

Administrative Regulations and Rulings

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Learning Objectives

- Identify the most important administrative sources of the Federal tax law.
- Distinguish among the structure, nature, and purpose of Regulations, Revenue Procedures, and IRS Rulings.
- Describe how to locate, and how to interpret the precedential value of administrative sources of the tax law.
- Explain the elements of common citations for Regulations and other IRS pronouncements.
- Detail the contents and publication practices of the *Internal Revenue Bulletin* and the *Cumulative Bulletin*.

THE INTERNAL REVENUE SERVICE (IRS), part of the U.S. Treasury Department, is responsible for the administration of the income tax law. The administrative process consists of both interpreting and enforcing the tax laws. The IRS interprets the law by issuing various pronouncements, examples of which include Treasury Regulations, Revenue Rulings, Revenue Procedures, and Private Letter Rulings requested by taxpayers. Enforcement of the tax law by the IRS consists primarily of the systematic audits of tax returns and administering an appeals process for taxpayers to arbitrate disagreement with audit results (see Chapters 13 and 14). In addition, the IRS administers a collection process to collect overdue taxes. The Treasury Secretary delegates the ongoing administrative responsibilities for the tax law to the Commissioner of the IRS, who is a presidential appointee.

To facilitate the IRS's administration of the tax laws, the Code authorizes the Treasury Secretary (or his or her delegate) to prescribe the Rules and Regulations necessary to administer the Code. According to §7805(a),

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

This Code section gives the IRS general authority to issue binding Rules and Regulations concerning Title 26 of the *United States Code*. In practice, most of the IRS's pronouncements are written by IRS staff or by the Office of the Chief Counsel of the IRS, who is an Assistant General Counsel of the Treasury Department.

The tax researcher must be especially familiar with the four major types of pronouncements that may be forthcoming under this authority, namely, Regulations, Revenue Rulings, Revenue Procedures, and Letter Rulings. Each of these categories of rulings is issued for a different purpose and carries a different degree of authority. The first three of these categories generally are published by the IRS, while the Letter Rulings (and other pronouncements) typically are not published by any government agency. The remainder of this chapter addresses the nature and location of each of these administrative pronouncements.

REGULATIONS

The **Regulations** constitute the IRS's and, thereby, the Treasury's official interpretation of the *Internal Revenue Code*. Regulations are issued in the form of **Treasury Decisions (TDs)**, which are published in the *Federal Register* and, sometime later, in the *Internal Revenue Bulletin*, discussed later in this chapter. At least thirty days before a TD is published in final form, however, it must be issued in proposed form, allowing interested parties time to comment on it. As a result of the comments received during this process of public hearings, the IRS may make changes in the TD before its final publication.

Before and during the hearings process, the TDs are referred to as **Proposed Regulations** and, unlike Final Regulations, do not have the effect of law. After the hearings are completed, and changes (if any) have been made to the text of the TD, the TD is published in final form. Final Regulations are integrated with previously approved TDs and constitute the full set of IRS Regulations. After this integration has occurred, the TD designation usually is dropped, and the pronouncement simply is referred to as a "Regulation."

Observers have identified two distinct categories of Regulations, general and legislative. **General Regulations** are issued under the general authority granted to

the IRS to interpret the language of the Code, usually under a specific Code (or Committee Report) directive of Congress, and with specific congressional authority. An example can be found under §212, Expenses for the Production of Income. This short Code section has many pages of interpretive Regulations, providing taxpayers with operational rules for applying this provision to tax situations.

With respect to **Legislative Regulations**, the IRS is directed by Congress to fulfill effectively a law-making function and to specify the substantive requirements of a tax provision. Regulations that are ordered by the Code in this manner essentially carry the authority of the statute itself and are not easily challenged by taxpayers. Such authority is granted because, in certain (especially technical) areas of the tax law, Congress cannot or does not care to address the detailed or complex issues that are associated with an otherwise-defined tax issue. Accordingly, Congress directs the IRS to pronounce Regulations on the matter. For example, Congress delegated to the IRS the authority to prescribe Regulations necessary to carry out the provisions of §135, which grants an exclusion for interest on certain U.S. savings bonds used for higher education expenses, including Regulations requiring record keeping and information reporting. Another example of this legislative authority is found in §385, which directs the IRS to prescribe Regulations to distinguish debt from equity in “thinly capitalized” corporations. Legislative Regulations bear the greatest precedential value of any IRS pronouncement.

