

Communicating Research Results

Chapter Outline

Communications and the Tax Professional
The Heart of Tax Research Communication:
The File Memo
Evaluating the Sources of Law
Client Letters
Comprehensive Illustration of Client File
Oral Presentations of Research Results

Learning Objectives

- Produce a standard format for the construction of a file memorandum to contain the results of one's research efforts and professional judgment.
- Develop skills in using other forms of communicating research results, including oral presentations and client letters.

ONCE THE PRACTITIONER HAS begun to develop effective tax research skills, he or she must hone them with practice—whether by working through tax research cases presented as a class exercise in a university course, or immediately beginning work for professional clients. Accordingly, the overriding purpose of this chapter is to provide the reader with guidance and opportunities to apply the research skills and examine the tax research resources that have been discussed in previous chapters.

In addition, this chapter will discuss the means by which the tax professional conveys the results of a tax research project—in other words, applying some of the judgment and communications skills required. Direction as to the proper format and content of memorandums to the file, of client letters, and of oral presentations is addressed, with development of professional skills the overriding goal.

COMMUNICATIONS AND THE TAX PROFESSIONAL

As we suggested in our initial discussions of the tax research process, illustrated in Exhibit 2-1, a tax research assignment often concludes with some form of communication by the tax professional. The audience for this communication often is the practitioner's supervisor or client, but tax-related communications can take many forms.

- A telephone call or instant message
- An informal discussion in person or via e-mail
- A letter prepared for reading by someone at least as familiar with the tax law as the writer
- A letter prepared for reading by someone less familiar with the tax law than is the writer
- A letter prepared for reading by someone who is essentially untrained in the tax law
- An article for publication in a newspaper or magazine directed at the general public
- An article for publication in a professional journal read by tax generalists
- An article for publication in a professional journal read by tax specialists
- A directed discussion among tax peers, for example, in a tax department meeting
- A speech to a general audience
- A speech at a conference of tax professionals
- A memorandum to be read in the future by the writer or by a peer with similar training
- An appearance on a news broadcast or program with a serious tone
- An appearance on a broadcast with a less serious tone
- A posting on a general, business, or tax-oriented blog

For the most part, the tax professional's preparation for these communications is similar. For the purposes of this chapter, we assume that all of the pertinent tax

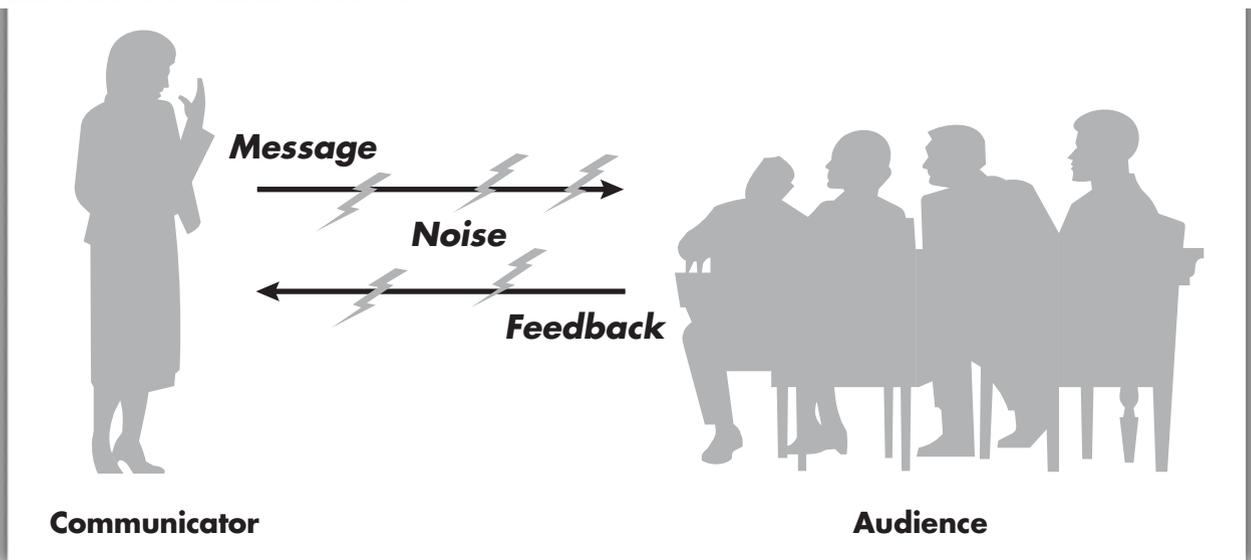
research techniques developed in earlier parts of this text have been planned and conscientiously applied, so that the practitioner is qualified and current enough with respect to prevailing tax law to address the audience in terms of the content of the communication. The challenge then becomes how to deliver this information in a manner that will be accepted and understood by the audience.

Actually, though, one's preparation for the delivery of tax communication must go far beyond obtaining control over the technical tax knowledge required for the assignment. As illustrated in Exhibit 11-1, communication truly occurs only when the message desired to be sent by the speaker or writer is received by the intended audience. Distractions of all sorts can make this process difficult to accomplish. Thorough research into the nature and expectations of the audience, factors that may interfere with the delivery of the message, and feedback and corrective measures must make up a critical part of the communicator's preparation.

Examples of "noise" that can disrupt the communications process include a mismatching of expectations as to the message, the chosen delivery method, the identity and nature of the sender and receiver of the message, other events competing for the attention of those involved, logistical difficulties, and technological problems. Feedback and corrective devices that can aid in accomplishing the delivery of the desired message include formal and informal evaluation processes, "real-time" opportunities such as question-and-answer periods and written comments received during the drafting of the document, and the sending and receiving of intended and unintended body language or other communicative signals.

Tax professionals generally are virtually untrained as to the application of communication methods in conveying tax messages, but this shortcoming can be remedied. The chief ingredients necessary to become an effective tax-content communicator are the desire to learn and improve as a communicator in general, and the use of every opportunity possible to obtain and develop skills in the delivery of tax information. Given the nature of today's competitive tax profession, plenty of such opportunities for practice exist, and pressures from others who are competing for clients and promotions provide most professionals with more than enough motivation to make improvements in their communication skills a lifelong process.

Exhibit 11-1: The Communication Process





SPOTLIGHT ON TAXATION

A Career in Taxation

“When I was young, I was taught the story of Jesus and the taxman. The point was that Jesus was good to everyone; so much so that he would even eat with the taxman. The story tells a lot about being good, but it also tells a lot about historical perceptions of the tax collector.”

—Christopher Bergin

We begin a more detailed review of the communication process with an examination of the most commonly encountered written communications demanded in the tax practice. The chapter concludes with a discussion of skills needed in delivering spoken communications. In either case, the structure of the communication follows the basic format delineated in Exhibit 11-2.

THE HEART OF TAX RESEARCH COMMUNICATION: THE FILE MEMO

The tax researcher spends most of his or her time reviewing primary and secondary sources of the Federal tax law, redefining pertinent issues, and attempting to discover additional facts concerning the client’s situation. On completion of this review, the researcher must integrate the disparate results of the research process into a more usable form. Thorough practitioners generate a memorandum to the client’s file for this purpose. This **file memorandum** is designed to:

Exhibit 11-2: The Structure of Technical Tax Communications

Element of the Message	Purposes	Comments
Introduction	Provide a roadmap for what is to come.	10% of allotted time/space.
	Place the message in context.	Could include a story/anecdote, current news development, or “object lesson.”
	Generate audience interest, if necessary.	
Body	Set the tone for the message.	
	Generally, the technical tax material is presented here.	80% of allotted time/space.
	Usually follows an order suggested by the hierarchy of the sources of the tax law.	Must be brief, to the point, hard-hitting; not trite or condescending.
Conclusion	Alternative ordering methods: historical, strengths/weaknesses, cost/benefit.	Identify three to six key points that all readers/listeners must take away from the message.
	Tie back to the introduction.	10% of allotted time/space.
	Reinforce key elements of the message. Bring the presentation to a climax. Indicate next steps and follow-up action.	Tip off the reader/listener that the conclusion is starting, with: “In closing,” “To sum up,” or “I’ll conclude with ...”

- organize the facts, issues, and conclusions of the project,
- facilitate a review of the research activities by the practitioner's supervisors or colleagues, and
- allow for a subsequent examination of the research issue, by the original researcher or by his or her successor, with respect to the same or another client's identical or related fact situation.

