



[Home](#) | [Tax Stats](#) | [About IRS](#) | [Careers](#) | [FOIA](#) | [The Newsroom](#) | [Accessibility](#) | [Site Map](#) | [Español](#) | [Help](#)

[Home](#) > [Tax Professionals](#)

Search

Forms and
Publications Finder

[Search Help](#)

contents

[e-file Providers](#)
[Enrolled Agents](#)
[Enrolled Actuaries](#)

resources

[e-file](#)
[Forms and Publications](#)
[Where to File](#)
[Contact My Local Office](#)
[FAQs](#)
[Taxpayer Advocate](#)

topics

[Tax Pro News](#)
[Tax Pro Events](#)
[Subscription Services](#)
[IRS Resources](#)
[Tax Issues](#)

Internal Revenue Manual

Part 4 Examining Process

Chapter 10 Examination of Returns

Section 7 Issue Resolution

Contents

- [4.10.7 Issue Resolution](#)
 - [4.10.7.1 Overview](#)
 - [4.10.7.2 Researching Tax Law](#)
 - [4.10.7.2.1 Internal Revenue Code](#)
 - [4.10.7.2.1.1 Authority of the Internal Revenue Code](#)
 - [4.10.7.2.1.2 Citing the Internal Revenue Code](#)
 - [4.10.7.2.1.3 Prior Tax Law](#)
 - [4.10.7.2.2 Committee Reports](#)
 - [4.10.7.2.2.1 Publication of Committee Reports](#)
 - [4.10.7.2.2.2 Citing Committee Reports](#)
 - [4.10.7.2.3 Code of Federal Regulations](#)
 - [4.10.7.2.3.1 Income Tax Regulations](#)
 - [4.10.7.2.3.2 Types of Regulations](#)
 - [4.10.7.2.3.3 Classes of Regulations](#)
 - [4.10.7.2.3.4 Authority of the Regulations](#)
 - [4.10.7.2.3.5 Publication of the Regulations](#)
 - [4.10.7.2.3.6 Citing the Regulations](#)
 - [4.10.7.2.3.7 Outdated Regulations](#)
 - [4.10.7.2.3.8 Financial Record-Keeping Regulations](#)
 - [4.10.7.2.4 Internal Revenue Bulletin](#)
 - [4.10.7.2.4.1 Miscellaneous Documents](#)

[More Topics ...](#)

- [4.10.7.2.4.2 Citing the Internal Revenue Bulletin](#)
- [4.10.7.2.5 Cumulative Bulletin](#)
 - [4.10.7.2.5.1 Citing the Cumulative Bulletin](#)
- [4.10.7.2.6 Revenue Rulings and Procedures](#)
 - [4.10.7.2.6.1 Authority of Rulings and Procedures](#)
 - [4.10.7.2.6.2 Publication of Rulings and Procedures](#)
 - [4.10.7.2.6.3 Citing Rulings and Procedures](#)
- [4.10.7.2.7 Bulletin Index -Digest System](#)
- [4.10.7.2.8 IRS Publications](#)
- [4.10.7.2.9 Court Decisions and Case Law](#)
 - [4.10.7.2.9.1 U.S. Board of Tax Appeals](#)
 - [4.10.7.2.9.2 Tax Court of the United States](#)
 - [4.10.7.2.9.2.1 Small Tax Case Procedures](#)
 - [4.10.7.2.9.2.2 Regular Opinions](#)
 - [4.10.7.2.9.2.3 Memorandum Decisions](#)
 - [4.10.7.2.9.2.4 Citing Tax Court Decisions](#)
 - [4.10.7.2.9.3 U.S. District Court and U.S. Court of Federal Claims](#)
 - [4.10.7.2.9.3.1 District Courts](#)
 - [4.10.7.2.9.3.2 U.S. Court of Federal Claims](#)
 - [4.10.7.2.9.4 Court of Appeals](#)
 - [4.10.7.2.9.5 U.S. Court of Appeals for the Federal Court](#)
 - [4.10.7.2.9.6 Supreme Court](#)
 - [4.10.7.2.9.7 Citators: Researching Case History](#)
 - [4.10.7.2.9.7.1 Citator Examples](#)
 - [4.10.7.2.9.8 Importance of Court Decisions](#)
 - [4.10.7.2.9.8.1 Action on Decision](#)
 - [4.10.7.2.9.8.2 Publication of Action On Decisions](#)
 - [4.10.7.2.9.8.3 Citing Actions on Decisions](#)
- [4.10.7.2.10 Private Letter Rulings and Technical Advice Memorandums](#)
 - [4.10.7.2.10.1 Publication of PLRs and TAMs](#)
 - [4.10.7.2.10.2 Citing PLRs and TAMs](#)
- [4.10.7.2.11 General Counsel Memorandums](#)
- [4.10.7.2.12 Technical Memorandums](#)
- [4.10.7.2.13 Engineering Citator](#)
- [4.10.7.2.14 Other Research Sources](#)
- [4.10.7.2.15 Electronic Tax Research](#)
 - [4.10.7.2.15.1 LEXIS](#)
 - [4.10.7.2.15.2 NEXIS](#)
 - [4.10.7.2.15.3 Compliance Automated Research Tools System \(CARTS\)](#)
 - [4.10.7.2.15.4 Examination Specialization Bulletin Board](#)
 - [4.10.7.2.15.5 Industry Specialization Program](#)
- [4.10.7.3 Evaluating Evidence](#)
 - [4.10.7.3.1 Evidence Defined](#)
 - [4.10.7.3.2 Oral Testimony](#)
 - [4.10.7.3.3 First Hand Knowledge](#)
 - [4.10.7.3.4 Expert Testimony](#)
 - [4.10.7.3.5 Hearsay](#)
 - [4.10.7.3.6 Admission Against Interest](#)

- [4.10.7.3.7 Opinions](#)
- [4.10.7.3.8 Observations](#)
- [4.10.7.3.9 Documentary Evidence](#)
- [4.10.7.3.10 Circumstantial Evidence](#)
- [4.10.7.3.11 Best Evidence](#)
- [4.10.7.3.12 Secondary Evidence](#)
- [4.10.7.3.13 Inferences](#)
- [4.10.7.4 Arriving At Conclusions](#)
 - [4.10.7.4.1 Taxpayer Credibility](#)
 - [4.10.7.4.2 Reasonable Determinations](#)
 - [4.10.7.4.3 Tolerances](#)
 - [4.10.7.4.4 Significant Items](#)
 - [4.10.7.4.5 Compliance](#)
 - [4.10.7.4.6 Collectibility](#)
 - [4.10.7.4.7 Rollover vs. Tax Deferrals](#)
 - [4.10.7.4.8 Coordinated Issues](#)
 - [4.10.7.4.9 Whipsaw Issues](#)
- [4.10.7.5 Proposing Adjustments to Taxpayers and/or Representatives](#)
 - [4.10.7.5.1 The Closing Conference: Time and Manner](#)
 - [4.10.7.5.2 Office Audit Examinations](#)
 - [4.10.7.5.3 Field Examinations](#)
 - [4.10.7.5.3.1 Unagreed Cases](#)
 - [4.10.7.5.3.2 Agreed Cases](#)
 - [4.10.7.5.4 Notice of Proposed Adjustments](#)
 - [4.10.7.5.5 TEFRA Cases](#)
 - [4.10.7.5.6 Payment Expectations](#)
- [4.10.7.6 Shift of Burden of Proof](#)
 - [4.10.7.6.1 General Burden of Proof](#)
 - [4.10.7.6.1.1 Criteria to Be Met](#)
 - [4.10.7.6.1.2 Relationship with IRC 6201\(d\)](#)
 - [4.10.7.6.1.3 Documentation of Case Files](#)
 - [4.10.7.6.1.3.1 Use of Examiner Activity Reports](#)
 - [4.10.7.6.1.3.2 Use of Workpapers and Reports](#)
 - [4.10.7.6.2 Use of Statistical Information – Burden of Proof](#)
 - [4.10.7.6.2.1 Overview of New Procedures](#)
 - [4.10.7.6.2.2 Supplemental Information](#)
 - [4.10.7.6.3 Assessment of Penalties Burden of Proof – Overview of New Procedures](#)
 - [4.10.7.6.3.1 Definitions](#)
 - [4.10.7.6.3.2 Explanation & Example](#)
- [Exhibit 4.10.7-1 Court of Appeals Jurisdictions](#)

4.10.7.1 (05-14-1999)

Overview

1. Examiners are responsible for determining the correct tax liability as prescribed by the Internal Revenue Code. It is imperative that examiners can identify the applicable law, correctly interpret its meaning in light of congressional intent, and, in a fair and impartial manner, correctly apply the law based on the facts and circumstances of the case.