Temporary Regulations

In addition to Proposed and Final Regulations, the IRS periodically issues **Temporary Regulations** in response to a congressional or judicial change in the tax law or its interpretation. Temporary Regulations are not subject to the public-hearings procedure that typifies the development of a Final Regulation, and they are effective immediately upon publication. Although they are effective immediately, the IRS must simultaneously issue the Regulations in proposed form; the Temporary Regulations expire three years after issuance pursuant to the statute.¹ Temporary Regulations are issued to provide the taxpayer with immediate guidance concerning a new provision of the law, perhaps concerning filing requirements that must be satisfied immediately or the clarification of definitions and terms.

Until a Temporary Regulation is replaced with the Final Regulation under a Code section, the tax researcher should treat the Temporary Regulation as though it were final. Thus, Temporary Regulations are fully in effect and must be followed until they are superseded, whereas Proposed Regulations, having been issued only to solicit comments and to expose the IRS’s proposed interpretation of the law, need not be followed as if they were law.

Effective Date of Regulations

In general, a new Regulation can be effective on the date on which such Regulation is filed with the *Federal Register*.² However, there are certain situations in which a Regulation can be effective retroactively. These are

- The Regulation is filed or issued within eighteen months of the date of the enactment of the statutory provision to which the Regulation relates.
- The Regulation is designed to prevent abuse by taxpayers.

¹IRC §7805.

²IRC §7805(b).

- The Regulation corrects a procedural defect in the issuance of a prior Regulation.
- The Regulation relates to internal Treasury Department policies, practices, or procedures.
- The Regulation may apply retroactively by congressional directive.
- The Commissioner also has the power to allow taxpayers to elect to apply new Regulations retroactively.

In situations where a Regulation applies retroactively, it technically can apply starting with the date of the underlying Code section to which it relates. However, the statute of limitations may limit the application of a retroactive Regulation in many situations.

Citing a Regulation

Tax practitioners use a uniform system for citing specific Regulations. Each Regulation is assigned a unique number by the Treasury, which is broadly based on the Code section being interpreted in that Regulation. An example of this citation system appears in Exhibit 4-1.

Exhibit 4-1: Interpreting a Regulation Citation

Reg. § 1.162-21 (a) (2)

—————→	Type of Regulation (1 = income tax)
┌—————→	Related Code Section (162)
┌—————→	Regulation Number (21)
┌—————→	Regulation Paragraph (a)
┌—————→	Regulation Subparagraph (2)

Regulation number	SEC. 1.162-21 FINES AND PENALTIES.
Paragraph →	(a) In general. No deduction shall be allowed under section 162(a) for any fine or similar penalty paid to—
Subparagraph →	(1) The government of the United States, a State, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;
Subparagraph →	(2) The government of a foreign country; or
Subparagraph →	(3) A political subdivision of, or corporation or other entity serving as an agency or instrumentality of, any of the above
Paragraph →	(b) Definition.
Subparagraph →	(1) For purposes of this section a fine or similar penalty includes an amount—

The number to the left of the period in a Regulation citation indicates the type of issue that is addressed in the pronouncement. The most commonly encountered types of Regulations include the following.

1. Income Tax
20. Estate Tax
25. Gift Tax
31. Employment Tax
301. Procedural Matters

By being familiar with this arbitrary numbering system used by the Regulations, the tax researcher immediately can identify the general issue that is addressed in a pronouncement. Note that these numbers indicating the type of issue addressed in the Regulation do not necessarily correspond to the chapter numbers of the Code sections that address the same issues.

The number to the immediate right of the period in the citation of a Regulation indicates the Code section to which the Regulation relates. In the Exhibit 4-1 example of a full citation, one can determine that this is an income tax Regulation dealing with §162 of the *Internal Revenue Code*. The numbers and letters to the right of the section number denote the Regulation number and smaller divisions of the pronouncement. Regulation numbers typically are consecutive, starting with 0 or 1, and follow the general order of the issues that are addressed in the corresponding Code section. The Regulation numbers, paragraphs, and so on do not necessarily correspond, however, to the subsection or other division designations of the underlying Code section.