Accordingly, the file memo should be constructed in a general, usable format that lends itself to a quick perusal of the pertinent tax facts and issues. Many accounting and law firms impose a standardized file-memo format. If the reader's employer has enacted no such requirement, he or she should consider adopting the format illustrated in Exhibits 2-5 and 11-3. A template for this memo format is available at the Web site for this text, <http://academic.cengage.com/taxation/raabe>.

A file memo should include a brief introductory summary of the facts and issues that face the client. In all but the most complex instances, this statement should require no more than two paragraphs. Similarly, the rare footnote at this point of the memo should be restricted to current developments, for example, with respect to an appeal relative to one of the critical cases that is cited in the memo or a statutory amendment.

The file memo then includes a listing of the tax issues that are in dispute and a matching conclusion for each identified issue. This format allows the subsequent reader to determine quickly whether each issue is "pro" or "con" for the taxpayer and limits the time required to sort through a number of such memos. In the support section, a detailed review and evaluation of controlling laws is derived, with full citations presented in the standard forms. The "meat" of the memo is presented here, and the strengths and weaknesses of both sides of the tax argument are developed and discussed. Finally, recommendations for subsequent actions with the client may be enumerated, and other strategies as to tax return or audit positions are identified.

Often, the gathering of the pertinent facts is the most challenging of the tax professional's tasks. Tax engagements typically begin with client contact in the form of a phone call or meeting, followed by an exchange of copies of pertinent documents such as letters, spreadsheets, trusts or wills, contracts, life insurance or annuity agreements, employer handbooks, and diaries or logbooks belonging to the client. In reality, though, the initial determination of the facts is likely to be incomplete.

- Taxpayers tend to see the dispute only from their side, so that facts and circumstances may be hidden or "forgotten" if they would cast doubt on the ability to determine or document the pro-taxpayer position.
- Taxpayers are not trained in the details of the technical tax law, so they may be unable to determine which documents or other evidence of the facts are important in determining the controlling tax law.
- For tax research that requires the full professional judgment and experience of the practitioner, there may be no clearly controlling tax statute or precedent, facts may be truly incomplete, or they may unfold as the evaluation of tax law occurs. The researcher may discover that issues of taxpayer motive, knowledge, or other circumstances turn on facts that were not immediately known to be critical.

Moreover, fact gathering often turns on such intangible factors as the reliability of the memories of the taxpayers and key witnesses, the ability of witnesses to withstand scrutiny in the deposition and testimony phases of the case, the unanticipated death or disappearance of key parties, the destruction of records due to casualty or computer mismanagement, and the tendency of some taxpayers to “fix the truth” after the fact. Recalling our language in Chapters 2 and 3, more research engagements entail closed-fact settings than open-fact situations by far, but those facts may be fairly difficult to determine and support in a manner that will satisfy the Internal Revenue Service (IRS) or the courts. Such fact-gathering travails make for interesting anecdotes at conferences of tax practitioners, and they seldom are apparent from the clean, black-and-white statements of facts that accompany file memos and case briefs.

The tone and nature of the file memo should recognize that its readers will be restricted to fellow tax practitioners who are well versed in the Federal tax law. Thus, references to primary and secondary sources of the tax law should be frequent and complete, but usually limited to the tax case reporters that are available in the office of the researcher’s firm. One must presume that the ultimate reader of the memo’s comments will need no introduction to the hierarchy of the Federal tax system nor to statutory citation practices. In addition, it often is helpful to include pertinent references to one or more of the commercial tax services to which the researcher’s firm subscribes, perhaps on a “sticky note” or other attachment to the memo, providing a clear paper trail to facilitate subsequent review and commentary concerning the tax issue.

Seldom will the researcher’s efforts result in merely the preparation of a research memorandum to the file. In general, the memo will be accompanied in the file by links to and briefs of one or more pertinent court cases or administrative pronouncements. (Review Exhibit 5-8 and your related class exercises concerning the format and content of a well-constructed court case brief.) In addition, many practitioners append to the file memo photocopies of or network links to prior-year documents, in-house memos, various IRS rulings, and journal articles, much of which features “highlighting,” that is, markup with a literal or virtual pastel marker. These practices are illustrated in Exhibit 11-3.

The authors recommend that practitioners restrict such appended material to only those resources that are of utmost importance to reduce both the associated client costs and the volume of the typical memo. In this regard, we believe that an effective statement of facts and issues, followed by a concise synthesis of the controlling law, is far more valuable than a mass of duplicated, small-print tax reference materials.



SPOTLIGHT ON TAXATION

The Tax Profession

The file memo and supporting documents also come under review by the audit department and others in the firm, so technical tax material might be accompanied by a set of nontechnical objectives and timetables for the client engagement. Information that could be used by those dealing with the creditors of the taxpayer also might be available in the file.

Exhibit 11-3: File Memorandum for Tax Research**Raabe, Whittenburg & Sanders, CPAs**

San Francisco, CA

September 30, 20XX

Relevant Facts

The Browns live in South Dakota. They own their home and hold investments in the debt of several domestic corporations. The interest that they received on this debt was gross income to them. To diversify their portfolio, the Browns took out a sizable second mortgage on their home and applied a portion of the proceeds to some City of Chandler School Bonds. The remainder of the proceeds was used to expand the facilities of Mrs. Brown's dental clinic.

Specific Issues

How much of the mortgage interest paid can be claimed as an itemized deduction by the Browns?

Conclusions

That portion of the mortgage proceeds applied to the dental clinic generates an interest deduction to be claimed against clinic income on Schedule C. No other deduction is allowed.

Support

The Code disallows the deduction of interest on indebtedness that is incurred or continued to purchase or carry obligations, the interest on which is exempt from the Federal income tax. *IRC § 265(a)(2)*. This provision denies the double benefit that would be enjoyed by the taxpayer who would receive tax-exempt income while simultaneously claiming an investment interest deduction for the interest expense paid, for example, by incurring a bank loan and using the proceeds to purchase municipal bonds.

The IRS examines evidence to infer the intent of the taxpayer who is incurring the indebtedness. Under *Rev. Proc. 72-18, 1972-1 C.B. 740*, a taxpayer who purchases exempt bonds can claim an interest deduction if the debt in question has been incurred (1) for personal reasons (e.g., via a mortgage to finance the purchase of residential property) or (2) for valid business reasons, as long as the borrowing does not exceed legitimate business needs.

Several court decisions have emphasized that the existence of such business motives must be documented clearly, as to both presence and amount. *Wisconsin Cheeseman v. U.S.*, 388 F.2d 420 (CA-7, 1968); *Bradford*, 60 T.C. 253 (1973); *Israelson v. U.S.*, 367 F.Supp. 1104 (D.Md., 1973). However, if the taxpayer's holdings of tax-exempt securities are deemed to be immaterial in amount, the § 265(a)(2) disallowance will not be invoked.

Indian Trail Trading Post, Inc. v. Comm., 503 F.2d 102 (CA-6, 1974). Typically, if the average adjusted basis of the exempt bonds does not exceed 2 percent of the average adjusted basis of the entire investment portfolio, the entire interest deduction is allowed. *Batten v. U.S.*, 322 F. Supp. 629 (E.D.Va., 1971); *Ball*, 54 T.C. 1200 (1970).

Mortgage indebtedness is a classic illustration of an investment that will generate deductible interest expenses for the taxpayer who holds exempt bonds. However, the timing of such a mortgage transaction must be monitored to exhibit the proper motives for the benefit of the IRS. In one case, the taxpayer paid for his home with cash. Only later was an investment program (that included municipal bonds) initiated and a residential mortgage secured. The IRS inferred that the mortgage proceeds were in indirect support of the exempt indebtedness, and the deduction for the mortgage interest was disallowed. *Marioenzi v. Comm.*, 490 F.2d 92 (CA-8, 1974), 32 TCM 681 (1973). Had the taxpayer secured a mortgage before the home was

continued

Exhibit 11-3: (continued)

completed, purchasing the exempt bonds out of savings, it appears that the deduction could have been preserved. The IRS has applied this doctrine outside of the Eighth Circuit, in PLR 8631006.

Because the Browns live in the Eighth Circuit, the Mariorenzi doctrine prevails, and no itemized deduction is allowed at all, that is, for that portion of the loan that is applied to the school bonds. Rev. Proc. 72-18 is insensitive to portfolio diversification motives, and no personal motive appears to exist that supports any other possible deduction. According to the logic of these precedents, the Browns should have sold the exempt bonds and then used the proceeds to finance their portfolio acquisitions.

Actions to Be Taken

Prepare letter, review results with client.

Suggest changes in portfolio holdings to re-gain the deduction.