2. This chapter addresses five areas:
 - A. Researching tax law, 7.2,
 - B. Evaluating evidence, 7.3,
 - C. Arriving at conclusions, 7.4,
 - D. Proposing adjustments to taxpayers and/or representatives, 7.5,
 - E. Shift in Burden of Proof, 7.6.

4.10.7.2 (05-14-1999) Researching Tax Law

1. Conclusions reached by examiners must reflect correct application of the law, regulations, court cases, revenue rulings, etc. Examiners must correctly determine the meaning of statutory provisions and not adopt strained interpretation.
2. The Federal tax system is constantly changing. Examiners must keep well informed of the ever-growing body of tax authorities and advances in the management and storage of information.
3. In the words of Supreme Court Justice Jackson, "No other branch of the law touches human activities at so many points. It can never be made simple." Income tax law is too complex for examiners to immediately perceive its ramifications and provisions in all examinations.
4. This section focuses on researching Federal tax law, evaluating the significance of various authorities, and supporting conclusions reached with appropriate citations. The profiles of various tax authorities in this chapter are intended to help examiners become familiar with the most common, but by no means all, sources or available research techniques.

4.10.7.2.1 (05-14-1999) Internal Revenue Code

1. The Internal Revenue Code of 1986 is the primary source of Federal tax law. It imposes income, estate, gift, employment, miscellaneous excise taxes, and provisions controlling the administration of Federal taxation. The Code is found at Title 26 of the United States Code (U.S.C.). The United States Code consists of fifty titles.
2. For ease of use, the Code is divided into different units: subtitles, chapters, subchapters, parts, and sections. Listed below are the Code sections which fall within the eleven subtitles of the current Code.

<u>Subtitle</u>	<u>Contents</u>	<u>Code Sections</u>
A	Income Taxes	1-1563
B	Estate and Gift Taxes	2001-2704
C	Employment Taxes	3101-3510
D	Miscellaneous Excise Taxes	4041-5000
E	Alcohol, Tobacco, and Certain Other Excise Taxes	5001-5881
F	Procedure and Administration	6001-7873
G	The Joint Committee on Taxation	8001-8023
H	Financing of Presidential Election Campaigns	9001-9042
I	Trust Fund Code	9500-9602

J	Coal Industry Health Benefits	9701-9722
K	Group Health Plan Portability, Access, and Renewability Requirements	9801-9806

- Sections are usually arranged in numerical order. This sometimes leads to the need to show a Code section number followed by a capital letter not in parentheses. An example is Code §280A. This designation is used because subsequent legislation created additional Code sections in Part IX, requiring the addition of new Code sections after section 280. Since section 281 already existed, new sections were added by creating sections 280A, 280B, 280C, etc.

4.10.7.2.1.1 (05-14-1999)

Authority of the Internal Revenue Code

1. The Internal Revenue Code is generally binding on all courts of law. The courts give great importance to the literal language of the Code but the language does not solve every tax controversy. Courts also consider the history of a particular code section, its relationship to other code sections, committee reports (7.2.2) below, Treasury Regulations (7.2.3) below, and Internal Revenue Service administrative policies.

4.10.7.2.1.2 (05-14-1999)

Citing the Internal Revenue Code

1. It is often necessary to cite Internal Revenue Code sections in reports and to taxpayers in support of a position on an issue. For convenience, the Internal Revenue Code is abbreviated IRC and the symbols § or §§ are often used in place of section and sections respectively.
2. When making reference to a Code section, usually no reference is made to the title, subtitle, chapter, subchapter, or part. Code sections are divided into subsections, paragraphs, subparagraphs, and clauses. For example, IRC § 170(b)(1)(A)(i) is subdivided as follows:
 - A. IRC § 170; Code section, Arabic numbers
 - B. Subsection (b); lower case letter in parentheses
 - C. Paragraph (1); Arabic number in parentheses
 - D. Subparagraph (A) ; capital letter in parentheses
 - E. Clause (i); lower case Roman numerals in parentheses

4.10.7.2.1.3 (05-14-1999)

Prior Tax Law

1. The Code is continually changing. It is important that examiners determine the law applicable to the year under examination. To do so, determine whether the applicable law has been modified, and if so, the date on which the changes became effective. Many publishers provide this information in small print immediately following the current Code section.

4.10.7.2.2 (05-14-1999)

Committee Reports

1. Federal income tax legislation originates in the House of Representatives. Hearings are held by the House Ways and Means Committee. When a bill is introduced in the House, a Committee Report is published which often states the reason the bill is being proposed. This reasoning establishes the legislative intent behind the finalized law.
2. After the bill clears the House, it is considered by the Senate. The Senate Finance Committee holds hearings and prepares a report explaining any changes made to the

House bill. A Conference Committee later resolves any differences between the House and Senate versions of the bill and issues its own report.

3. When the bill passes both the House and Senate, it is sent to the President to be signed. Once signed, the bill becomes law and a new or amended section of the Code is enacted. Committee Reports are useful tools in determining Congressional intent behind certain tax laws and helping examiners apply the law properly.

4.10.7.2.2.1 (05-14-1999)

Publication of Committee Reports

1. Committee Reports are published in full in the Congressional Record and in part in the Internal Revenue Bulletin and Cumulative Bulletin. Selected reports are found in many commercial tax services.

4.10.7.2.2.2 (05-14-1999)

Citing Committee Reports

1. Committee Reports are identified by a number representing the session of Congress and a sequence number. For example, the Tax Reform Act of 1986 was enacted by Public Law 99-514. House, Senate, and Conference reports accompanying that legislation are cited as follows:
 - A. House Report 99-426, 1986-3 C.B. Vol. 2
 - B. Senate Report 99-313, 1986-3 C.B. Vol. 3
 - C. Conference Report 99-841, 1986-3 C.B. Vol. 4
2. The reports are published in the Cumulative Bulletin (IRM 4.10.7.2.4). In each citation, "99" refers to the 99th Congress. Some publishers refer to the reports collectively as "Committee Reports, P.L. 99-514."

4.10.7.2.3 (05-14-1999)

Code of Federal Regulations

1. The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the Federal Register (F.R.) by the Executive departments and agencies of the Federal Government. It is divided into fifty titles which represent broad areas subject to Federal regulation. Each title is divided into chapters usually bearing the name of the issuing agency. Each chapter is subdivided into parts covering specific regulatory areas. Title 26 comprises the Internal Revenue Regulations and is cited 26 CFR.

4.10.7.2.3.1 (05-14-1999)

Income Tax Regulations

1. The Federal Income Tax Regulations (Regs.) are the official Treasury Department interpretation of the Internal Revenue Code and follow the numbering sequence of Internal Revenue Code sections.

4.10.7.2.3.2 (05-14-1999)

Types of Regulations

1. Legislative and interpretative regulations are issued by the Secretary of the Treasury. If the code states "The Secretary shall provide such regulations . . .", then the regulations issued are legislative. Interpretative regulations are issued under the general authority of IRC section 7805(a), which allows regulations to be written when the Secretary determines they are needed to clarify a Code section.
2. The courts consider the merit of both interpretative and legislative regulations.

However, more weight is given to legislative regulations than to interpretative regulations.