The numbering system for Temporary Regulations is similar to the numbering system for the Final and Proposed Regulations; however, usually the reference to or citation of a Temporary Regulation will include a “T” designating the temporary nature of the Regulation. An example of a citation for a Temporary Regulation under Code §280H is **Reg. §1.280H-1T(b)(3)**.

Assessing Regulations

In the course of tax practice, the researcher occasionally is faced with a question concerning the validity of a Regulation. If the practitioner disagrees with the scope or language of the Regulation, he or she bears the burden of proof of showing that the Regulation is improper. This can be difficult. Many Regulations simply restate the Code or congressional Committee Reports; they are known as “hard and solid” Regulations. Moreover, because of the authority delegated to the IRS, Legislative Regulations have the full force and effect of law. Finally, the Supreme Court views General Regulations as also having the force and effect of law, unless they conflict with the statute.³ Thus, a taxpayer challenge to a Regulation typically must assert an improper exercise of IRS power, or an overly broad application of a rule.

In questioning the provisions of a Regulation, the tax researcher must be aware of several accuracy-related penalties Congress has enacted in the *Internal Revenue Code*. For example, a penalty is assessed equal to 20 percent of any underpayment of tax where the underpayment is found to be due to “negligence” on the part of the taxpayer.⁴ Generally, negligence includes any failure to make a reasonable attempt to comply with the Code or any evidence of disregard of Treasury Rules or Regulations. Thus, if a practitioner chooses to ignore an administrative element of

³*Maryland Casualty Co. v. U.S.*, 251 U.S. 342 (1920).

⁴IRC §6662.

Exhibit 4-2: Sources of Administrative Tax Law

Computer Sources	
<i>RIA Checkpoint</i>	Research Institute of America
<i>Westlaw</i>	West Publishing Co.
<i>CCH Tax Research Network</i>	Commerce Clearing House
<i>Kleinrock's</i>	Kleinrock Publishing Co.
<i>Lexis</i>	LexisNexis
Printed Sources	
<i>Tax Coordinator 2d</i>	Research Institute of America
<i>United States Code Annotated</i>	West Publishing Co.
<i>Standard Federal Tax Reporter</i>	Commerce Clearing House
<i>Cumulative Bulletin</i>	Government Printing Office
<i>Public Law Legislative History</i>	Commerce Clearing House
<i>Primary Sources (since 1968)</i>	Bureau of National Affairs

the tax law, he or she must possess substantial authority to do so to avoid this penalty or others of its kind. See Chapter 14 for a more detailed examination of these provisions.

Locating Regulations

When TDs are final, they are published in the *Internal Revenue Bulletin*, a weekly newsletter of the IRS. Twice a year, the IRBs are indexed and bound into a set of volumes titled the *Cumulative Bulletin*, which becomes the permanent IRS location of the Regulations.

Most commercial tax services also reproduce the Regulations in their materials; annotated services usually include the text adjacent to the language of the Code and the related court case notes, and topical services usually provide an appendix that includes the edited Regulations for the volume or chapter that discusses the pertinent issue. Paperback or hardbound editions of the tax Regulations also are available from several commercial publishers, including Research Institute of America (RIA) and Commerce Clearing House (CCH), typically as a companion to a similar edition of the Code. Exhibit 4-2 shows common places where the tax researcher can find the Regulations and most other sources of administrative tax research material.

REVENUE RULINGS

Revenue Rulings are second to Regulations as important administrative sources of the Federal tax law. A Revenue Ruling is an official pronouncement of the National Office of the IRS; it deals with the application of the Code and Regulations to a specific factual situation, usually one that has been submitted by a taxpayer. Thus, many Revenue Rulings indicate how the IRS will treat a given taxpayer transaction. In addition, Revenue Rulings provide taxpayers needed information such as the short-term, mid-term, and long-term applicable Federal interest rates. These rates are used for complying with required tax law calculations.

Revenue Rulings do not carry the force and effect of Regulations. Revenue Rulings provide excellent sources of information; in fact, they are published chiefly for the purpose of guiding taxpayers. Therefore, even for a tax researcher whose client did not submit the original request for the Ruling, the result of the Ruling is of value if it concerns a transaction similar in nature, structure, or effect to the client's situation. Reliance should, however, not be placed on a Revenue Ruling if it has been affected by subsequent legislation, Regulations, Rulings, or court decisions.