Preparer: Mary H. Polzin

Reviewer: Char E. Mano

EVALUATING THE SOURCES OF LAW

The tax researcher will have made a number of judgments and creative applications concerning the client's fact situation before preparing the file memo. For instance, the researcher may select and eliminate competing issues and direct the research process onto one or more pathways, to the exclusion of others. Nonetheless, in deriving an analysis of the various elements of the controlling sources of the tax law, the practitioner must choose from among a number of varied interpretations of the statute and of its (interpretive) regulations and court case opinions.

Often the researcher will be guided in this regard by the opinions of the most recent of the court cases discovered. Well-written case opinions typically provide a summary of the evolution of the pertinent tax law and a discussion of the competing interpretations thereof by the parties to the lawsuit. In this manner, the researcher regularly can obtain an indication of both the critical facts and issues that the court has identified in the present case and its interpretation as to the distinguishing features of seemingly relevant precedents. (In reality, most of these sections of the opinion are written by law clerks or law school students who obtain and retain their positions by preparing thorough and insightful file memos of their own!) Moreover, court case opinions often include lengthy dissenting or concurring opinions, from which the researcher can identify additional facts and issues relative to the opinion. Logical and legal leads also might be found in a dissenting opinion that could be pertinent in building an appeal to overturn the majority opinion.

Lacking (or in lieu of) such judicial direction, the researcher's evaluation of the efficacy of a precedent or pronouncement often is guided by no more than a review of the hierarchy of the sources of the Federal tax law. (For a review of these sources, see Chapters 3 through 5.)

In addition, we offer the following points to be considered in the evaluation of a series of apparently conflicting tax laws.

- Regulations seldom are held to be invalid by a court. In the typical year, fewer than a dozen such holdings are issued. Thus, challenges to the provisions of a Regulation should be based on more than a simple challenge to the Treasury's authority or a self-serving competing interpretation of the statute offered by the taxpayer.

- Revenue Rulings and Revenue Procedures, however, are frequently modified or otherwise held to be invalid by a court. Accordingly, the taxpayer's attempted restructuring of the pertinent law in his or her favor with respect to such an administrative pronouncement is more likely to be heard openly by the court and, therefore, to be based on the weight of the competing arguments, rather than simply on the Treasury's preemptive interpretive rights.
- The decisions of courts that are higher in the judicial hierarchy should receive additional precedential weight. Given an adequate degree of similarity in fact situations, district and circuit court opinions have direct bearing on the taxpayer only if they were issued in the corresponding jurisdiction. On the other hand, opinions of the national courts like Court of Federal Claims and Tax Court are binding on the taxpayer, even though they were issued with respect to a taxpayer who works or resides in another jurisdiction, unless they are overturned in a pertinent appeal.
- Thus, a taxpayer who works in Wyoming is not bound by decisions of, say, the Seventh Circuit or Alaska District courts. The practitioner should not feel restricted in a trial or appeal hearing by the doctrine of *stare decisis*. Conversely, an Alaska taxpayer's Court of Federal Claims decision is binding on the Wyoming citizen's Court of Federal Claims case. If this Court of Federal Claims decision was held in a manner that is detrimental to the Wyoming taxpayer, another trial court should be pursued.
- Other factors being equal, decisions of the Second, Ninth, and Federal Circuits should be assigned additional precedential value. Among other reasons, this additional weight can be attributed to the inclusion of the cities of New York and Washington and the state of California in these circuits. Typically, the Ninth Circuit is the first to introduce an innovative or otherwise unusual interpretation of the law, and the Second and Federal Circuits are authoritative in a more traditional vein.
- Older court decisions should be assigned a geometrically declining degree of importance unless (1) they are Supreme Court cases, (2) they are Second, Ninth, or Federal Circuit cases, or (3) they are the only precedents available. The roster and philosophical makeup of a court change over time and often reflect the changing societal culture and philosophies. Thus, recent case opinions are more likely to identify issues that are held to be critical by the sitting judges that the taxpayer will face, and they are likely to be better predictors of the outcome relative to the current taxpayer's issues.
- Tax treatises and journal articles are a useful source by which to identify current, critical tax issues. They also can be utilized in the formation of the practitioner's research schedule, because they often include both a comprehensive summary of the evolution of the controlling law and a thorough list of citations concerning prior interpretive court decisions.
- IRS agents are bound only by the Code, administrative pronouncements, and Supreme Court decisions. Some of the most difficult decisions a tax practitioner must face include those in which one must determine whether the time, effort, and expense of litigation will generate a reward that is sufficient to justify, in essence, the construction of new (judicial) tax law, that is, to overcome this narrow scope of the agent's concern.

- Court decisions are never completely predictable. Thus, even if absolutely all of the judicial precedent that is available supports the taxpayer's position, the court still may hold against him or her. Negative decisions may be the result of a poor performance by the attorney, other tax adviser, or witnesses that are heard by the court; changes in the makeup or philosophy of the members of the court; changes in societal mores, as reflected by the court; or an incorrect interpretation of the law by the court that hears the present case. The practitioner, however, can do little more than conduct a thorough tax research analysis concerning the case, identify convincing witnesses, and trust that justice will prevail.

CLIENT LETTERS

Our discussion to this point in the chapter has concentrated on the communication of tax research by the practitioner to him- or herself or to other tax professionals in a fairly sophisticated document—a memorandum to the file. We now shift the focus for the communication to a different audience, namely, the client, and to a different setting, the written or oral presentation.

By far the most common form of substantive communication between the tax professional and his or her client is the telephone call. We must stress the danger inherent in placing too great a dependence on the phone call to convey the results of tax research, given the intricacies of both the fact situation and the (tax adviser's interpretation of) controlling law, in most professional situations. If the telephone must be used (perhaps because of time pressures or convenience) to convey tax research results, the practitioner should always send a fairly detailed follow-up **client letter**, in hard copy, not just e-mail, confirming his or her understanding as to the information that was conveyed and the actions that are to be taken as a result of the call.

Foremost among the attributes of the client letter is its brevity. Except in the most unusual circumstances, it should not exceed two pages. This rule should be violated only when the subject of the research is especially complex or grave, perhaps in anticipation of extended litigation or with respect to a more sophisticated client, where, for instance, one might be tempted to attach a copy (or a “client version”) of the research file memo.

The brevity of the client letter is, most often, in response to the desire of the client for “the answer” that has been found concerning the extant tax issues. Clients do tend to see tax issues as black-and-white ones, and they want to know whether they will win or lose with the IRS. Of course, tax practitioners are aware of the colorful world that tax practice presents, and the various shades of emphasis and interpretation sometimes make the view quite murky. Thus, to accommodate the desire of the client, one typically must convey no more than the absolute highlights of the research process.

Another factor that leads to brief client letters is the tax practitioner's professional responsibilities. Responding to client questions is generally easier in a face-to-face meeting. Thus, most practitioners use the client letter to deliver the general conclusions of the research project and to request a follow-up meeting in which questions, comments, and the need for more detail can be addressed.

Exhibits 11-4 and 11-5 illustrate the format and content of typical client letters. The sole difference between these two letters is the degree of sophistication that is possessed by the receiving party.

Exhibit 11-4: Sample Client Letter—Sophisticated Client**Raabe, Whittenburg & Sanders, CPAs**

San Francisco, CA
November 19, 20XX

M/M Dale Brown
2472 North Mayfair Road
Fillingham, SD 59990

Dear Dale and Rae,

Thanks again for requesting my advice concerning the tax treatment of your interest expenses. I am sorry to report that only a portion of your expenses can be deducted this year.

I have uncovered a series of court cases in which the IRS has prevailed over the taxpayer's requests for a deduction that is similar to yours. Unfortunately, the Tax Court's position is that interest such as yours is nondeductible, and additional litigation would be necessary to bring about a more favorable result for you.

My efforts have concentrated on the treatment of interest expenses that are incurred by taxpayers who hold exempt bonds while maintaining a bank loan that requires interest payments.

Over the past thirty years or so, a number of Circuit Court decisions have held that a taxpayer effectively must divest him- or herself of investments in such municipal bonds, regardless of portfolio diversification objectives, before a deduction for the interest payments to the bank is allowed. Fortunately, however, an exception exists relative to business-related loans, so that interest that is related to Rae's clinic will be allowed as a deduction. Conversely, that portion of the loan that relates to your school bond investment is nondeductible, even though it is secured by your residence.

You may wish to reconsider your use of the mortgage for this purpose, as your tax advantages therefrom are somewhat limited. This appears to be more palatable for you than would be the alternative of expensive further (and, probably, fruitless) litigation of the issue.