4.10.7.2.3.3 (05-14-1999)

Classes of Regulations

1. Regulations are written by the Legislative and Regulations Division or Tax Exempt and Government Entities Office of Associate Chief Counsel (Technical), Internal Revenue Service, and are approved by the Department of the Treasury. There are three classes of regulations: proposed, temporary, and final.
 - A. Proposed Regulations – Proposed regulations provide guidance concerning Treasury's interpretation of a Code section, but do not have authoritative weight. The public is given an opportunity to comment on proposed regulations and public hearings may be held if sufficient written requests are received. Since proposed regulations have no authoritative weight, taxpayers and examiners are not bound by them. Proposed regulations become binding when adopted by a Treasury Decision and they become final regulations.
 - B. Temporary Regulations – Temporary regulations are often issued soon after a major change to provide guidance for the public and Internal Revenue Service employees with respect to procedural and computational matters. Unlike proposed regulations, temporary regulations are authoritative and have the same weight as final regulations. Public hearings are not held on temporary regulations.
 - C. Final Regulations – Final regulations are issued after public comments on proposed regulations are evaluated. They supersede both temporary and proposed regulations. A final regulation is effective the day it is published in the Federal Register as a Treasury Decision, unless otherwise stated.

4.10.7.2.3.4 (05-14-1999)

Authority of the Regulations

1. The Service is bound by the regulations. The courts are not.
2. If both temporary and proposed regulations have been issued on the same Code section and the text of both are similar, examiners' positions should be based on the temporary regulations because it can be cited as an authority for proposing an adjustment.
3. When no temporary or final regulations have been issued, examiners may use a proposed regulation to support a position. Indicate that the proposed regulation has no authoritative weight, but is the best interpretation of the Code section available.

4.10.7.2.3.5 (05-14-1999)

Publication of the Regulations

1. Regulations are printed in the following publications:
 - A. Federal Register
 - B. Code of Federal Regulations (CFR)
 - C. Under the heading "Treasury Decisions" (T.D.) in the Internal Revenue Bulletins (I.R.B.) and the Cumulative Bulletin (C.B.)
 - D. Tax services of commercial publishers, such as CCH Incorporated and Research Institute of America.

4.10.7.2.3.6 (05-14-1999)

Citing the Regulations

1. The citation for a regulation contains three basic organizational units:
 - A. The part number,
 - B. The Code section number, and
 - C. The regulation section number.
2. Treasury Regulation § 1.61 -9(c) is illustrated below:

Figure 4.10.7-2

- A. The first division is the CFR part number and indicates the subject of the regulation. The part number appears before the decimal point in a citation. In the citation Treas. Reg. § 1.61 -9(c), the number 1 refers to Part 1 of the CFR, which is income tax. If the regulation were on employment taxes, the number 31 would precede the decimal point.
 - B. The numbers immediately after the decimal point refer to the Code section to which the regulations apply. In the citation Treas. Reg. § 1.61 -9(c), the number 61 refers to IRC § 61. The regulations are sequenced by Code section numbers. For example, Treas. Reg. § 31.6051 comes before § 31.6052 but after § 301.6047.
 - C. The section number of the regulation is separated from the Code section by a hyphen. Again, using the citation Treas. Reg. § 1.61 -9(c), the number 9 is the regulation section number and (c) is the subsection.
3. References to regulations sections do not correspond to Code sections.

4.10.7.2.3.7 (05-14-1999)

Outdated Regulations

1. Regulations may only apply to a particular time period. This fact is sometimes reflected by the publisher in the paragraph heading. Regulations do not always reflect recent changes in the law and may not be applicable to years following a change in the law. Look for disclaimers and cautions regarding time frames.

4.10.7.2.3.8 (05-14-1999)

Financial Record-Keeping Regulations

1. Financial Recordkeeping Regulations are issued by the Treasury Department under authority of the Federal Deposit Insurance Act, 12 U.S.C. 1829b, §§ 1951-1959, and the Currency and Foreign Transactions Reporting Act, 31 U.S.C. §§ 103.11-103.53. The regulations specify the financial reports and records to be kept and/or filed by those engaged in domestic and foreign currency transactions.

4.10.7.2.4 (05-14-1999)

Internal Revenue Bulletin

1. The Internal Revenue Bulletin (I.R.B.) is the authoritative instrument of the Commissioner of Internal Revenue for announcing official IRS rulings and procedures and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published on a weekly basis by the Government Printing Office.
2. It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating

solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

4.10.7.2.4.1 (05-14-1999) **Miscellaneous Documents**

1. In addition to Revenue Rulings and Revenue Procedures, a number of miscellaneous documents having application to tax law interpretation and Documents administration are published in the Bulletin .
 - A. Announcements – Announcements are public pronouncements on matters of general interest, such as effective dates of temporary regulations, clarification of rulings and form instructions. They are issued when guidance of a substantive or procedural nature is needed quickly. Announcements can be relied on to the same extent as Revenue Rulings and Revenue Procedures when they include specific language to that effect. Announcements are not included in the bound Cumulative Bulletin . They are identified by a two digit number representing the year and a sequence number, for example, Announcement 96-124, 1996-49 I.R.B. 22. This announcement is found in Internal Revenue Bulletin No. 1996-49, issued December 2, 1996, at page 22.
 - B. Notices – Notices are public announcements issued by the Internal Revenue Service. Notices appear in the Internal Revenue Bulletin and are included in the bound Cumulative Bulletin . Notices are identified by a two digit number representing the year and a sequence number. For example, Notice 95-67 is cited as Notice 95-67, 1995-52 I.R.B. 35 or Notice 95-67, 1995-2 C.B. 343. (The Cumulative Bulletin is the more permanent bound volume and citing the Cumulative Bulletin is more appropriate after its publication.)
 - C. Delegation Orders – Commissioner Delegation Orders (Del. Order) formally delegate authority to perform certain tasks or make certain decisions to specified Service employees. Agreements made by Service employees under these orders are binding on taxpayers and the Internal Revenue Service. Delegation Orders are identified by a number, sometimes followed by a revision date. Delegation Orders appear in the Internal Revenue Bulletin and are included in the Cumulative Bulletin . For example, Delegation Order No. 245 is cited as Del. Order 245, 1995-22 I.R.B. 5 or Del. Order 245, 1995-1 C.B. 288. (The Cumulative Bulletin is the more permanent bound volume and citing the Cumulative Bulletin is more appropriate after its publication.)

4.10.7.2.4.2 (05-14-1999) **Citing the Internal Revenue Bulletin**

1. Items appearing in the Internal Revenue Bulletin that have not appeared in the Cumulative Bulletin should be cited to the weekly Bulletin as follows, Rev. Rul. 96-55, 1996-49 I.R.B. 4. Internal Revenue Bulletin No. 1996-49 was issued December 2, 1996. Revenue Ruling 96-55 is found at page 4.

4.10.7.2.5 (05-14-1999) **Cumulative Bulletin**

1. The Cumulative Bulletin (C.B.) is a consolidation of items of a permanent nature published in the weekly Internal Revenue Bulletin . The Cumulative Bulletin is issued on a semiannual basis. The Bulletin is numbered 1 to 5, inclusive (April 1919 to

December 31, 1921); and I-1 and I-2 to XV-1 and XV-2, inclusive (January 1, 1922, to December 31, 1936) . Each Cumulative Bulletin number thereafter bears the particular year covered, for example, 1963-1 (January 1 to June 30, 1963).

2. The Cumulative Bulletin is divided into four parts:
 - A. Part I, 1986 Code: This part is divided into two subparts based on provisions of the Internal Revenue Code of 1986. Arrangement is sequential according to Code and regulations sections. The Code section is shown at the top of each page.
 - B. Part II, Treaties and Tax Legislation: This part is divided into two subparts as follows: (1) Subpart A, Tax Conventions, and (2) Subpart B, Legislation and Related Committee Reports.
 - C. Part III, Administrative, Procedural, and Miscellaneous: To the extent practical, pertinent cross references to these subjects are contained in the other parts and subparts.
 - D. Part IV, Notice of Proposed Rule Making: The preambles and text of Proposed Regulations that were published in the Federal Register during this six month period are printed in this section. Included in this section is a list of persons disbarred or suspended from practice before the Internal Revenue Service.

