

THINK OUTSIDE THE TAX BOX

How to ensure your client's circumstances align with the black and white of the tax law. We'll cover the hierarchy of authoritative guidance, which interpretations can be relied upon, and how to protect your recommendations during an examination.

Dominique Molina
CPA, MST, CTS
Founder, American Institute of Certified Tax Planners
Editor-in-Chief, Think Outside The Tax Box

Effective Tax Research for Tax Strategy Preparation

Importance of Written Advice

- Managing Risks and Liabilities
- Avoiding Incorrect Advice
- Enhancing Client Trust and Satisfaction
- Leveraging Technology for Accuracy and Efficiency
- The Power of Tax Research Technology

Roadmap

- Essentials of Tax Research and Creating of Written Tax Plans
- Legal Responsibilities
- Where do you find the law?
- How do you know if it's current?
- How to conduct tax research

Tax Practice by CPAs & EAs: Permitted



- Tax compliance
- Tax planning
- Tax research
- Practicing before the IRS**
- Practicing before the Tax Court

**upon passing USTCP exam

Tax Practice by CPAs & EAs: Prohibited



- Legal opinion in _____ matter
- _____ legal documents

Purpose



- Circular 230 and the Office of Professional Responsibility (OPR)
- Clear Communication With Taxpayer
- Define Scope
- Document Facts and Information Provided
- Protect Yourself From Professional Liability

Statutory Authority



- 31 U.S.C. §330 (1884)
- Regulate the practice of representatives of persons before the Department of the Treasury
- Authorizes determinations of practitioner "fitness" to practice

Regulatory Authority



- 31 C.F.R. Subtitle A, Part 10 (1886)
- Treasury Circular No. 230 (1921)
- 31 C.F.R. 10.1(a)(1)
- Delegation Order 25-16

Fees – §10.27



A practitioner may not charge an unconscionable fee in connection with any matter before the IRS.

- Unreasonably excessive; grossly unfair
- Limitations on contingency fees.
- **Generally, section 10.27 violations involve charging high fees for bad advice (i.e., raising numerous trivial arguments long-rejected by the IRS and by case law)**
- Limitations on contingency fees.

What's In It?



- Authority to Practice (Licensing, renewals, continuing education)
- Duties and Restrictions Relating to Practice (Ethics/Conduct)
- Sanctions for Violations ("Rules of Engagement")
- Disciplinary Procedures (Due Process)

OPR Mission



"Interpret and apply the standards of practice for Tax professionals in a fair and equitable manner"

Practicing Before the IRS



- All matters
- Presentation to the IRS
- Relating to a taxpayer's rights, privileges, or liabilities
- Under laws or regulations administered by the IRS
- Preparing, filing, corresponding, communicating, written or oral advice, representing

Discipline Options



- Negotiations or Administrative Proceedings
- Reprimand/Soft Letter (Private)
- Censure
- Suspension
- Disbarment
- Monetary Sanction (*Individuals and Firms*)

Burden of Proof



- Monetary penalty, disbarment, or suspension in excess of 6 months = **"Clear & Convincing"** evidence.
- Less than **"Beyond a Reasonable Doubt"** (criminal convictions), but more than **"Probable Cause"** (search warrants) or **"Preponderance of Evidence"** (injunctions).

The Basics of Written Advice



- [T]he regulations may well reach beyond the concept of what most local firm and sole practitioners in the legal and accounting professions believe constitutes a "tax shelter."
- Circular 230 governs written communications concerning any federal tax of every attorney, CPA and enrolled agent. There is no exclusion based on the size of the firm or its activities. In addition, the regulations may well reach beyond the concept of what most local firm and sole practitioners in the legal and accounting professions believe constitutes a "tax shelter." For purposes of both the Code (the accuracy-related penalty standard of Code Sec. 6662) and the Circular 230 "opinion standards," the tax shelter definition includes "...any other plan or arrangement, if a significant purpose of such... arrangement is the avoidance or evasion of Federal income tax"
- Essentially, the IRS is concerned with practices in providing advice to clients and in preparing, or assisting in the preparation of, information submitted to IRS. They include: communicating clearly with the client regarding the terms of the engagement; establishing the facts, determining their relevance, evaluating the reasonableness of assumptions and representations, relating the applicable law to the relevant facts, and arriving at a conclusion supported by the law and facts;

Competence – §10.35



- Practitioners must have the knowledge, skill, thoroughness, and preparation necessary for the matter for which they have been engaged.
- Can provide competent representation by researching and educating self on the issue or by consulting with another tax professional who has established competence in the field in question.

What Are Best Practices?