My conclusion is based upon the facts that you have provided me, and upon the efficacy of these somewhat dated court decisions. As you've requested, I've attached a copy of my research memo for you to read and from which you might develop subsequent inquiries.

I'm sorry that the news from me wasn't more favorable. I look forward to seeing you, though, at the firm's holiday reception!

Sincerely,

Mary H. Polzin

for Raabe, Whittenburg & Sanders, CPAs

In general, the client letter should be structured as follows, perhaps allowing one paragraph for each of the noted topics.

- Salutation/social graces/general conclusion
- Summary of the research project results
- Objective of the report
- Statement of facts and disclaimer as to the scope of the tax professional's knowledge base
- Summary of critical sources of law that lead to result

Exhibit 11-5: Sample Client Letter—Less Sophisticated Client

Raabe, Whittenburg & Sanders, CPAs

San Francisco, CA

November 19, 20XX

M/M Dale Brown
2472 North Mayfair Road
Fillingham, SD 59990

Dear Dale and Rae,

Thanks again for requesting my advice concerning the tax treatment of your interest expenses. I am sorry to report that only a portion of your expenses can be deducted this year.

My research has uncovered a series of successes by the IRS in convincing several important courts that interest such as yours should not be allowed as a deduction to reduce your taxes. Unfortunately, the court whose decision initially would prevail upon us would hold against you, and a series of court hearings, over two or three years or so, would be necessary for you to win the case.

This research has been restricted to situations that are similar to yours, that is, in which the taxpayer both owns a municipal bond and owes money to the bank from an interest-bearing loan.

It seems that the IRS would rather have you purchase the municipal bonds with your own money, rather than with the bank's. It maintains that you get a double benefit from the non-taxability of the school bond interest income and the deductibility of the interest expense that is paid to the bank. Thus, that portion of the interest that relates to the bond investment is not allowed. A business purpose for the loan salvages the deduction, however, so you can deduct the interest from the loan that relates to Dr. Rae's clinic.

You may just have to live with this situation, as the IRS has been winning cases like these for about thirty years. Yours is not likely to be the one that changes their mind, so you might reconsider your investment in the municipals in the near future.

My conclusion is based upon the facts that you have provided me, and upon the reliability of the court cases that I found.

I'm sorry that the news from me wasn't more favorable. I look forward to seeing you, though, at the firm's holiday reception!

Sincerely,

Mary H. Polzin

for Raabe, Whittenburg & Sanders, CPAs

- Implications of the results
- Assumptions/limitations
- Closing/reference to follow-up meeting/social graces
- Attachments, if any (e.g., engagement letter, file memo, illustrative charts, bibliography), on a separate page

Effective written business communication often makes use of the following guidelines. Notice that most of these elements are present in each of the two sample client letters that we have included in this chapter.

- Make your main point(s) in the first paragraph of the communication.
- State a well-defined purpose for the document, and stick to it.
- Avoid “filler” language, for example, “at the present time,” “the fact that,” “as you know,” and “enclosed please find.”
- Avoid cliches and trendy jargon, for example, “interface,” “input,” “seamless,” “hands-on,” “state-of-the-art,” and any number of sports analogies.
- Follow the 10-80-10 rules of Exhibit 11-2.
- Don’t be afraid to revise the letter several times to improve its format or to expand or narrow (as needed) its content. In this regard, allow enough time for the preparation of the document in a professional manner.
- Use the social amenities to your advantage by spelling names correctly, keeping current on the recipient’s promotions and current title, and adding handwritten messages at the beginning or end of the document.
- *Practice writing* until it becomes easier and more enjoyable for you to do. Word processing programs, with the editing and proofreading capabilities that they provide, will aid you in this task.

COMPREHENSIVE ILLUSTRATION OF CLIENT FILE

Exhibit 11-6 provides a comprehensive illustration of the two major elements of a client file: a client letter and a file memo. Notice the degree of correspondence between the two documents, in that some portions of the client letter are no more than quotations or paraphrases of the file memo.

The remainder of the internal file for this hypothetical client would include, among many other possibilities:

- an engagement letter,
- a billing and collection history,
- case, regulation, and ruling briefs that are pertinent to the file memo, and
- links to important analyses of the client’s prevailing tax issues from treatises, journal articles, and other resources.

Each consulting firm or tax department has its own formatting requirements with respect to client files. Because document and browser software is so easy to use, the temptation is for the tax researcher to reduce the thickness of the client file, as paper duplications of controlling law and other precedent are deemed unnecessary. This paper reduction movement constitutes a laudable goal. Yet one must not shortchange the importance of the client file as a roadmap by which to retrace the researcher’s line of thinking that leads to the conclusions and recommendations evidenced in the file memo and client letter. Electronic equivalents of the mind-map of the researcher and of underlining or pastel highlighting of portions of lengthy legal documents must be developed.

Accordingly, every tax researcher must develop or work with a scheme by which to cross-reference the steps of the professional critical thinking model undertaken on the client’s behalf. This might entail a listing of legal citations and computer files that would bear upon a reconstruction of the researcher’s analysis,

Exhibit 11-6: Client File Illustration

CLIENT LETTER

Tax Jockeys Limited

Newport, RI

December 10, 20XX

Harold and Frieda van Briske

2000 Fox Point Heights

Whitefish Bay, RI 02899

Dear Harold and Frieda,

Congratulations on your recent marriage! I hope that you found your honeymoon at Club Med to be an enjoyable and memorable experience.

Thank you again for requesting my advice concerning the tax treatment of your prenuptial agreement. I understand that Frieda transferred some appreciated stock to Harold on the morning of the wedding, under the prenuptial agreement. I am happy to report that the transaction will not result in the imposition of any Federal tax for either of you.

My research has uncovered a series of successes by the IRS in convincing several important courts, including the Supreme Court, that an agreement such as yours is not supported by “full and adequate consideration,” and, therefore, that it is to be treated as a gift. Although you did not intend for your property transfer to be a gift, the intent of the parties in such agreements does not control for Federal gift tax purposes.

Fortunately, however, the treatment of your transaction as a gift will result in the imposition of neither Federal income tax nor Federal gift tax upon you. Federal income tax is not imposed upon the transfer because gross income is not recognized by either the donor or donee when a gift is made. Although a gift has occurred, no gift tax is due, because the unlimited gift tax marital deduction neutralizes the transfer.

This research has been restricted to fact situations that are similar to yours, that is, in which, pursuant to a prenuptial agreement, a taxpayer surrendered his or her other marital rights in exchange for a sum of money or other property.

My conclusion is based upon the facts that you have given me and upon the reliability of the court cases that I found. I look forward to seeing you at the Christmas Charity Ball!

Sincerely,

Karen J. Boucher, CPA, JD, MST

for or Tax Jockeys Limited

FILE MEMO

December 10, 20XX

Tax Jockeys Limited

Newport, RI

Relevant Facts

On the morning of their wedding, Frieda gave to Harold \$400,000 of appreciated stock, pursuant to a prenuptial agreement. Frieda’s basis in the stock was \$150,000. In exchange for these securities, Harold surrendered all other marital rights and claims to Frieda’s assets, under the terms of the agreement. Harold and Frieda both are residents of Arizona.

Specific Issues

1. What are the gift tax consequences of this exchange?
2. What are the income tax consequences of this exchange?

Conclusions

1. Frieda incurs no gift tax liability as the agreement is executed and implemented.
2. Asset basis carries over to Harold, the new owner of the securities. Neither Frieda nor Harold recognizes gross income as a result of the exchange.

Support

Issue One

Donative intent on the part of the donor is not an essential element in the application of the gift tax. *Reg. § 25.2511-1(g)(1)*.

The Supreme Court has held that prenuptial transfers in relinquishment of marital rights are not adequate and full consideration in money or money's worth for the transfer of property, within the meaning of IRC § 2512(b). *Merrill v. Fahs*, 324 U.S. 308, 65 S.Ct. 655 (1945); *Comm. v. Wemyss*, 324 U.S. 303, 65 S.Ct. 652 (1945); *Reg. § 25.2512-8*. However, the Second Circuit has held that a prenuptial agreement was acquired for valuable consideration and did not constitute a gift, for income tax (basis computation) purposes. *Farid-Es-Sultaneh v. Comm.*, 160 F.2d 812 (CA-2, 1947). This decision is not critical to the present analysis, though, because the van Briskes do not live in the Second Circuit, and because the somewhat dated decision may be aberrational.

Although the van Briske transaction resulted in a gift, no gift tax is imposed due to the application of the annual exclusion and the unlimited gift tax marital deduction. IRC §§ 2503(b) and 2523; *Reg. § 25.2511-2(a)*; *Rev. Rul. 69-347*, 1969-2 C.B. 227.