4.10.7.2.5.1 (05-14-1999)

Citing the Cumulative Bulletin

1. The title of Cumulative Bulletins issued before 1937 does not reflect the year of issuance. A citation to the Bulletin must include the year in parentheses at the end of the citation, as follows: S.S.T. 31, XV-2 C.B. 400 (1936).
2. After 1936, a citation to the Bulletin is as follows: Rev. Proc. 71 -4, 1971-1 C.B. 662. Revenue Procedure 71 -4 is found at page 662, volume one of the 1971 Cumulative Bulletins (January - June, 1971).
3. To call attention to a certain page of a document, such as the Bulletin , show first the page on which the document begins followed by the page to which attention is directed. Thus, the citation Rev. Rul. 63-107, 1963-1 C.B. 71, 74, directs the reader's attention to page 74 of Rev. Rul. 63-107 found in volume 63-1 of the Cumulative Bulletin , starting on page 71.

4.10.7.2.6 (05-14-1999)

Revenue Rulings and Procedures

1. Revenue Rulings (Rev. Rul.) represent the conclusions of the Service on the application of the law to specific facts stated in the ruling. In rulings based on positions taken in private letter rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.
2. A revenue procedure (Rev. Proc.) is issued to assist taxpayers in complying with procedural issues that deal with tax return preparation and compliance.
3. The purpose of rulings and procedures is to promote uniform application of the tax laws. Internal Revenue Service employees must follow rulings and procedures. Taxpayers may rely on them or appeal their position to the Tax Court or other Federal courts.
4. Revenue Rulings and Revenue Procedures that have an effect on previous rulings use the following defined terms to describe the effect:
 - A. Amplified describes a situation where no change is being made in a prior

published position, but the prior position is being extended to apply to a variation of the original fact situation.

- B. Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, confusion. It is not used where a position in a prior ruling is being changed.
- C. Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.
- D. Modified is used where the substance of a previously published position is being changed.
- E. Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. The term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.
- F. Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.
- G. Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings) . Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desirable to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and superseded describes a situation where the substance of previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.
- H. Supplemented is used in situations in which a list, such as a list of the name of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.
- I. Suspended is used in rare situations to show that the previously published ruling will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

4.10.7.2.6.1 (05-14-1999)

Authority of Rulings and Procedures

1. Rulings do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings, the effects of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Caution is urged against reaching the same conclusion in other cases, unless the facts and circumstances are substantially the same.

4.10.7.2.6.2 (05-14-1999)

Publication of Rulings and Procedures

1. Revenue Rulings and Procedures are published by the Internal Revenue Service in the [Internal Revenue Bulletin](#) .

4.10.7.2.6.3 (05-14-1999) **Citing Rulings and Procedures**

1. Locating a ruling or procedure requires the following information from the citation:
 - A. The year the ruling or procedure was issued,
 - B. The ruling or procedure number,
 - C. The volume number of the I.R.B. or C.B.,
 - D. The page number of the Ruling or Procedure.
2. Rev. Rul. 76-12, 1976-2 C.B. 88, is illustrated below:

Figure 4.10.7-3

4.10.7.2.7 (05-14-1999) **Bulletin Index-Digest System**

1. The [Bulletin Index-Digest System](#) provides a way to quickly research Revenue Rulings, Revenue Procedures, Public Laws, Treasury Decisions, and other matters of a permanent nature published since 1952 in the [Internal Revenue Bulletin](#) or [Cumulative Bulletin](#) . The [Index-Digest](#) is published by the Government Printing Office. It is a comprehensive, up-to-date research tool and consists of four Services:
 - A. Service No. 1, [Income tax](#) (Publication 641);
 - B. Service No. 2, [Estate and Gift Tax](#) (Publication 642);
 - C. Service No. 3, [Employment Tax](#) (Publication 643);
 - D. Service No. 4, [Excise Taxes](#) (Publication 644);
2. Each Service consists of a basic volume and cumulative supplements that provide (1) finding lists of items published in the [Bulletin](#) , (2) digests of Revenue Rulings, Revenue Procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

4.10.7.2.8 (05-14-1999) **IRS Publications**

1. IRS Publications, issued by the Headquarters Office, explain the law in plain language for taxpayers and their advisors. They typically highlight changes in the law, provide examples illustrating Service positions, and include worksheets. Publications are nonbinding on the Service and do not necessarily cover all positions for a given issue. While a good source of general information, publications should not be cited to sustain a position.

4.10.7.2.9 (05-14-1999) **Court Decisions and Case Law**

1. Congress legislates tax law, the Internal Revenue Service interprets and enforces the law, and the judiciary branch of government determines whether the Service's interpretation is correct. This provides for yet another source of guidance as to the meaning of tax laws (court decisions) sometimes referred to as case law.
2. This section focuses on the Federal courts (and their predecessors) that interpret Federal tax law, and the role of case law in tax research and decision making. This section includes the following subsections:

- 7.2.9.1 – U.S. Board of Tax Appeals
- 7.2.9.2 – Tax Court of the United States
- 7.2.9.3 – U.S. District Court and U.S. Court of Federal Claims
- 7.2.9.4 – Courts of Appeals
- 7.2.9.5 – U.S. Court of Appeals for the Federal Circuit
- 7.2.9.6 – Supreme Court
- 7.2.9.7 – Citators: Researching Case History
- 7.2.9.8 – Importance of Court Decisions

4.10.7.2.9.1 (05-14-1999)

U.S. Board of Tax Appeals

1. Until superseded by the U.S. Tax Court in 1942, the Board of Tax Appeals (B.T.A.) offered taxpayers a prepayment forum for disputing deficiencies assessed by the Service. The Board had jurisdiction over income, excess profits, and estate and gift taxes.
2. Although these decisions are old, many retain precedential value because they address issues of continuing significance or state principles that are still valid. However, a B.T.A. decision may be based upon an authority that is obsolete and all references to the Code are to a pre-1954 Code. Therefore, caution must be exercised in citing B.T.A. decisions.
3. Board of Tax Appeals Decisions are cited as follows: Simons Brick Co. v. Commissioner is cited 14 B.T.A. 878 where "14" is the volume number, "B.T.A." is the publication title, and "878" is the page number. These decisions are available from commercial publishers.

4.10.7.2.9.2 (05-14-1999)

Tax Court of the United States

1. When taxpayers disagree with a determination and the case is not settled through the Appeals process, taxpayers may petition the United States Tax Court for a judicial determination of tax liability before paying the tax. Tax Court offers taxpayers a forum for disputing deficiencies asserted by the Service under income, estate and gift tax, and certain (not all) employment tax and excise tax provisions.

4.10.7.2.9.2.1 (05-14-1999)

Small Tax Case Procedures

1. Tax Court cases involving not more than \$50,000 for any one year may be handled under the "small tax case procedures". These procedures were authorized in order to expeditiously and informally handle litigation for cases involving small sums of money. When taxpayers choose this route to appeal a decision, they are barred from making an appeal to a higher court. Decisions reached by the Tax Court under the small case procedures are not published and have no precedential value.

4.10.7.2.9.2.2 (05-14-1999)

Regular Opinions

1. Tax Court regular opinions are decisions of the Court that involve more than mere factual determinations or applications of well established legal principles. They generally involve new decisions on points of law that set precedents. Regular opinions

are published in Reports of the United States Tax Court by the Government Printing Office. Commercial publishers also print these decisions.

4.10.7.2.9.2.3 (05-14-1999)

Memorandum Decisions

1. Memorandum decisions primarily involve factual determinations and the application of well-established legal rules. Memorandum decisions do not warrant publication in bound volumes in the opinion of the Court. They are published in pamphlets by the Government and in bound volumes by commercial publishers.