- Essentially, the IRS is concerned with practices in providing advice to clients and in preparing, or assisting in the preparation of, information submitted to IRS. They include: communicating clearly with the client regarding the terms of the engagement; establishing the facts, determining their relevance, evaluating the reasonableness of assumptions and representations, relating the applicable law to the relevant facts, and arriving at a conclusion supported by the law and facts;

Avoiding Incorrect Advice



- Thorough Research and Analysis
- Leveraging Technology
- Tax Research Software
- Artificial Intelligence (Tax Legal Ease)

Basics of Written Tax Advice



- Importance of written advice
- Key Components

Tax Authorities



- Legislative
- Administrative (executive)
- Judicial

Sources of Tax Law



- **Legislative**
 - Internal Revenue Code (IRC)
 - Located in Title 26 of the U.S.C. and as a stand-alone code
- **Administrative**
 - Internal Revenue Service (IRS) in conjunction with the Treasury Department
- **Judicial**
 - Federal court opinions
 - US Tax Court
 - US Courts of Appeals

Sources of Tax Law, cont.



- **Agency interpretative regulations (executive authority– written by IRS & Treasury), including:**
 - Final, Temporary and Proposed Regulations promulgated under IRC 7805
 - Treasury Notices and Announcements
- **Public Administrative Rulings (IRS Revenue Rulings) – official interpretations of the tax consequences of the Code's application to a hypothetical factual situation.**
 - Binding on all taxpayers and are not general statements.
 - Can provide clues to the IRS' litigation strategy.
 - About 60 per year, 1-3 pages each
 - Sources: taxpayer inquiries, court decisions, perceived need for additional guidance
 - Published in the Weekly Internal Revenue Bulletin and semi-annually in the Cumulative Bulletin
 - Must check its currency with a citator volume
 - Citation: Rev. Rul. 99-40, 1999-48 IRB 5; Rev. Rul. 99-40, 1999-2 CB 60

Persuasive Authority



- Legislative history
- Private Administrative Rulings (*private parties may approach the IRS directly and ask for a Private Letter Ruling on a specific issue – these rulings are binding only on the requesting taxpayer*)
 - See [irs.gov](https://www.irs.gov) for how to make this request

Conducting Tax Research



Step 1: Establish Facts



- From where do facts come?
- Gather all relevant facts
- Obtaining additional facts
- Efficiency issues
- Be cognizant of non-tax factors
 - Estate planning
 - Financial reporting
 - Individual taxation

Step 2: Identify Issues



- What is the “problem with tax problems”?
- Questions of fact and law
- Need for additional facts (looping to step _)

Step 3: Locate Authority



- Primary vs. secondary authority
- When to consult secondary authority
 - Clearer or simpler _____
 - Saves _____
 - _____ primary authority
 - No _____ authority
 - Avoid _____ issues

Step 3: Locate Authority

(continued)



- Academic research:
 - Don't spend too much time looking ____ authority (loop between steps ____ and ____)
 - Knowledge of _____ allows tax researchers to locate more relevant authority

Step 4: Evaluate Authority



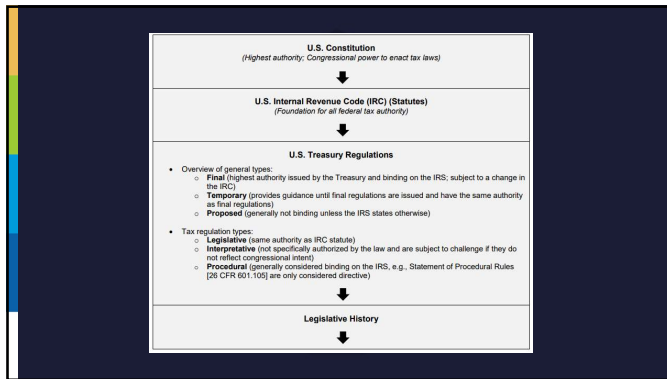
- Two sub-steps:
 - _____
 - _____
- Reading authority may raise new issues of fact (loop to step ____ and step ____)

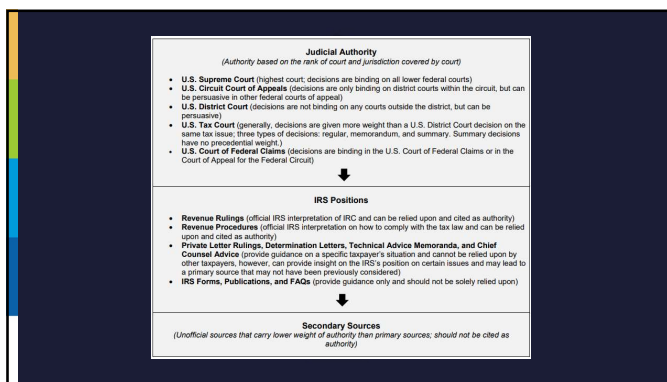
Step 4: Evaluate Authority

(continued)