IRC § 2501 imposes a tax on the transfer of property by gift; the gift tax is not imposed, though, upon the receipt of property by the donee. Rather, it is the transfer itself that triggers the tax. Since the prenuptial agreement here is enforceable by state law only when consummated by marriage, the transfer has not taken place until after the marriage occurred. Thus, the transfer appears to be eligible for the gift tax marital deduction, regardless of the timing of the transfer relative to the marriage ceremony on the wedding day. Even if the securities had been physically transferred to Harold prior to the completion of the ceremonies, the agreement was only enforceable after the couple was married. The IRS likely would not need or attempt to establish the exact moments of both (1) the transfer of the securities, and (2) the consummation of the marriage. *C.I.R. v. Bristol*, 121 F.2d 129 (CA-1, 1960); *Bradford*, 34 T.C. 1059 (1960, Acq.); *Archbold*, 42 B.T.A. 453 (1940, Acq. in result only); *Harris v. Comm.*, 178 F.2d 861 (CA-2, 1949).

Issue Two

Neither Harold nor Frieda recognize any gross income upon Harold's release of his marital rights. Gross income does not include the value of property that is acquired by gift. IRC §102(a); *Reg. §1.102-1(a)*; *Rev. Rul. 79-312*, 1979-2 C.B. 29; *Rev. Rul. 67-221*, 1967-2 C.B. 63; *Howard v. C.I.R.*, 447 F.2d 152 (CA-5, 1971) .

The transfer of securities is not deductible in any way by Frieda, but under the Farid decision, Harold's basis may be stepped up to fair market value. Recall our earlier comments, though, concerning the reliability of this precedent. *Illinois National Bank v. U.S.*, 273 F.2d 231 (CA-7, 1959), cert. den. 363 U.S. 803, 80 S.Ct. 1237 (1960); *C.I.R. v. Marshman*, 279 F.2d 27, cert. den. 364 U.S. 918, 81 S.Ct. 282 (1960); *Rev. Rul. 79-312*. In the typical gift situation, the donee takes the donor's income tax basis in the transferred property. *IRC §§ 1015(a) and 1041(a)(1)*.

Actions to Be Taken

Prepare letter, review results with client.

Place copy of prenuptial agreement in the client file.

Alert the New York and New Jersey offices that their conclusions may differ, under the Farid decision.

Preparer: *Karen J. Boucher*

Reviewer: *Lynne E. Schoenfeldt*

perhaps in the form of a decision tree or project management summary. Various software applications will be useful in this regard, not the least of which is the “research trail” feature of many electronic tax research products, which records the detailed sequencing of commands and decisions made during the online project. Regardless of the form this project diary takes, its importance for professional quality control cannot be overstated.

ORAL PRESENTATIONS OF RESEARCH RESULTS

Psychologists tell us that most people’s greatest fear is speaking before groups of other people. Indeed, the thought of being the only one in the room who is standing, of having your listeners whispering their evaluations of you to each other, of having members of the audience taking notes on (or tape recording) your comments (certainly so that your errors of omission and commission can be parroted back at a later date), and of fielding extemporaneous questions is enough to bring many people to tears.

Yet public speaking is an important part of the tax practitioner’s professional life. In many ways, it is the most accurate predictor of success. As politicians have long known, when one is delivering an oral presentation in an effective and professional manner, the audience becomes convinced that all of the other professional qualities that they desire from the speaker are also present. Conversely, an ill-prepared or ill-delivered message can do much to erode the audience’s confidence in the speaker, not just with respect to the topic of the presentation, but in general.

Thus, it behooves the tax professional to develop skill in public speaking. In contexts that range from the presentation of an award to a colleague or the conduct of a staff meeting to the presentation of a keynote address at the annual tax conference of your peers, such skills can mean the difference between enhancing and damaging your reputation.



SPOTLIGHT ON TAXATION

Observation

Jerry Seinfeld noted that peoples’ fear of public speaking is greater even than the fear of death. Under this ranking, he thought, someone attending a funeral would rather be in the casket than delivering the eulogy!

What is advised here is not a series of “tricks” to fool the audience into believing that you are more knowledgeable than you really are. Rather, we now convey some time-tested techniques leading to an effective communication of ideas—from one who has developed a secure base of knowledge in a subject to an audience with a specified background that has a desire to learn more about that subject. Whether making a presentation of one’s results to a supervisor in one’s own firm or elaborating on a research project with the client’s board of directors, the communication of tax research results poses special problems that make a review of oral communications procedures all the more valuable. Specifically, we can make the following suggestions concerning **oral presentations** of tax research.

- General preparation for the talk should include a thorough, frank examination of the following set of questions by the presenter. Nearly all of these observations can be characterized as knowledge of the makeup of the audience.

Why me? Why was I asked to speak? What knowledge or celebrity do I bring to the event?

What do they want? What does the audience hope to take away from the presentation? Technical knowledge? Relief from stress? Inspiration? Skill development? Amusement or entertainment? Should I present an overview or a detailed technical update or analysis?

What is their attitude? Is the audience coming to the event curious or anxious to hear from me, or must they be persuaded of the relevance or importance of my topics?

From what should I stay away? Are there topics that are taboo for this audience, due to their age, experiences, or existing attitudes? One must not alienate the audience, wittingly or unwittingly, in any way if the message is to get across.

What do they already know? What is the knowledge base of the audience? It would be ideal to speak to a homogeneous audience, especially in the level of knowledge that it brings into the event, but this seldom is the case. One must decide, then, whether to aim at the median knowledge base, above, or below. The stakes are high in exercising this judgment, though, and either repeating what is common knowledge to the group, or presenting information at a high level that is accessible to only a few in the audience, can make communication impossible.

Who is the audience? Details as to the audience's demographic characteristics such as age, education and income level, political leanings, and so forth can be vital for tailoring one's style, presentation speed and media, references to literature and popular culture, and use of humor in an effective manner. Remember to play to as many members of the audience as possible, not just the majority of those in attendance or those who were involved directly in hiring or retaining your services.

- Be prepared in the technical aspects of your discussion, particularly the basic research. Spend most of your preparation time on your main points and conclusions rather than on the fine points. If you are caught without a piece of technical information, it is clearly better for you if that information is specific (so that you can refer the questioner to a more detailed reference or to a later, private conversation with you), rather than basic in nature.
- Resist the temptation to tell the audience all that you know about the subject. You almost certainly have neither the time nor the organizational abilities that are necessary to command the attention of the audience for that long a time. Direct your remarks to the highlights and general results of the research, and allow a questions-and-comments period in which more detailed subjects can be addressed. In this manner, you will provide the greatest amount of information to the greatest number of listeners in the audience.
- Use visual aids effectively. Handouts, slides, or videos can serve to clarify or emphasize your key points (and, not incidentally, to transfer the "spotlight" of the presentation away from you). Most advisers recommend that you not look at the screen repeatedly, or read the text of the visual aid word for word along with the audience, but, rather, that you use the visual aid as a means of keeping

the audience focused on the discussion points by the use of a pointer or other highlighter. Avoid a sequence that allows a “blank screen” for more than a second or two. Inexpensive computer software will assist you in preparing and delivering electronic presentations, and in staying on schedule. Use your ink-jet or color laser printer to prepare your visual aids.

- If you are a frequent public speaker, purchase a moderately priced, easy-to-carry projector, so that you need not depend on conference center staff to present your slides.

Many speakers are tempted to overuse visual aids, especially because they are so easy to create, even at professional-quality levels, given today’s software packages. Visual aids, though, generally should be used only for the following purposes.

- To illustrate things that are difficult to convey strictly with words by using a photograph, videotape, map, blueprint, or flowchart.
- To save time by consolidating ideas, committing to a time frame or strategy, or listing conflicting viewpoints or tactics.
- To create interest in a subject, perhaps by presenting the concept in a manner with which the audience is unfamiliar (e.g., an extra-large view, a view from “the other side of the issue,” or an evolutionary time or growth line).
- To emphasize a point or concept by highlighting a graphic, picture, mnemonic, or list of key words or concepts.
- To organize the introduction, body, or conclusion of the presentation.
- To introduce humor to the event with a tasteful quotation or cartoon.
- To place ideas in the audience’s memories, through a visual “take away” item.

A speaker’s prepared slides should be designed with care and diligence. When using this technology, as opposed to the hand-drawn flip chart or on-the-fly smartboard drawing, one essentially is competing with professional graphic and television artists, and the audience will hold your efforts to these high standards. Most visual and graphic artists offer guidelines for presentation layouts, including the following.