4.10.7.2.9.2.4 (05-14-1999)

Citing Tax Court Decisions

1. In citing a regular decision of the United States Tax Court, examiners should name the case, refer to the number of the volume in which it is published, and the page in the volume on which the ruling begins. For example: Richard A. Sutter, 21 T.C. 170.
2. Examiners should be careful not to cite a Tax Court case in which the decision was against the Government unless that decision has been acquiesced by the Commissioner (see 7.2.9.8.1(4)). If the decision was against the Commissioner and acquiescence followed, the decision must be noted as "Acq". A decision against the Government which has been nonacquiesced in should be noted as "Nonacq".
3. Memorandum decisions are usually cited with reference to one or both of two commercial publications. For example: R.L. Taylor v. Commissioner may be cited as follows:
 - A. CCH, Incorporated: Taylor, R.L. 40 T.C.M. 1206 1980-376 Dec. 37,228(M)
 - B. Research Institute of America: Taylor, R.L. 1980 T.C. Memo 80376
4. Some of the information is the same in each citation, such as the case name and decision number (1980-376 and 80376, respectively). However, reference to where the decision is found is different and the CCH citation includes a CCH decision number, Dec. 37,228(M).
5. The term "v. Commissioner" is not used in citing United States Tax Court cases.

4.10.7.2.9.3 (05-14-1999)

U.S. District Court and U.S. Court of Federal Claims

1. Generally, the United States District Court and the United States Court of Federal Claims hear tax cases after the taxpayer has paid the tax and filed a claim for refund or credit. If the claim is denied by the Service, the taxpayer may petition either the District Court or the Court of Federal Claims. District Court decisions may be appealed to the Courts of Appeals for the appropriate circuit. The Supreme Court of the United States may, at its discretion, review decisions of a Court of Appeals or the Court of Federal Claims.

4.10.7.2.9.3.1 (05-14-1999)

District Courts

1. United States District Courts are the primary Federal courts of original jurisdiction and are located across the United States and its possessions. This is the only court where taxpayers can request a jury trial.
2. Decisions of District Courts are published by commercial publishing houses. Examples are:
 - A. CCH Incorporated: United States Tax Cases. (cited USTC)

- B. Research Institute of America: American Federal Tax Report (cited AFTR)
- C. West publishing Company: Federal Reports (cited F. 2d)

(NOTE: West Publishing Company publishes all decisions; CCH and Research Institute publish only Federal tax decisions.)

3. Citing District Court decisions is demonstrated below for the case of Ruby Smith Stahl v. United States .
 - A. CCH Incorporated: 69-1 USTC 9179
 - B. Research Institute: 23 AFTR 2d 69-563
 - C. West Publishing: 294 F. Supp 243 (D.D.C. 1969)
4. If a case has been decided but not yet cited to an unofficial reporter, cite as follows: Gifford Corp. v. United States , Civil No. 73-1250 (D. Mass., Jan. 10, 1973).
5. If a case has not been decided, cite as follows: Cowden Mfg. Co. v. United States , Docket No. 2227 (E.D. Ky. , filed April 17, 1972).

4.10.7.2.9.3.2 (05-14-1999)

U.S. Court of Federal Claims

1. The United States Claims Court, subsequently renamed United States Court of Federal Claims, is located in Washington, D.C., and was established on October 1, 1982. It is authorized to sit nationwide. Prior to October 1, 1982, taxpayers could petition the United States Court of Claims. When researching tax issues, examiners will find cases from both courts.
2. Decisions of the Claims Court are published by commercial publishers:
 - A. CCH Incorporated: United States Tax Cases (cited USTC)
 - B. Research Institute of America: American Federal Tax Report (cited AFTR)
 - C. West Publishing Company: Federal Reports, Second Series (cited F. 2d) and beginning October 1982, Claims Court Reporter (cited Cl. Ct.)
3. Citing United States Court of Claims is demonstrated below for the case of Uptown Club of Manhattan, Inc. v. United States .
 - A. CCH Incorporated: 49-1 USTC 9261
 - B. Research Institute: 37 AFTR 1316
 - C. West Publishing: 83 F. Supp. 823 (Ct. Cl. 1949)
4. Citing a Claims Court decision is demonstrated below for the case of Recchie v. United States .
 - A. CCH Incorporated: 83-1 USTC 9312
 - B. Research Institute: 51 AFTR 2d 83-1010
 - C. West Publishing: 1 Cl. Ct. 726

4.10.7.2.9.4 (05-14-1999)

Court of Appeals

1. Either the taxpayer or the Government may appeal decisions of the Tax Court and District Courts to the regional Circuit Court of Appeals. There are twelve courts of appeals for eleven circuits and the District of Columbia.
2. District Courts must follow the decision of the Court of Appeals for the circuit in which they are located. For example, the District Court in the Eastern District of Missouri must follow the decision of the Eight Circuit. If the Eighth Circuit has not rendered a decision on the particular issue involved, then the District Court may make its own decision or follow the decision of another circuit which has rendered a decision on the issue.
3. Since one circuit court is not bound by the decision of another circuit, it is important to

find a case from the circuit that will hear the case when citing a case supporting the position taken on an issue. If a decision on a particular issue has not been rendered in the examiner's circuit, cite a supporting decision rendered in another circuit.

4. Decisions of the Court of Appeals and U.S. Court of Appeals for the Federal Circuit are published by commercial publishers in the following volumes:
 - A. CCH Incorporated: United States Tax Cases (cited USTC)
 - B. Research Institute of America: American Federal Tax Report (cited AFTR)
 - C. West Publishing Company: Federal Reports, Second Series (cited F. 2d)
5. Citing United States Courts of Appeals decisions:
 - A. Example: In the case of Graham v. Commissioner , the citation is 6 F.2d 878 (4th Cir. 1964).
 - B. If a case has not been reported in Federal Reports , cite an unofficial reporter, as follows: Marwais Steel Co. v. Commissioner , 17 AFTR 2d 11 (9th Cir. 1965), or Marwais Steel Co. v. Commissioner , 66-1 USTC 85, 126 (9TH Cir. 1965).

4.10.7.2.9.5 (05-14-1999)

U.S. Court of Appeals for the Federal Court

1. Before October 1, 1982, taxpayers appealed Court of Claims Decisions directly to the Supreme Court. A new appellate court, the United States for the Court of Appeals for the Federal Circuit, was established. Taxpayers who disagree with a decision of the United States Court of Federal Claims must make their appeal to the Court of Appeals for the Federal Circuit.
2. Exhibit 4.2.7-1 shows the jurisdiction of the circuits of the Court of Appeals.

4.10.7.2.9.6 (05-14-1999)

Supreme Court

1. Decisions of the U.S. Courts of Appeal and the U.S. Court of Appeals for the Federal Circuit Court may be appealed to the United States Supreme Court. The Supreme Court of the United States is the highest court of the land. No one has a right to be heard by the Court; the Supreme Court only accepts cases which it views as having national importance. Only a limited number of tax cases are heard.
2. Appeal to the Supreme Court of the United States is by Writ of Certiorari . If the Court accepts the petition, it will grant the writ, cited cert. granted . If the petition is denied, the case is cited cert. denied .
3. Supreme Court decisions are published by the Internal Revenue Service in the Internal Revenue Bulletin and Cumulative Bulletin . Commercial publishers as well as the Government Printing Office print the Court's decisions:
 - A. CCH Incorporated: United States Tax Cases (cited USTC)
 - B. Research Institute of America: American Federal Tax Report (cited AFTR)
 - C. West Publishing Company: Supreme Court Reporter (cited S. Ct.)
 - D. United States Law Week (cited U.S.L.W).
 - E. Government Printing Office: United States Reports (cited U.S.)
4. Citing Supreme Court cases is demonstrated below for the case of Commissioner v. Neil Sullivan :
 - A. CCH Incorporated: 58-1 USTC 9368
 - B. Research Institute of America: 1 AFTR 2d 1158
 - C. West Publishing Company: 78 5. Ct. 512
 - D. United States Reports : 356 U.S. 27 (1958)

