “at risk” rules of § 465, and still not finalized.

3. **Case Law.**



a. **Refund suits.** A taxpayer may file in a district court or in the Court of Federal Claims if he or she pays the tax deficiency (or has overpaid tax) and sues for a refund. A jury is available in the district courts but not in the Court of Federal Claims.

Cases are styled: Taxpayer v. United States.

b. **Deficiency determinations.** A taxpayer who does not want to pay up first must file in the Tax Court.

Cases are styled: Taxpayer v. Commissioner.

No jury is available. The Tax Court has 19 regular judges (plus 15 special trial judges who hear small cases). Decisions usually issue from one judge, but if the case is important it will be reviewed by the entire court (producing some very complicated, Supreme-Court like alliances and opinions).

Decisions are cited to “T.C.” for published cases; to “T.C.M.” (Tax Court Memorandum) for unpublished cases unofficially reported; and to “B.T.A.” for old cases, when the court was part of the Internal Revenue Service and known as the Board of Tax Appeals. If appropriate, add “(reviewed by the court)” to the cite.

Decisions are appealable generally to the Circuit which would get the appeal if the case had instead been heard in district court. Thus the Tax Court might have to apply different rules to taxpayers living in different circuits.

If the Service decides to concede an issue in all circuits, it issues an “acquiescence” (it

might also “acquiesce in result only”); if the Service wishes to announce its intention to keep fighting in other circuits, it issues a “nonacquiescence.” Add “acq.” or “nonacq.” and cite to the C.B. or I.R.B. (see below) in which it is announced.

c. **Bankruptcy.** As bankruptcy filings rise, more and more substantive tax issues are being decided by bankruptcy judges. These days, each bankruptcy court operates under the particular rules of its supervising district court.

4. Revenue Rulings and Revenue Procedures.

a. **Revenue rulings** set forth the IRS’s position on a specific fact pattern, but have no binding effect on the anybody, including the IRS. They have no more legal effect than the Service’s brief, so it irritates courts when the Service issues a revenue ruling on point during the course of litigation and then cites to it!

b. **Revenue procedures** are supposed to be used for administrative rules, but the bright lines drawn can sometimes produce substantive consequences as taxpayers attempt to come within the safe harbors.

c. **Cite** to the Service’s weekly newspaper, the Internal Revenue Bulletin (“I.R.B.”), if recent. The I.R.B.’s are collated by Code sections twice a year; each six-month volume is called a Cumulative Bulletin (“Cum. Bull.” or “C.B.”). E.g. –

“Rev. Rul. 98-71, 1998-32 I.R.B. 13” means the 71st revenue ruling issued in 1998, and it was published in the I.R.B. in the 32nd week in 1998.

“Rev. Proc. 96-22, 1996-1 C.B. 609” means the 22nd revenue procedure issued in 1996, and it is collated in the first of the two 1996 Cumulative Bulletins.

Caveat: Starting with the new millennium, ruling numbers start with the full four-digit year: e.g., “Revenue Procedure 2000-15.” In addition, the I.R.B.’s for each year will be paginated sequentially, so that the C.B. page numbers will be the same.

5. Unpublished Internal Revenue Service Guidance: Private Letter Rulings, Technical Advice Memoranda, General Counsel Memoranda, and Chief Counsel Advice.

After litigation by Tax Analysts (a public interest group and publisher of Tax Notes magazine and Tax Notes Today), the courts decided that the Freedom of Information Act requires the Service to release internal and other informal guidance that previously amounted to a “secret body of law.” These documents are written by the Office of Chief Counsel of the IRS, and are

issued either to taxpayers or to the IRS agent in the field. The released version is “redacted” – that, is, taxpayer identifying information is excised.

Two types of guidance relate solely to a specific taxpayer. A **private letter ruling** (“letter ruling” or “P.L.R.”) is issued to the taxpayer at his or her request, so that the tax consequences of a deal can be known in advance. The Service annually publishes a list of areas in which it will not rule (usually because the law is unsettled, or the issue is too factual). A **technical advice memorandum** (“tech advice” or “T.A.M.”) is issued during an audit at the request of the examining agent (the taxpayer can also ask the agent to make a tech advice request). Some publishers refer to both P.L.R.’s and T.A.M.’s as P.L.R.’s.