- Use the slide to emphasize pictures, not text or numbers. Except to be able to point to a specific position on the page and keep the members of the audience in the same spot throughout the presentation, do not use your slideshow to duplicate pages of text or spreadsheets with voluminous numbers. Employ graphs, charts, arrows, and other pictorial devices instead.
- When text is involved, use the “six and six” rule: No more than six lines of type, and no more than six words on a line. This directive will help to dictate the font chosen and the corresponding size of print.
- Keep the font style simple. Use sans serif or newspaper-type fonts, not script or modern fonts, unless corporate logos or other protected styles are used. Most designers recommend that no more than two colors of text be used on a slide and that the color scheme of the graphics blend well with that of the text. Be conservative—stick to the primary colors, colors of local sports teams, and multiple shades of gray, so as not to frustrate the duplication process for related handout materials.

- Similarly, try to use some background music if your available technology will support it at a professional-quality level. In this regard, select audio clips that do not draw attention to themselves, but are memorable in a more subtle way. Music can signal the start or end of a presentation or its subunits, a change in direction, or a specific idea (e.g., a Frank Sinatra clip sends a different message than does one by Jimi Hendrix or a smooth jazz group).
- On the average, allow at least three minutes of spoken presentation for each slide. Accordingly, limit the number of your slides to the length of your talk in minutes, divided by three. In this way, you will not overproduce your number of slides. If you want to provide your audience with a content outline, use some other medium, not the slides.
- Prepare for the worst: E-mail yourself an extra copy of the slides in case of emergency, and carry your files to the site on a flash drive *and* on your portable music player. Bring a few sets of hard copy slides, as well.

Without exception, determine ahead of the presentation how long your talk is supposed to be and be absolutely certain not to exceed it. You need to be fair to the other speakers, if any, who follow your presentation. Moreover, with very few exceptions, the audience also is aware of the schedule for the session, and if the speaker exceeds the allotted time, the audience, at best, will stop paying attention and, at worst, will become restless or angry. Because of their technical nature, most tax presentations should not exceed forty-five minutes, and one-half of that time might be ideal for both speaker and audience.

Have an outline for your discussion that includes miniature versions of slides and your business address, phone and fax numbers, and your e-mail and Internet addresses. Use the visual aids to convince the audience that you are following the outline. This will (1) ensure that you will cover the material that you desire, (2) build confidence among the audience as to your speaking abilities, and (3) convince yourself that you are doing a good job in leading the discussion of the assigned topic.

Rehearse your presentation, word for word, at least once. The most effective means of preparing yourself in this manner probably is with a video recorder, because your distracting mannerisms (e.g., clearing the throat repeatedly, saying the words “ah” or “you know” too often, or pounding on the lectern) quickly will become apparent. Lacking such a device, use an audio recorder or webcam. Family members or colleagues should not be used for this rehearsal.

Be kind to yourself in evaluating your video performance, but be observant for the following “I didn’t know I did that” items.

- In all but the very largest presentation venues, get as physically close to the audience as you can, ideally removing the lectern, stepping down from the stage or platform, and moving to a series of different spots in the room throughout your speaking time. Use a portable mouse device to control your slideshow, but practice using the device an hour before your presentation begins.
- Eliminate nervous and visual distractions, such as jingling coins, playing with pen and marker tops, and adjusting clothing. Minimize the use of crossing your arms, pounding the table, and finger-pointing, reserving them as means of emphasizing key points or declaring victory over competing viewpoints.
- Vary the pitch of your voice, avoiding both a dry monotone and a “classic actor” dramatic approach. Many speakers talk too fast or too loud; check yourself

throughout the talk on these matters. Test the microphone system before the audience arrives, so that you don't need to ask, "Can you hear me in the back?"

- Don't be afraid of silence. Pauses invariably seem longer to the speaker than they do to the audience, so don't let natural breaks in the talk add to your anxiety. In fact, well-paced pauses can relieve tension (both yours and the audience's), signal changes of pace, and allow you to emphasize the importance of certain ideas.
- Don't read directly from your outline, except for a selected quote of three lines or so from the material once or twice in the presentation. Try not to have a separate set of note cards, because the tendency again is to break your contact with the audience and hide behind the scripting device. Disguise your notes in the form of comments on hard copies of your slides and flip charts and notes in the margin of your copy of the outline. Keep your eyes up and on the audience.

Avoid references to administrative or "housekeeping" aspects of the event—leave these to be conveyed by the host of the event. Be enthusiastic and positive about your comments—don't apologize for a lack of discussion on a tangential point, a logistical snafu, or a misstatement of fact or law. The audience generally wants you to succeed, so don't undermine this trust with self-destructive comments. Don't refer to the schedule for the event or other timing issues, because they can distract the audience or otherwise detract from conveying your message (e.g., "Only ten minutes to go," "We may be out of here early," "The previous speakers ran over into my time slot," or "I'll try to get through this quickly, so we can finish on time").

Rehearse the logistical aspects of the presentation, such as the lighting, projectors, or computer presentation software and terminals, before you begin to speak, ideally both the night before and one hour before your presentation. Have adequate numbers and varieties of markers, pointers, flip chart pads, and remote control devices. You don't want to encounter any surprises after it is too late to do anything about them! On your script, note cards, or slide masters, make notes to yourself as to when, for instance, to pass out the handout material, turn on or turn off the projector, or refer to a flip chart.

Avoid clichés, such as opening with a joke, or saying, "It's a pleasure to be here." Don't take the risk of boring or offending the audience with a joke that (1) they may have heard already or (2) you may not tell effectively under pressure. This is not to suggest that you avoid humor altogether, however. Audiences, and speakers' reputations, thrive on it. If you are sure of your skill in this area, you might venture a joke, but it would probably be wiser to open with a "punch line" summary of some of the most interesting of your results or fact situations.

Have a "Plan B" ready to go—flexibility is the watchword of the effective speaker. If the time actually allowed for your talk is shorter than you had thought, due to a misunderstanding or unanticipated events, have a list of topics, videos, or slides that can be eliminated without changing the nature of the talk. Practice your question-and-answer-session skills, especially for occasions where there is more time available than you had anticipated. Do not mention any of these on-the-fly adjustments to the audience—make the changes, don't talk about them.

Observe audience body language, and use signals conveying interest, enthusiasm, boredom, or restlessness to your advantage. Make consistent eye contact with the audience, smile when appropriate, and take a few seconds at the completion of the presentation to accept the audience's show of thanks and savor your job well done.

SUMMARY

The tax professional must become proficient in communicating his or her research results. Recipients of these communications might include oneself or one's peers, via the file memorandum; the client, via a brief letter; or a number of other lis-

teners, via an oral presentation. In each case, the practitioner must be sensitive to the needs, backgrounds, and interests of the recipients of the messages, without sacrificing professional demeanor or responsibilities.

TAX TUTOR

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

KEY WORDS

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

client letter
file memorandum

oral presentations

TAX RESEARCH ASSIGNMENTS

As we have discussed them in this chapter, develop solutions and appropriate documentation for one or more of the problems that you have worked on in previous chapters or for the following fact situations. In this context, proper format and professional content are of equal importance, so that the development of the reader's tax research communication skills will be facilitated.

Specifically, as assigned by your instructor, prepare one or more of the following means of communicating your research results for your chosen problem or case. Be sure to apply the "10-80-10" rule of Exhibit 11-2.