Revenue Rulings adhere to a general internal structure, as illustrated in Exhibit 4-3. The typical structure is as follows.

Issue: A statement of the issue in question.

Facts: The facts on which the Revenue Ruling is based.

Law and analysis: The IRS's application of current law to the issue in the Revenue Ruling.

Holding: How the IRS will treat the transaction.

Exhibit 4-3: Revenue Ruling

REV. RUL. 2007-1

ISSUES

1. If a credit card issuer becomes entitled to a fee if it refuses to honor a credit card convenience check that, if honored, would leave the cardholder over the cardholder's credit limit, is the fee interest income for federal income tax purposes?
2. When is the credit card fee that is described in Issue (1) includible in gross income by the card issuer?

FACTS

X, a taxpayer that uses an overall accrual method of accounting for federal income tax purposes, issues a credit card to A. The credit card allows A to access a revolving line of credit to make purchases of goods and services and to obtain cash advances, including cash advances obtained through A's use of a convenience check made available through A's credit card account (an "account check").

There is a written agreement between X and A that sets forth the terms and conditions governing A's use of the credit card (the "Cardholder Agreement"). Under the terms and conditions of the Cardholder Agreement, X is not required to honor one of A's account checks if, when the account check is presented to X for payment, either A is overdrawn on A's line of credit or payment of the check would cause A to become overdrawn. Under the agreement X is entitled to impose a \$25 fee (the "Credit Card NSF Fee") on A if an account check is presented to X that, if honored, would leave A overdrawn and X does not in fact honor the check (the "NSF Event").

A writes an account check and uses it to make a payment to a third party. X does not honor A's account check when the third party presents it for payment because A would be overdrawn on A's line of credit if X honored the account check at that time. X is therefore entitled to impose a \$25 Credit Card NSF Fee on A in accordance with the terms of X's Cardholder Agreement with A.

LAW AND ANALYSIS

For federal income tax purposes, interest is an amount that is paid in compensation for the use or forbearance of money. *Deputy v. DuPont*, 308 U.S. 488 (1940); *Old Colony Railroad Co. v. Commissioner*, 284 U.S. 552 (1932). Neither the label used for the fee nor a taxpayer's treatment of the fee for financial or regulatory reporting purposes is determinative of the proper

continued

Exhibit 4-3: (continued)

federal income tax characterization of that fee. See *Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 542-43 (1979); Rev. Rul. 72-315, 1972-1 C.B. 49.

When X determines that it will not honor A's account check that the third party has presented for payment because A would be overdrawn on A's line of credit, X is denying A the use of X's funds. Thus, the \$25 Credit Card NSF Fee does not compensate X for the use or forbearance of money, and it is not interest income for federal income tax purposes.

Under §451(a) of the Internal Revenue Code, the amount of any item of gross income is includible in gross income for the taxable year in which it is received by the taxpayer, unless that amount is to be properly accounted for in a different period under the method of accounting used by the taxpayer in computing taxable income.

* * *

HOLDINGS

1. The Credit Card NSF Fee is not interest for federal income tax purposes.
2. The Credit Card NSF Fee is includible in gross income for federal income tax purposes when the NSF Event occurs.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Jonathan Silver and Tina Jannotta of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact the principal authors at (202) 622-3930 (not a toll-free call).

About seventy-five Revenue Rulings are released by the IRS each year (e.g., sixty-three in 2006). Each is identified by the year in which it was released and the consecutive number of the Ruling for that year. The IRS publishes them in the weekly *Internal Revenue Bulletin* and, later, in the *Cumulative Bulletin*.

Revenue Ruling Citations

Revenue Rulings bear both a temporary and a permanent citation. The temporary citation is structured as follows.

Rev. Rul. 2005-7, 2005-9 I.R.B. 712, where

2005-7 is the Revenue Ruling number (the seventh Revenue Ruling of 2005).

2005-9 is the weekly issue of the *Internal Revenue Bulletin* (the ninth week of 2005).

I.R.B. is the abbreviation for the *Internal Revenue Bulletin*.

712 is the page number where the Ruling starts in the *Internal Revenue Bulletin*.