E. Cumulative Bulletin : 1958-1 C.B. 506

4.10.7.2.9.7 (05-14-1999)

Citators: Researching Case History

1. Knowledge of the judicial history of a tax case is important and research of case law is not complete until the history of a case is reviewed in a citator. For example, examiners should consider whether a case is current, whether there are other cases on the same point of law that should be considered, or whether a ruling is still valid. A citator lists court decisions alphabetically by case name and shows where the full text of the decisions may be found. The citator traces the case history from its original entry into the court system through the Supreme Court, if appealed.
2. Decisions reached in a lower court are sometimes reversed in the Appellate or Supreme Court. When this happens, the lower case decision has no legal sanction and should not be cited as an authority. A citator will show whether a higher court reversed, affirmed, modified, or otherwise disposed of a lower court decision.
3. Revenue Rulings and Procedures may be revoked, modified, amplified, etc. A citator findings list will indicate whether or not this is the case.
4. A citator will also direct examiners to subsequent cases or rulings that deal with the same legal principle in the setting of other Code sections or fact patterns. It lists everything that has been said about a case, ruling, or procedure.
5. Citators are published by commercial publishers of tax services such as CCH Incorporated and Research Institute of America. While formats differ, commercial citators provide basically the same information.

4.10.7.2.9.7.1 (05-14-1999)

Citator Examples

1. The following examples are taken from the Main Citator Table of CCH Incorporated's Standard Federal Tax Reporter on compact disc.
2. Example 1: Case Citator
 - A. **Batman, Ray L.** ANNOTATED AT . . . 96 FED 2250.66; 8586.0358; 8706.075; 8706.11; 11, 025.3801; 13, 709.2261; 25,424 .95
 - B. **SCt** –Cert. denied, 342 US 877; 72 SCt 167
 - C. **CA-5** –(aff'g TC), 51 -1 USTC P9305; 189 F2d 107
 - D. Miller, CA-10, 61-1 USTC 9156, 285 F2d 843
 Finley, CA-10, 58-1 USTC 9517, 255 F2d 128
 Batman, CA -5, 57-1 USTC 9247, 239 F2d 283
 Christopher, CA-5, 55-1 USTC 9504, 223 F2d 124
 West, CA -5, 54-2 USTC 9480, 214 F2d 300
 Wofford, CA-5, 53-2 USTC 9637, 207 F2d 749
 Mauritz, CA -5, 53-2 USTC 9495, 206 F2d 135
 Tomlinson, CA -5, 52-2 USTC 9543, 199 F2d 674
 Seabrook, CA -5, 52-1 USTC 9294, 196 F2d 322
 Culbertson, Sr., CA-5, 52-1 USTC 9233, 194 F2d 581
 Alexander, CA-5, 52-1 USTC 9232, 194 F2d 921
 Tilden, Inc., CA-5, 51-2 USTC 9501, 192 F2d 704
 Britt Est., CA -5, 51-2 USTC 9414, 190 F2d 946
 Scott, DC–Ark, 53-1 USTC 9166, 110 FSupp 165
 Lewis, TC, Dec. 20,733, 23 TC 538
 West, TC, Dec. 19,435, 19 TC 808

- Tomlinson, TC, Dec. 18,513(M), 10 TCM 828
- E. **TC** –Dec. 17,553(M); 9 TCM 210
3. Explanations of the above citations are as follows:
- Case name (Batman, Ray L.) and paragraph references to CCH Federal Standard Tax Reporter.
 - Batman was appealed to the Supreme Court; however, certiorari was denied.
 - Fifth Circuit Court of Appeals heard Batman and affirmed the Tax Court Decision.
 - These cases deal with the same legal principle or fact pattern and cite Batman.
 - Tax Court heard Batman and case was appealed to Fifth Circuit Court of Appeals.
4. Example 2: Rulings Finding List
- Rev. Proc. 75-25, 1975-1 CB 720** ANNOTATED AT ...96 FED 8471.90; 29,663.90 1975 CCH 6595
 - Amplified by:** Rev. Proc. 78-25
 - Cited in:** Jones, Dec. 49,862(M), 67 TCM 2997, TC Memo. 1994-230 Notice 91-4 T.D. 8408 Haynsworth, TC, Dec. 34,581, 68 TC 703 Rev. Rul. 76 -247
 - Obsoleted by:** Rev. Proc. 92-29
 - Superseding:** Mim. 4027
 - Example 2 is self-explanatory.

4.10.7.2.9.8 (05-14-1999)

Importance of Court Decisions

- Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.
- Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.
- Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.

4.10.7.2.9.8.1 (05-14-1999)

Action on Decision

- It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision (A.O.D.) is the document making such an announcement. An Action on Decision is issued at the discretion of the Service only on unappealed issues, decided adverse to the government. Generally, an Action on Decision is issued where guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.
- An Action on Decision may be relied upon within the Service only as the conclusion, applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the

- Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.
3. Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.
 4. The recommendation in every Action on Decision is summarized as acquiescence, in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. The following differences are noted:
 - A. "Acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions.
 - B. "Acquiescence in result only" indicates disagreement or concern with some or all of those reasons.
 - C. Nonacquiescence signifies that, although no further review was sought, the Service does not agree with the holding of the court and generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

4.10.7.2.9.8.2 (05-14-1999)

Publication of Action On Decisions

1. Action on Decisions are published in the weekly Internal Revenue Bulletin and consolidated semiannually. The consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year. The annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

4.10.7.2.9.8.3 (05-14-1999)

Citing Actions on Decisions

1. If the Commissioner has published an acquiescence, acquiescence in result only, or nonacquiescence in a Tax Court or Board of Tax Appeals decision, it must be included in the citation, as in the following examples:
 - A. Merle P. Brooks , 36 T.C. 1128 (1961), acq., 1962-2 C.B. 4.
 - B. Rodney Horton , 13 T.C. 143 (1949), acq. in result, 1959-2 C.B. 5.
 - C. Forest Lawn Memorial Park Ass'n. , 45 B.T.A. 1091 (1941), nonacq. 1960-2 C.B.

4.10.7.2.10 (05-14-1999)

Private Letter Rulings and Technical Advice Memorandums

1. A Private Letter Ruling (PLR) represents the conclusion of the Service for an individual

taxpayer. The application of a private letter ruling should therefore be confined to the specific case for which it was issued, unless the issue involved was specifically covered by statute, regulations, ruling, opinion, or decision published in the Internal Revenue Bulletin.

2. Technical Advice Memorandums (TAM) are requested by IRS area offices after a return has been filed, often in conjunction with an ongoing examination. TAMs are binding on the Service in relation to the taxpayer who is the subject of the ruling.
3. A private letter ruling to a taxpayer or a technical advice memorandum to an area director, which relates to a particular case, should not be applied or relied upon as a precedent in the disposition of other cases. However, they provide insight with regard to the Service's position on the law and serve as a guide.
4. Existing private letter rulings and memorandums (including Confidential Unpublished Rulings (C.U.R.), Advisory Memorandums (A.M.), and General Counsel Memorandums (G.C.M.)) may not be used as precedents in the disposition of other cases but may be used as a guide with other research material in formulating a area office position on an issue.
5. Whenever an area office finds that a C.U.R., A.M., or G.C.M. represents the sole precedent or guide for determining the disposition of an issue and cannot to its own satisfaction find justification in the Code, regulations, or published rulings to support the indicated position, technical advice should be requested from the Headquarters Office.
6. Technical advice should be requested where taxpayers or their representatives take the position that the basis for the proposed action is not supported by statute, regulations, or published positions of the Service. If it is believed that the position of the Service should be published, the request for technical advice will contain a statement to that effect. Instructions for requesting technical advice from the Headquarters Office are contained in the second revenue procedure issued each year. Questions regarding the procedures should be addressed to the functional contacts listed in the revenue procedure.