- File memorandum
- Letter to tax-sophisticated client
- Letter to unsophisticated client
- Outline for a tax department meeting
- Article for local business news weekly
- Speech to local chamber of commerce
- Article for *Practical Tax Strategies*
- Speech to State Bar Association conference
- Presentation to client's board of directors
- Presentation to client's senior counsel

- Posting to the Internet Tax Blog for Practitioners
- Posting to the Internet Tax Help group for taxpayers

PROBLEMS

1. Sarah came home one day to find significant water damage in her home. Apparently one of the hoses to her washing machine had worn out and split, spilling water all over the place. Over the next month, mildew appeared as well. Is there any casualty loss deduction for Sarah? Ignore any computational floors and assume that she did not have any homeowners' insurance.
2. Richie is a wealthy rancher in Texas. He operates his ranch through a grantor trust set up by his grandparents. Richie does not like to get his hands dirty, so he hires a professional management company to run the ranch. The property generated a \$500,000 loss this year. Can Richie deduct this loss on his Schedule E, given the material participation rules of § 469?
3. Maggie could not conceive a child using natural means, so she sought out a woman who would donate an egg to be surgically implanted in Maggie, so that Maggie could become a mother. Which of the following items are deductible by Maggie in her process to find an egg donor?
 - a. Payment to a search firm to find donor candidates.
 - b. Payment to Maggie's attorney.
 - c. Payment of a fee to the egg donor.
 - d. Payment to medical staff to run physiological and psychological tests on the prospective donor.
4. Larry and Mo were in the process of being divorced, and the decree as negotiated allowed alimony payments to Mo of \$3,000 on the fifteenth of each month. The divorce was final on July 5, 2009, but Mo was short of cash, so Larry made the payments to her starting already in March. What is Larry's alimony deduction for 2009?
5. Sally incurred a ninety-mile round-trip commute every day, mainly because she could not get along with her supervisor at the sales office four miles from Sally's home. Sally works under a one-year contract, and her assignment to the nearer office is affirmed in the current year's contract, but management has allowed her to travel to the further location. How many deductible commuting miles does Sally accumulate on a work day?
6. Professor White operates a popular bar review course as a sole proprietor. He charges \$2,000 tuition to each student, and he guarantees a full refund of the tuition if the student passes an in-course exam but does not pass the actual bar exam on the first try. White is bold enough to do this because the first-time-pass rate is more than 80 percent for the bar exam (as opposed to less than 15 percent for the certified public accountants [CPA] exam). He collected \$150,000 tuition for his Fall 2008 review section, but he reported the gross receipts on his 2009 Form 1040, because the grades for those taking the fall review are not released until February 2009. Thus, White asserted that he had no constructive receipt of the tuition until February 2009. Is this treatment correct?

7. Lisa, usually a stay-at-home mother, went to the hospital one day for some outpatient surgery. She hired a babysitter for \$35 to watch her four-year-old son while she was gone. What tax benefits are available to Lisa for this cash payment?
8. Same as 7, except that Lisa paid the sitter while she worked as a scout leader for the Girl Scouts.
9. Joan, a traveling sales representative, kept no formal books and records to summarize her gross receipts for the year, but she retained copies of all customer invoices and reported her gross income for the year from these totals. Is she liable for a negligence penalty under § 6662 for failing to keep any books and records?
10. Tex's credit union has provided him with financing to acquire his \$200,000 home. The loan is set up as a three-year note with a balloon payment, but the credit union always renews the loan for another three years at the current interest rate. This year, the credit union renewed Tex's loan for the third time, charging \$3,000 in points. In what year(s) can Tex deduct this \$3,000?
11. Barb and Bob were one-fourth shareholders of a C corporation. When the entity had negative E&P, Barb and Bob secretly withdrew \$200,000 in cash, hiding this fact from the other owners. How much gross income do Barb and Bob report?
12. Detail the tax effects to the Prasads of making the § 1(q)(7)(a)(iv) election to include their seven-year-old daughter's \$10,000 unearned income on their current-year joint return.
13. Eighty percent of the Willigs' AGI comes from their submarine sandwich proprietorship. In 2009, the Willigs lost an IRS audit and owed \$12,000 in 2007 Federal income taxes, all attributable to inventory computations in their business. Interest on this amount totaled \$3,200. All amounts due were paid by the end of 2009. How much of the interest can the Willigs deduct on their 2009 Schedule C?
14. Al and Amy are divorced. In which of the following cases can legal fees be deducted?
 - a. Al pays \$5,000 to get the court to reduce his alimony obligation.
 - b. Amy pays \$5,000 to get the court to increase her alimony receipts.
 - c. Al pays Amy's attorney fees in part b, as required by the original divorce decree.
15. Katie is a one-third owner of an S corporation. After a falling-out with the other shareholders, Katie signed an agreement early in January 2008. Under the terms of the agreement, Katie took \$200,000 of her capital from the corporation and had eight months to negotiate a purchase of the stock of the other shareholders. She did not complete this task by the end of August 2008. Thus, contrary negotiations began and on March 1, 2009, Katie sold all of her shares to the remaining shareholders for a \$2.5 million gain. For how many of these months does Katie report flow-through income from the S corporation?
16. Can an individual make a contribution to an IRA based on unemployment compensation proceeds received?

17. Duane paid his 2004 Federal income taxes in January 2007 in the amount of \$10,000, and then paid \$4,000 interest and penalties on this amount in May 2008. In April 2010, Duane filed a claim for refund of the \$14,000, due to a sizable operating loss from his business in tax year 2009. Can he recover the 2004-related amounts?
18. After an audit was completed, IRS agent van Court informed Harris of the latter's \$10,000 Federal income tax deficiency by leaving a summary memo on Harris's e-mail account. Harris shared this account with his mother, who read the mail first and in a panic confronted Harris with a two-hour "What's this all about?" interrogation. Did van Court violate Harris's right to privacy by using e-mail in this manner?
19. SlimeCo spent \$250,000 to build storage tanks for its waste by-products. This is a recurring expenditure for SlimeCo, because once the tanks are filled, new ones must be built. When can SlimeCo deduct the \$250,000?
20. Prudence was named a shareholder in her law firm, which operates as an S corporation. Her payments into the capital of the firm were to start in about nine months, when an audit would determine the full value of the firm and a new corporate year would commence. Paperwork with the pertinent state offices was completed, naming Prudence as a shareholder and director, and adding her name to that of the firm. But Prudence left the firm eight months after the announcement, that is, before she paid any money for shares. Is Prudence liable for tax on her share of the entity's earnings for the eight months?
21. Laura deducted \$8,100 in state income taxes on her 2008 Federal income tax return. Her refund, received in 2009 after all credits and the minimum tax, was \$7,800 for these taxes.
 - a. How much 2009 gross income must Laura recognize?
 - b. How does your answer change if Laura's 2008 deduction was limited to \$7,200, due to the application of IRC § 68?
22. Cal's son has been labeled a "can't miss" NBA prospect since junior high school. This year, while the son is a college freshman and classified as an amateur under NCAA rules, Cal spent \$14,000 for special clothing, equipment, camps, and personal trainers to keep improving his son's skills. Can Cal deduct these items?
23. CPA Myrna forgot to tell her client Freddie to accelerate the payment of state income and property taxes in a year when Freddie was in an unusually high tax bracket. Upon discovering the error, the parties negotiated a \$15,000 payment from Myrna (and her insurance company) to Freddie to compensate Freddie for Myrna's inadequate professional advice. Is this payment gross income to Freddie?
24. How much of the \$100,000 interest that is paid on a loan from Everett National Bank can Ben deduct if he invests the loan proceeds in the following? Consider each item independently.
 - a. South Chicago School District bonds.
 - b. AT&T bonds, paying \$125,000 interest income this year.

- c. Computer Futures, Inc., shares, a growth stock that pays no dividend this year.
 - d. A life insurance policy on Betty, Ben's wife.
25. Lilly leases a car that she uses solely for business purposes. The car would be worth \$40,050 on the market, and Lilly paid \$7,400 in lease payments this year. How are these items treated on her tax return?

RESEARCH CASES

26. Lizzie filed a gift tax return for a sizable transfer to her nephew. The value of the gift exceeded the annual gift tax exclusion and used up \$1 million of her transfer tax exemption equivalent, so Lizzie's later gifts and taxable estate would have a more likely chance of being taxed.
- Four years later, another relative won a court case against Lizzie and the nephew. Uncle Joe prevailed in showing the court that the gift property was his, not Lizzie's. It seems that title to the property actually was held by Uncle Joe, not Lizzie, so the property was not hers to give away. Uncle Joe recovered the property and associated income from the nephew. But what about Lizzie? Is the \$1 million of her exemption equivalent now wasted?
27. You served as an expert witness in taxation in a recent Tax Court case, charging \$400 per hour for your services. The LLC client who employed you prevailed in the decision against the government, so now the client is filing to recover your fees from the Treasury under § 7430(c)(1)(B)(iii). How much can the client collect?
28. Pete is an engineering professor at State University. Under his contract, Pete's inventions while employed at the university are the property of the Board of Regents, but Pete receives an addition to his salary equal to one-third of the royalties received by the university on his patents. This year, Pete received \$75,000 on top of his salary, as royalties allocated to him. Does Pete recognize this amount as ordinary income or capital gain?
29. Tobey was late in filing his Federal income tax refund claim, but he requested an extension of the statute of limitations, citing the financial disability exceptions of § 6511(h). Tobey's mother is chronically ill, and he must make four-day-a-week trips to another city to care for her. Will the IRS grant Tobey's request?
30. Dean and Robin owned a family business, each holding the shares as community property. When they were divorced in 2005, the court did not force them to split the shares, citing damage to the business that could occur if the public learned that ownership of the enterprise was changing. Now it is 2009 and Robin wants to remarry. She and her new husband want to have the business retitle one-half of the shares in Robin's name only. The original divorce court agrees in 2009. Is this an income taxable transfer? Is it a gift taxable event?
31. Dave took a \$100,000 cash withdrawal from his IRA. He bought \$100,000 of Microcraft stock and, within the rollover period, transferred the stock to another IRA. Does Dave report any gross income?