The permanent citation for the same Revenue Ruling would be as follows.

Rev. Rul. 2005-7, 2005-1 C.B. 712, where

2005-7 is the Revenue Ruling number (the seventh Revenue Ruling of 2005).

2005-1 is the volume number of the *Cumulative Bulletin* (Volume 1 of 2005).

C.B. is the abbreviation for the *Cumulative Bulletin*.

712 is the page number where the Ruling starts in the *Cumulative Bulletin*.

Once the pertinent *Cumulative Bulletin* is published, the temporary citation is normally no longer used. The page number in the I.R.B. is the same as that in the C.B. Before 2000, Revenue Rulings were given a two-digit identification number instead of the current four-digit number (e.g., Rev. Rul. 98-23).

Locating Revenue Rulings

Generally, the tax researcher must examine every applicable Revenue Ruling before a tax research project is complete. Revenue Rulings can be found at most of the locations (i.e., commercial tax services, the *Cumulative Bulletin*, and some Internet sites) shown in Exhibit 4-2. Prior to 1953, Revenue Rulings were known by different names, including Appeals and Review Memorandum (ARM), General Counsel's Memorandum (GCM), and Office Decision (OD). These early rulings still may have some application in client situations if the IRS has not revoked them or modified them in any way. A tax researcher cannot ignore such rulings simply because they are old.

The current status of a Revenue Ruling or other IRS ruling can be checked in the most current index to the *Cumulative Bulletin*. In addition, several of the printed commercial tax services (i.e., RIA and CCH) present a variety of finding lists and other references with which to examine the status of a ruling.

REVENUE PROCEDURES

Revenue Procedures deal with the internal practice and procedures of the IRS in the administration of the tax laws. They constitute the IRS's way of releasing information to taxpayers. For example, when the IRS releases specifications for facsimile tax forms generated by a computer service, or informs the public about areas in which it will no longer issue Revenue Rulings, it issues a Revenue Procedure to that effect. Although a Revenue Procedure may not be as useful as a Regulation or a Revenue Ruling in the direct resolution of a tax research problem, the practitioner still should be familiar with all of the pertinent Procedures.

Revenue Procedures are issued in a manner similar to that for Revenue Rulings. They are first published in the weekly *Internal Revenue Bulletin* and later are included in the bound edition of the *Cumulative Bulletin*. The IRS issues approximately seventy-five Revenue Procedures per year (e.g., there were fifty-six in 2006).



SPOTLIGHT ON TAXATION

Factoid

Between 1954 and 2007, the IRS has issued approximately 20,000 Revenue Rulings and Revenue Procedures. This is an average of about 400 Rev. Ruls. and Rev. Procs. per year. But the average since 2000 has been less than one-half of that.

A Revenue Procedure is cited using the same system as that for Revenue Rulings, that is, adopting first a temporary and then a permanent citation. In this regard, the temporary citation refers to the location of the Procedure in the *Internal Revenue Bulletin*, and the permanent citation denotes its location in the *Cumulative Bulletin*. Thus, a typical Revenue Procedure would have the following permanent citation.

Rev. Proc. 2005-78, 2005-2 C.B. 1177

A Revenue Procedure is reproduced in Exhibit 4-4. Revenue Procedures can be found in the same publications in which Revenue Rulings are located.

Exhibit 4-4: Revenue Procedure Excerpt

Rev. Proc. 2004-22, 2004-15 I.R.B. 727

SECTION 1. PURPOSE

This revenue procedure provides transition relief from Revenue Ruling 2004-38 for determining an “eligible individual” under section 223 who may make contributions to a Health Savings Account (HSA). The transition relief covers the months before January 1, 2006, in the case of an individual who is covered by both a high deductible health plan (HDHP) and by a separate plan or rider that provides prescription drug benefits before the minimum annual deductible of the HDHP is satisfied.

SECTION 2. BACKGROUND

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added section 223 to the Internal Revenue Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003. Generally, an “eligible individual” is an individual who is covered by an HDHP and no health plan that is not an HDHP. Revenue Ruling 2004-38, clarifies that an individual who is covered by a health plan that provides prescription drug benefits before the minimum annual deductible of an HDHP has been satisfied, is not an “eligible individual” under section 223(c)(1)(A) and may not make contributions to an HSA. Because of the short period between the enactment of HSAs and the effective date of section 223, many employers and health insurance providers have been unable to modify the benefits provided under their existing health plans to conform to the statutory requirements for an HDHP. Thus, it is appropriate to provide transition relief to allow individuals to contribute to an HSA who would otherwise qualify as eligible individuals but for coverage by a prescription drug benefit provided under a separate plan or rider that is not an HDHP.