4.10.7.2.10.1 (05-14-1999)

Publication of PLRs and TAMs

1. Letter rulings and technical advice memorandums are available from commercial publishers.

4.10.7.2.10.2 (05-14-1999)

Citing PLRs and TAMs

1. Letter rulings and technical advice memorandums are cited PLR or TAM, respectively, followed by a seven digit number. For example, PLR 8210019 or TAM 9643001. The first two digits indicate the year the ruling was published, for example, 1982 and 1996, respectively.

4.10.7.2.11 (05-14-1999)

General Counsel Memorandums

1. General Counsel Memorandums (GCM) are legal memorandums from the Office of Chief Counsel prepared in connection with the review of certain proposed rulings (Rev. Ruls., PLRs, TCMs). They contain legal analyses of substantive issues and can be helpful in understanding the reasoning behind a particular ruling and the Service's response to similar issues in the future.

4.10.7.2.12 (05-14-1999)

Technical Memorandums

1. Technical Memorandums (TM) function as transmittal documents for Treasury Decisions or Notices of Proposed Rule Making (NPRMs) . They generally summarize or explain proposed or adopted regulations, provide background information, state the issues involved, and identify any controversial legal or policy questions. Technical Memorandums are helpful in tracing the history and rationale behind a regulation or regulation proposal.

4.10.7.2.13 (05-14-1999)

Engineering Citator

1. The Engineering Citator, Document 5262, contains annotations (short summaries of cases and rulings) and citations of precedents and published tax law developments pertinent to administering Internal Revenue Code provisions involving engineering matters.
2. Copies of the Citator and supplements are distributed to Service personnel most concerned with engineering issues.

4.10.7.2.14 (05-14-1999)

Other Research Sources

1. A wide range of tax literature is available to Service personnel. Monthly publications such as The Journal of Taxation , Taxation for Accountants , and Taxation for Lawyers , published by Warren, Gorham & Lamont, include articles pertaining to Federal tax matters.
2. Numerous books presenting detailed analyses of tax laws and issues are available and provide excellent sources of information. One of the better known is Federal Income Taxation of Corporations and Shareholders by Bittker and Eustice, published by Warren, Gorham & Lamont, which has been cited by the Supreme Court.
3. A number of tax services are available from commercial publishers that provide explanations and annotations on a variety of tax issues. Well known examples include CCH Incorporated's Standard Federal Tax Reporter , Bureau of National Affairs' Tax Management Portfolios , and Research Institute of America's American Federal Tax Reports .
4. Although these services may not be available in office libraries, they may be available through other library systems, i.e., public libraries or universities.

4.10.7.2.15 (05-14-1999)

Electronic Tax Research

1. Electronic tax research using computers, compact discs, and on-line tax services is also available. Information can be accessed quickly and all references to a given topic, obtained by searching, by specific words or word groups. Most of the documents discussed above are available from commercial vendors on compact disc or online.

4.10.7.2.15.1 (05-14-1999)

LEXIS

1. One example of research available to employees is LEXIS-NEXIS. "LEXIS" is a commercial vendor who supplies electronic access to data bases that contain extensive libraries from which legal research material can be retrieved in full text through research terminals.
2. Research terminals can retrieve, read, and make a copy of the complete text or any

portion of a document such as a Tax Court decision or Revenue Ruling. Most terminal responses are received in a matter of seconds.

3. Information is retrieved by means of a search request. A search request consists of two elements—the search terms and the search logic. Search terms are words or phrases. Search logic is the manner in which the terms are treated in relation to one another. A LEXIS desk reference explains the mechanics and logic formulation of search requests. All words, except about 100 common ones, are searchable in any document in the libraries.
4. Employees who receive LEXIS or other electronic research training receive User-ID cards with personal identification numbers enabling them to use the service. (User ID cards may also be obtained for employees who have not had formal LEXIS training.)
5. Employees should consult their local Electronic Research coordinator for additional details concerning use of LEXIS and other research services in their area.

4.10.7.2.15.2 (05-14-1999)

NEXIS

1. "NEXIS" provides access to electronic data bases that includes many of the major newspapers, magazines, news wires, and reference works. This service is normally available through LEXIS terminals. NEXIS is not generally available. Examiners should consult their area coordinator for further information.

4.10.7.2.15.3 (05-14-1999)

Compliance Automated Research Tools System (CARTS)

1. A national information system, Corporate Automated Research Tools System (CARTS), is available to Service employees. The system can be accessed from the Information Systems (IS) Support Bulletin System (BBS) . CARTS contains tools such as the Internal Revenue Manual, Market Segment Specialization Program (MSSP) Guides, Examining Officer's Guide (EOG) and technical newsletters/alerts. It utilizes Textware search software. Access to CARTS can be obtained through local management.

4.10.7.2.15.4 (05-14-1999)

Examination Specialization Bulletin Board

1. The Examination Specialization (ES) is an area program in which compliance is addressed on a market segment basis. ES facilitates the development of examiner expertise and includes national audit technique guides for various market segments.
2. The Headquarters Office ES staff maintains the national ES bulletin board. The bulletin board has sections containing summaries of ES projects nationwide, audit technique guide user notes, audit technique guides, and ISP information. Examiners should contact the area ES Coordinator if direct access to the bulletin board is not available.
3. The ES bulletin board also includes a forum that can be used to seek advice on an issue or share a solution. The forum is like E-Mail except messages can be viewed by all users.

4.10.7.2.15.5 (05-14-1999)

Industry Specialization Program

1. The Industry Specialization Program (ISP) is a national program with a national coordinator for each represented industry.
2. ISP includes industries such as Aerospace, Construction/Real Estate, Health, and

Petroleum and issue specialities such as Changes in Methods of Accounting, Passive Activity Losses, and Uniform Capitalization (Section 263A) . Complete listings can be obtained from the Area Industry Specialization Technical Coordinators (AISTC).

3. The ISP specialists also publish coordinated issue papers and/or quarterly digests on their industry or issue. These papers/digests can be helpful in identifying and developing issues.

4.10.7.3 (05-14-1999)

Evaluating Evidence

1. Examiners gather facts to correctly determine a taxpayer's tax liability. This determination must be made on the basis of all available facts, including facts supporting the taxpayer's position. For this reason, examiners should determine all the facts supporting both sides of an issue.
2. Examiners should pursue an examination to a point where a reasonable determination of the correct tax liability can be made. In the daily application of this responsibility, examiners must deal with problems of evidence and its evaluation. The following discussion is presented as a series of definitions and explanations to assist examiners in determining the nature and sustaining value of various types of evidence.

4.10.7.3.1 (05-14-1999)

Evidence Defined

1. Evidence is something which tends to prove a fact or point in question. Evidence is distinguished from proof, in that proof is the result or effect of evidence.

4.10.7.3.2 (05-14-1999)

Oral Testimony

1. The Internal Revenue Code requires all taxpayers to keep adequate records. There are times, due to unusual circumstances, when records do not exist. In such cases, oral testimony may be the only evidence available. Therefore, oral statements made by taxpayers to examiners represent direct evidence which must be thoroughly considered. Although self-serving, uncontradicted statements which are not improbable or unreasonable should not be disregarded. The degree of reliability placed on a taxpayer's oral statements must be based on the credibility of the taxpayer and surrounding circumstantial evidence (7.3.10 below) . The following general guidelines should also be considered:
 - A. Oral evidence should not be used in lieu of available documentary evidence.
 - B. If the issue involves specific recordkeeping required by law and regulations (e.g., IRC 274), then oral evidence (testimony) alone cannot be substituted for necessary written documentation.
 - C. Oral testimony need not be accepted without further inquiry. If in doubt, attempts should be made to verify the facts from other sources of evidence.
2. A summary of a conversation or statement made by a taxpayer or witness should be prepared as documentation of the oral testimony and the taxpayer (or third party) should be requested to sign the document. It should always be signed by the examiner or examiners party to the interview. If the taxpayer or third party does not sign the documentation, then it is considered a report of the interview. This summary document should always contain:
 - A. Date, time and place of contact,
 - B. Name of the parties present, and

- C. Description of what transpired.
- 3. Sometimes a more formal written statement is needed when documentation is not available and oral testimony will significantly affect the outcome of the case. In these cases examiners should assume that the case may eventually be resolved through litigation and should use formal written statements such as affidavits to record taxpayer or third party statements. An affidavit is an attested statement and has great validity when properly prepared and voluntarily given. Affidavits should be completed using Form 2311. Affidavits may be used:
 - A. When other documentary evidence is unavailable,
 - B. When the examiner wants the taxpayer's statements to become part of the case file,
 - C. To help accumulate complete and accurate information.
 - D. To record the testimony of a witness, and
 - E. To prevent a taxpayer from changing testimony.
- 4. If oral testimony is accepted or where oral testimony is not allowed, the workpapers should reflect a full development of the facts, oral statements, corroborating evidence and conclusions, including an explanation of the factors supporting the conclusion. "Per oral testimony" or "as reasonable" are insufficient unless the amounts are both de minimis and reasonable.