The Code says that P.L.R.’s and T.A.M.’s carry no authoritative weight (because they necessarily are issued by staff attorneys and are not reviewed at a high level). However, the courts (and tax lawyers), desperate for a peg to hang their hat on, cite to them anyway (you claim in a footnote that you're not citing to the PLR, you're citing to the reasoning contained therein!).

Cite (at your own risk) as, e.g., “P.L.R. [or T.A.M.] 9234002 (March 22, 1992).” The first two digits (“92”) give the year published; the next two digits (“34”) give the week published; the last three digits (“002”) tell you it was second in the letter rulings issued that week; and the date is the date written (which, because the taxpayer gets to look at it first to sanitize taxpayer identifying information, is several months prior). “Bluebook” citation form requires hyphens here (e.g., 92-34-002)! In 1999, the IRS began to use the full year – e.g., “P.L.R. 199935008.”

Somewhere between a revenue ruling and a T.A.M. is internal guidance known as “**general counsel memoranda**” (G.C.M.s), issued in the good old days, and, more recently, “**chief counsel advice**” (C.C.A.s). Not only is taxpayer information withheld, but also the Service redacts discussions that might jeopardize its litigation strategy. The Service is locked in perpetual litigation under FOIA over which new forms of internal documents must be released.

6. Legislative History.

The usual caveats apply. Watch particularly for “post legislative history”!

a. Permanent committees:

House of Representatives (where tax bills start): **Ways and Means Committee.**
Website: <http://waysandmeans.house.gov>.

Senate: **Senate Finance Committee.**
Website: <http://finance.senate.gov>.

Joint: **Joint Committee on Taxation** (composed of some representatives and

some senators). More known than this committee is its staff — the **Staff of the Joint Committee** writes pretty much all of the reports for all these committees. Website: www.jct.gov.

b. When a bill has been approved by the full House and by the full Senate, differences between the two versions are ironed out in a “conference.” The **Conference Committee** contains members appointed from both houses (and from both parties). After conference, the Staff of the Joint Committee prepares a Conference Report describing (1) the current law, (2) the reasons for change, (3) the House and Senate versions of the bill, and (4) the agreed version. The houses then vote on the conference bill. After it’s been signed into law, if it’s a major bill (like the 1986 Tax Reform), the Staff of the Joint Committee comes out with a “General Explanation” of the law (informally known as the “Bluebook”). This is basically a gussied-up Conference Report (sometimes with “clarifications” provided by lobbyists!).

7. Legal Research.

LEXIS and **Westlaw** are excellent for doing tax research, because you can search by Code or reg section, or even the P.L.R. number (if you know it). In many law firms, this is the only source for Tax Court decisions, revenue rulings, and private letter rulings. You can also access daily tax services, such as **Tax Analysts’** “Tax Notes Today,” on computer.

Secondary source material is beyond the scope of this summary. Among the general material, **Commerce Clearing House (CCH)** and **Research Institute of America (RIA)** publish looseleaf multi-volume services organized by Code section. Similarly organized are specialized looseleaf services (such as a pension law reporter or an exempt organizations reporter). **Bureau of National Affairs (BNA)** publishes helpful portfolios on specific Code sections. Check out the library for other services, treatises and journals.

Tax resources abound in cyberspace. Check out the **IRS Web Page** at www.irs.gov for forms, publications, and a whole host of other stuff the government wants taxpayers to know. For legislative histories, go to the **Joint Committee on Taxation’s** website at www.jct.gov. The States also maintain cites (see, e.g., the **Illinois Department of Revenue** site at www.revenue.state.il.us) with forms, assistance, regulations, and statistics.

Among the many private Web pages are two of note – these have links to other resources. First is the one maintained by **Tax Analysts**, a nonprofit tax publisher; the Internet address is www.tax.org and its most interesting feature is an archive of postings on various topics. You can also sign on to particular discussion groups (indeed, numerous tax listserves can be found all over the Internet). Similarly, try the **American Bar Association Tax Section’s** home page at www.abanet.org/tax. Happy surfing!