SECTION 3. APPLICATION

For months before January 1, 2006, an individual who would otherwise be an “eligible individual” under section 223(c)(1)(A), but is covered by both an HDHP that does not provide benefits for prescription drugs and by a separate health plan or rider that provides prescription drug benefits before the minimum annual deductible of the HDHP is satisfied (i.e., the separate prescription drug plan is not an HDHP), will continue to be an “eligible individual” and may make contributions to an HSA based on the annual deductible of the HDHP.

SECTION 4. EFFECT ON OTHER DOCUMENTS

The holding of Revenue Ruling 2004-38 is suspended in part and replaced by the transition relief provided in this revenue procedure for months before January 1, 2006.

DRAFTING INFORMATION

The principal author of this notice is Shoshanna Tanner of the Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Tanner at (202) 622-6080 (not a toll-free call).

LETTER RULINGS

The tax researcher is also interested in the *letter rulings* that are issued by the IRS in several forms, including Private Letter Rulings, Determination Letters, and Technical Advice Memoranda. The IRS does not publish these items in any official collection, but they are available from several commercial sources, as will be discussed later in this chapter.

Private Letter Rulings

The National Office of the IRS issues **Private Letter Rulings** in response to a taxpayer's request for the IRS's position on a specified tax issue. The IRS has the authority to decline to issue Letter Rulings under certain conditions, such as where the problem is one of an inherently factual nature. The content, format, and procedures that are used for Revenue Rulings apply with respect to Private Letter Rulings. The IRS does not publish its reply in the *Internal Revenue Bulletin* or *Cumulative Bulletin*. Rather, it sends its response only to the taxpayer who submitted the request. An excerpt of a Private Letter Ruling is shown in Exhibit 4-5.

Exhibit 4-5: Private Letter Ruling

LTR 200703016 COMPANY GRANTED EXTENSION TO FILE S CORP ELECTION.

Dear * * *:

This responds to a letter dated February 28, 2006, submitted on behalf of X, requesting relief under §1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on D1 under the laws of State. X intended to be treated as an S corporation for Federal tax purposes effective D2, but the election was not timely filed.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect to be an S corporation. Section 1362(b) provides the rule for when an S election will be effective.

Section 1362(b)(2) provides that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if no election is made pursuant to section 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such election as timely made for such taxable year and effective as of the first day of that year.

X did not file a timely election to be treated as an S corporation under section 1362(a) effective D2. X has, however, established reasonable cause for not making a timely election and is entitled to relief under section 1362(b)(5).

CONCLUSION

Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, and that within 60 days from the date of this letter, X submits a properly completed Form 2553, with a copy of this letter attached, to the appropriate service center, we conclude that X will be recognized as an S corporation effective D2.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether X is, in fact, an S corporation for federal tax purposes.

continued

Exhibit 4-5: (continued)

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
 Dianna K. Miosi
 Chief, Branch 1
 Office of the Associate Chief Counsel
 (Passthroughs & Special Industries)

The process is as follows. The taxpayer asks the letter ruling application IRS to disclose its interpretation of the Code, Regulations, and pertinent court cases for a transaction the taxpayer describes; the description should include a statement of the business purpose for the transaction. For instance, if two corporations plan to merge, one of them might request a Private Letter Ruling to find out whether the IRS believes that the Code's tax-favored reorganization provisions will apply to the anticipated merger. In many cases, if the IRS asserts that the transaction will not receive a treatment favorable to the taxpayer, it will suggest means by which the transaction could be restructured to obtain the favorable treatment.

As mentioned, a Private Letter Ruling is issued only to the taxpayer who requested the ruling. However, Private Letter Rulings are included in the list of authorities constituting "substantial authority" upon which a taxpayer may rely to avoid certain statutory penalties.⁵ Letter Rulings are, in any case, an important source of information, because they indicate how the IRS may treat a similar transaction.