4.10.7.3.3 (05-14-1999)

First Hand Knowledge

- 1. One of the basic rules of evidence is that witnesses (either taxpayers or third parties) can testify only about facts of which they have first hand knowledge. In other words, witnesses must be able to say the facts to which they testify are true.

4.10.7.3.4 (05-14-1999)

Expert Testimony

- 1. Some issues are so difficult that the ordinary person needs assistance from someone more familiar with the subject to understand and resolve the matter at hand. An expert opinion is made by someone with the education and experience to qualify as an expert. Thus, expert testimony is needed.

NOTE:

An examiner is not compelled to accept expert testimony; expert testimony can be challenged.

4.10.7.3.5 (05-14-1999)

Hearsay

- 1. Hearsay is what a witness says another person was heard to say. It is a secondary source of information and generally the reliability and trustworthiness of the evidence rests upon the veracity and reliability of a person giving testimony.
- 2. A common example of hearsay evidence is testimony of taxpayers' representatives. It should therefore be recorded in the workpapers by examiners. Hearsay often leads to primary sources of information.

4.10.7.3.6 (05-14-1999)

Admission Against Interest

- 1. A statement that is harmful to the person making the statement is considered an "admission against interest" . When an admission is made voluntarily and with

- deliberation, it represents substantial evidence that the fact admitted is probably true.
- 2.

EXAMPLE:

If someone tells a friend that they shoot par golf, the friend may be skeptical. But if they said that they have trouble breaking 100, the friend might be inclined to believe them because it would be more likely.

4.10.7.3.7 (05-14-1999)

Opinions

1. An opinion is a belief not based on absolute certainty, or a judgment or evaluation of what seems to be true. Opinions are statements of personal feelings.
2. An opinion is not conclusive evidence of a fact. But opinions may be the only evidence available. Before accepting an opinion as evidence, make every effort to obtain other documentary evidence.
3. Opinions emphasize connotative meaning, that is, how someone feels about something; how they value it.
4. Opinions cannot be proven or verified. The only criterion for testing an opinion is whether it is acceptable or not, believed or not believed.
5. There are three primary types of opinions:
 - A. Unqualified Opinion : An unqualified opinion is made by someone who is only guessing. The individual has neither the education or work experience to make an intelligent estimate.
 - B. Biased Opinion : A biased opinion is made by someone whose relationship with the taxpayer influences the opinion. Suspect bias when a valuation or opinion is rendered by a family member or someone receiving a substantial benefit from the taxpayer.
 - C. Expert Opinion : An expert opinion is made by someone with the education and experience to qualify as an expert, but biases, for example, family or employment relationships, should be considered. Any doubt about the validity of an expert's opinion should be resolved by seeking a second expert's opinion.

4.10.7.3.8 (05-14-1999)

Observations

1. Observations are statements, judgements, or inferences of fact based on something observed. It is the act of recognizing and noting a fact or occurrence.

4.10.7.3.9 (05-14-1999)

Documentary Evidence

1. Documents are another form of evidence. Documentary evidence is generally regarded as having great probative (providing proof or evidence) value. Writings made contemporaneously with the happening of an event generally reflect the actual facts and show what was in the minds of the parties to the event.
2. While documentary evidence has great value, it should not be relied on to the exclusion of other facts. Facts can also be established by oral testimony and there will be occasions when courts will give greater weight to oral testimony than to conflicting documentary evidence.

4.10.7.3.10 (05-14-1999)

Circumstantial Evidence

1. Circumstantial evidence is evidence from which more than one logical conclusion can be reached. To be useful, both the credibility of the evidence and the reasonableness of the conclusion should be evaluated.

4.10.7.3.11 (05-14-1999)

Best Evidence

1. The best evidence rule requires that, when possible, original evidence be used. Therefore, examiners should always ask to see original documents when there is reason to believe such documents are available.

4.10.7.3.12 (05-14-1999)

Secondary Evidence

1. Secondary evidence is used when original evidence is unavailable. Examples of acceptable secondary evidence are copies of original documents made by an examiner. In the absence of original documents, copies made by the examiner become the best evidence available.

4.10.7.3.13 (05-14-1999)

Inferences

1. The fact in dispute can, in some cases, be proved by showing other facts from which the fact can be inferred. In other words, as a matter of logic, an inference can be made from facts to decide a disputed fact.
2. An inference is a logical conclusion based on facts. Things beyond the range of what can be observed are inferences.

4.10.7.4 (05-14-1999)

Arriving At Conclusions

1. After all the facts have been gathered through taxpayer interviews; examination of the books, records and supporting documents; interviews with third parties; and, having researched questionable items, the examiner has all the information to be considered in resolving the issues. At this point the examiner will use his/her professional judgement in considering all the information to arrive at a conclusion.
2. Examiners are expected to arrive at a definite conclusion by a balanced and impartial evaluation of all of the evidence. Examiners are given the authority to recommend the proper disposition of all identified issues, as well as any issues raised by the taxpayer.
3. Examiners will employ independent and objective judgment in reaching conclusions on issues being examined and in all aspects of their duties and will decide all matters on their merits, free from bias and conflicts of interest. Fairness will be demonstrated by:
 - A. Making decisions impartially and objectively based on consistent application of procedural and the applicable tax law,
 - B. Treating individuals equitably,
 - C. Being open-minded and willing to seek out and consider all relevant information, including opposing perspectives,
 - D. Voluntarily correcting mistakes and improprieties made by themselves or someone else in the Service and refusing to take unfair advantage of mistakes or ignorance of citizens, and
 - E. Employing open, equitable, and impartial processes for gathering and evaluating information necessary to decisions.
4. Examiners will use their professional judgment in evaluating all evidence to reach a

conclusion. Examiners seldom have all of the information they would like to have to definitively resolve an issue. Examiners, therefore, must decide when they have enough, or substantially enough, information to make a proper determination for all issues under consideration. The sooner this point is reached, the more timely the case can be completed and the less burden will be placed on the taxpayer.

5. IRC 274(d) specifies recordkeeping rules that are required in certain situations. Treasury Regulations 1.274-5(c)(2)(v) states that it is permissible to allow a deduction without complete documentation if the taxpayer can show he or she has "substantially complied" with the adequate recordkeeping requirements. The examiner will use his/her skill and judgement in developing the surrounding evidence when less than the required documentation is available, so that the taxpayer is treated fairly, but does not profit from failure to keep records.
6. To determine if the taxpayer has "substantially complied," the following factors should be considered:
 - A. Number and type of expenditures involved,
 - B. Elements of documentation missing,
 - C. Reason(s) the why deduction was not properly substantiated,
 - D. Availability of other information to substantiate the expenditure
 - E. Materiality of unsubstantiated items, and
 - F. Relative tax significance of the items.

Internal Revenue Manual **Part 4 Examining Process Chap. 10 Examination of Returns Sec. 7 Issue Resolution** **(05-14-1999)**

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