32. Gold Partners wanted to complete a like-kind exchange just before it liquidated. Accordingly, it sold the real estate it meant to transfer to the other party, and a qualified intermediary held the resulting cash. When the intermediary found acceptable replacement realty, the intermediary transferred cash and the like-kind property directly to the partners, thereby liquidating Gold. Does § 1031 apply?
33. HelpCo pays Hank two \$100,000 salaries per year, one through its WestCo subsidiary and one through its EastCo subsidiary. How do Hank and HelpCo treat his Social Security tax obligations?
34. Zhang lived in Atlanta from 2005 through 2007 to carry out her duties as an employee of YourTV.com, receiving an annual salary of about \$150,000. She was transferred to the San Jose office for 2008 through 2010, and then in 2011 she took an executive position with the Web2.2 LLC in Austin. Zhang owned a home in Atlanta, but she rented an apartment in San Jose. When she withdraws money from her IRA to submit a down payment on her Austin condo, is a 10 percent penalty due?
35. Give three examples of situations where the IRS would waive the two-year rule for applying the §121 exclusion of gain from the sale of a principal residence, due to “unforeseen circumstances.”
36. LaFollette lives in a condo with Tourneau. The two are not married, but they each hold a one-half interest in the deed for their unit. In 2008, the condo association installed a solar water heater. The association paid for the water heating system, but it assessed LaFollette and Tourneau \$7,500 for this expenditure, as it did for other unit owners. Tourneau was short of funds, so LaFollette paid the entire assessment before the end of 2008. Compute LaFollette’s §25D credit against her Form 1040 liability for the year.
37. On December 6, Ed Grimely appeared on the game show, “The Wheel of Fate.” As a result of his appearance, Grimely won the following prizes.

	Manufacturer’s Suggested List Price	Fair Market Value	Actual Cost to the Show
All-expenses-paid trip to Hawaii	\$8,432	\$6,000	\$5,200
One case of Twinkies	16	12	0
Seven music lessons for the calliope	105	35	0
One year of free haircuts	120	60	15

- a. Assuming that Grimely received all of these prizes by the end of the year, compute his gross income from these prizes.
- b. Will this amount change if Grimely refuses to accept the calliope lessons immediately after the program’s taping session is completed?
38. Sing-Yi receives a \$100 debit card every month from her employer, the Porter Group. The debit card is limited so that it only can be used to purchase fare cards and passes on the Metro Transit line that operates trains and subways in town. Sing-Yi throws away the card when it expires at the end of the month, and she is not required to provide any records to Porter about how the card

was used. The card logo says “American Airlines Visa,” and Sing-Yi picks her own password for the card. Does the card represent \$100 monthly gross income to Sing-Yi? Explain.

39. Ellie owned five apartment buildings, each worth \$200,000. For three of the buildings, she worked with employees to keep the property in good repair. This entailed maintaining electrical and plumbing fixtures, common areas, and walls and roofs, and providing janitorial services such as garbage removal, vacuuming, and rest room supplies. For the other two buildings, Ellie’s lease required the tenants to perform this work. Can her estate claim a § 6166 estate tax deferral for any of the buildings?
40. HardCo spent \$4 million this year on a new graphic design for its product, a yo-yo. Under the prior design, HardCo’s name and logo only appeared on the box and wrapping paper, which were discarded by most customers once they started using the product. The new design displayed HardCo’s name and newer, flashier logo on both sides of the yo-yo, with a paint that also made it glow in the dark. When can HardCo deduct the \$4 million?

ADVANCED CASES

These items require that you have access to research materials other than the Federal tax law and related services. For instance, you might need to refer to an international tax or multistate service or to access Internet sources to prepare your solution for these cases. Consult with your instructor before beginning your work, so that you are certain to have available to you all of the necessary research resources for the case(s) that you choose.

41. Tony received some nonqualified and incentive stock options when he worked for his employer in Oregon. But when he took a two-year assignment in another country, the corporation employing Tony there granted him some options, too. Does Tony have gross income in the other country upon receiving or exercising the non-U.S. options? Assume that Tony was assigned to a corporation based in:
 - a. Belgium
 - b. Germany
 - c. Hong Kong
 - d. Russia
 - e. The Netherlands
42. Chico is a corporation operating in several states on the accrual basis. Chico received a state income tax refund this year, in 2010, in the form of a check from the state. Based on the following sequence of events, in which tax year does Chico recognize the refund as gross income?

2007: Generated the operating loss.
2008: Filed the loss carryback form with the state.
2009: Received notice that the refund was approved.
2010: Received the refund check.

43. Rosemary's house just did not sell, after her employer transferred her to another town. After two years of Internet listings, open houses, repairs and improvements, and price cuts, a buyer finally came along. By this time, the house had sat empty for twenty-five months before the closing occurred, and Rosemary rented it out just to help with the mortgage payments. Rosemary claimed a \$40,000 Schedule C loss with respect to the house. Do you agree with this filing position?
44. Edna is a well-paid executive with ADley, a firm that uses stock options and deferred compensation as well as high salaries, to compensate its most successful employees. When Edna and Ron were divorced, Ron got the rights to a bundle of these deferred compensation rights. Complete the following table, indicating the required tax results.

Tax Year	Market Price for Edna's Option Transferred to Ron	Event	Tax Consequences to Edna	Tax Consequences to Ron
2004	\$ 9	Divorce settlement		
2007	\$14	Ron exercises options with \$10 cash payment, then holds stock received.		
2010	\$20	Edna terminates employment with ADley; \$100 lump sum of deferred compensation is distributed to Ron.		
2012	\$22	Ron sells shares received via option contracts.		

45. Wes and Donna were the only members of an LLC, and they fended off unwanted takeover suitors with a clause in the charter that shares could change hands only with unanimous approval from all of the other owners. Wes is now age seventy, so he wants to start phasing out of the business. He makes a gift of 10 percent of the LLC shares to his son Jeffrey as agreed to by Donna. The shares are worth \$20,000. What is Wes's taxable gift in the year of the transfer to Jeffrey?
46. According to the Tax Foundation, what was the country's Tax Freedom Day in 2007? How much of this time was spent with respect to tax liabilities and how much in meeting tax compliance costs? Which states bear the heaviest tax burden? The lightest? Per capita, how much annual total income and total tax does the U.S. citizen generate? What is the average U.S. citizen's average tax rate?
47. Chan's only transaction in the United States this year was to sell the biggest office building in Denver at a \$100 million gain. Chan has no assets, offices, or

- employees in the United States. Can he be taxed on the gain? Why or why not?
48. As the result of a Federal audit, your 2009 Federal taxable income increased by \$27,000. By when must you report this adjustment to your state's revenue department? What form is used for this purpose, where do you obtain it, and where is it to be filed?
 49. Does your state provide a form with which to file for a manufacturer's exemption from sales/use tax? Which form is used for this purpose, where do you obtain it, and where is it to be filed?
 50. For the current period, what is the short-term, quarterly compounded Federal AFR? Mid-term? Long-term exempt interest rate for computing loss carryforwards under § 382?
 51. SalesCo sold Tom a prepaid phone card for \$100 in 2008. Tom used the phone card for communications services in 2009. When can your state collect sales/use tax from SalesCo for the sale to Tom?
 52. GoodCo donated \$40,000 of goods from its inventory to the Red Cross. Does your state require GoodCo to collect or pay sales/use tax on these donated goods?
 53. The Downtown Wellness Clinic, a tax-exempt organization, sells memberships to corporations so that their employees can work out before and after office hours. Three blocks away, the Power Up Fitness Center has similar facilities and also wants to sell memberships to corporate neighbors. Is the Clinic subject to Federal income tax on its membership sales?
 54. Does America Online owe any corporate income tax to your state? Don't compute the tax, but determine whether AOL is subject to any obligation for the current year. Hint: apply the concept of *nexus*.
 55. How much state and local income tax did New York Yankee Alex Rodriguez owe to your state last year?
 56. Find two government documents that discuss potential solutions to the so-called marriage penalty characteristic of the Federal income tax.