- Imagined v. true conflicts
 - Legislative _____ analysis
 - _____ authority vs. _____ authority
 - _____ law vs. _____ interpretation
- Academic research: "_____" frequently between facts and authority
 - Builds _____ of research problem
 - _____ relevance of tax authority





Step 5: Develop Conclusions and Recommendations

- Conclusions, not
- Be explicit
- _____ recommendations may be necessary

Step 6: Communicate Results



- Very, very important
- Consider the audience
- See Blue Book for Citations

Burden of Proof - Willfulness



- Usually, Practitioner's misconduct must be "willful."
- **Willfulness** =
 - Cir 230 Regulation imposed a duty;
 - Practitioner knew of this duty, and
 - Practitioner voluntarily and intentionally violated that duty.
- Does not require evil motive or intent.
- Willful blindness qualifies.

Issues: Examples



Not a question and vague

A question arises as to how much a taxpayer can deduct the payment he made for the lessons.

Question and specific

Can **part or all** of the **\$13,000 payment** be deducted and, if so, **what is the character** of the deduction?

Issues: Examples



Unclear tax concept

What is the tax treatment for a company under Reg. §1.162-5(c)(1) when it pays its employee's tuition?

Explicit tax concept

Can Acme Company deduct The \$2,300 it pays to Smith to cover his tuition?

Issues: Examples



Accounting concept

Can Bikes-R-Us, Inc. expense the rental payment to its chief financial officer?

Tax concept

Can Bikes-R-Us, Inc. deduct the rental payment to its chief financial officer?

Conclusions



- For each issue in dispute, give a clear and unambiguous conclusion in a separate sentence
- Then, proceed to explain logically how you arrived at your conclusion

Supporting Analysis



- Discuss tax authority in sufficient detail to show its relationship to the client's situation
- Connect logically each cited authority with the facts
- Make your line of reasoning so clear that misinterpretation is impossible

Supporting Analysis



Insufficient

The theft loss is deductible in 2017 according to §165(e).

Better

Section 165 (e) **indicates that** theft losses are Deductible in the taxable year sustained. **Thus**, the theft loss is deductible in 2017, but not in 2018 under TCJA.

Supporting Analysis



- If the clearest tax authority is a ruling or judicial decision, always begin with the most relevant Code provisions
- Next, discuss any related Regulation if it narrows the focus or clarifies the statutory law
- Finally, finish with the on-point or analogous judicial decision or ruling

Recommendations



- State the required follow-up actions
- If the research is related to proposed transactions, explain the recommended changes

Use of Abbreviations



Abbreviate common tax terms, especially in citations:

- *Reg.* rather than *Regulation* or *Treasury Regulation*
- *Rev. Rul.* rather than *Revenue Ruling*
- *IRC* rather than *Internal Revenue Code*

Avoid, however, the temptation to abbreviate many words and phrases beyond commonly accepted

The Revolving Door of Regulatory Changes...



AICPA's most recent
"Top Firm Issues Survey"
 found that
*"keeping up with changes
 and complexity of tax laws"*
 is among the top issues
 for firms large and small.

Focus For Employee Training:



“Changes to Tax Rules”

66 percent of firm leaders said they will offer such training to everyone in their firm

Firms Must...



...quickly and efficiently conduct tax research and improve tax reporting efficiencies.

Easier said than done! The Key Issue?...



Tax Filing is not the same as **Tax Planning!**

Unless you're investing significant resources into thorough tax planning, you're likely not maximizing the potential benefits for your clients.



What's The Solution?



Firms should consider a software solution that can do the following:

- Enable efficient research with a built-in, customizable tax law database tailored to meet the specific needs of the firm.
- Deliver accounting and compliance news alerts so practitioners are regularly provided with critical accounting, audit, and corporate finance developments, along with expert analysis.
- Provide frequently updated news and articles about employee benefits law and compliance.

Digital Research Library
TAX LAW PRO
POWERED BY TOTTB.TAX

**THINK OUTSIDE THE TAX BOX IS THRILLED
TO INTRODUCE TAX LAW PRO™**

An innovative and indispensable online tax law discovery tool designed to elevate your research capabilities and propel your practice to new heights.

This cutting-edge resource is a constantly updated, user-friendly tax law library, with precise and current information, empowering you to make well-informed decisions for yourself and your clients.

Digital Research Library
TAX LAW PRO
POWERED BY TOTTB.TAX

SPECIAL DISCOUNT OFFERS!

TOTTB Members

10% OFF
Enter `taxlaw10pro`
at checkout

AICTP
Certified Tax Planners

25% OFF