Private Letter Rulings also constitute an important IRS stimulus for new Revenue Rulings. When the IRS comes across an unusual transaction that it believes to be of general interest, or when it receives a flurry of Letter Ruling requests concerning very similar factual situations, a Private Ruling may be converted into Revenue Ruling form and published in official administrative sources. The IRS must notify the taxpayer of its intention to disclose the ruling, and the taxpayer has the right to protest such disclosure. Before publication, all aspects of the new ruling, including the statement of facts, are purged of any reference to the taxpayer's name or other identifying information.



SPOTLIGHT ON TAXATION

Factoid

The IRS has issued almost 100,000 Letter Rulings and Technical Advice Memoranda since 1980. As a result, a tax researcher is faced with an average of over 3,000 new research documents every year just from this one source of authority.

Technical Advice Memoranda

A **Technical Advice Memorandum** is issued by the IRS's National Office, making it similar in this regard to the Private Letter Ruling and different from the Determination Letter. The Technical Advice Memorandum, however, concerns a

⁵Reg. §1.6662-4(d)(3)(iii).

completed transaction. Whereas a Private Letter Ruling typically is requested by a taxpayer prior to completing a transaction or filing a tax return, a Technical Advice Memorandum usually is requested by an agent when a question arises during an audit that cannot be answered satisfactorily by the local office.

Similar to the Private Letter Ruling, a Technical Advice Memorandum applies strictly to the taxpayer for whose audit it was requested, and it cannot be relied on by other taxpayers. However, again, the information that is contained in the memorandum may be useful to the tax researcher for the insight that it gives concerning the thinking of the IRS relative to a given problem area in taxation.

These memoranda are not included in any official IRS publication, but they are open for public inspection, as we will discuss next. If the facts or the holding of a Technical Advice Memorandum are felt by the IRS to be of general interest, the memorandum may be converted into Revenue Ruling format and published by the IRS in the *Internal Revenue Bulletin* and the *Cumulative Bulletin*.

Determination Letters

A **Determination Letter** is similar in purpose and nature to a Private Letter Ruling, except that it is issued by a local office of the IRS, rather than by the National Office of the IRS. Because a Determination Letter is issued by a lower-level IRS official, it usually deals with issues and transactions that are not overtly controversial. For instance, the trustee of a pension plan might request a Determination Letter to ascertain whether the plan is qualified for the Code's tax-favored deferred compensation treatment.

Determination Letters usually relate to completed transactions rather than to the proposed transactions that typically lead to the issuance of a Private Letter Ruling. Determination Letters are not included in any official IRS publication, but they are available to the tax researcher from commercial and Internet sources.

Public Inspection of Written Determinations

The public can receive copies of any unpublished IRS Letter Rulings, e.g., in lieu of using a subscription commercial service.⁶ Included under this provision are Private Letter Rulings, Determination Letters, and Technical Advice Memoranda. Before any public inspection is allowed, however, the IRS is required to remove the taxpayer's name and any other information that might be used by a third party to identify the taxpayer.⁷ In addition, the IRS is required to purge the document of any items that could affect national defense or foreign policy, trade secrets, financial information, data relative to the regulation of financial institutions, geographical data, and items that could invade personal privacy. If the taxpayer opposes the disclosure of the written determination, he or she can bring the matter before the IRS and the Tax Court prior to the scheduled disclosure.

Once all of the required data have been removed from the written determination, it must be made open for public inspection online and at such places as the Treasury Secretary designates in the Regulations. Information of this type is available in Washington, D.C., and at selected other locations.

The precedential value of any of these written determinations is strictly limited.⁸ Overall, such pronouncements may not be cited as authority in a tax matter by either the taxpayer or the IRS. However, Letter Rulings can be used as "examples" of IRS treatment of similar factual patterns when dealing with the IRS.

⁶IRC §6110(f).

⁷IRC §6610(c).

⁸IRC §6110.

For example, tax practitioners could suggest that a Letter Ruling be used as guidance in a similar situation during an audit. However, an IRS agent need not follow a Letter Ruling issued to a different taxpayer.

Taxpayers may rely on Private Letter Rulings, Technical Advice Memoranda, Actions on Decisions, General Counsel Memoranda, and other similar documents published by the IRS in the *Internal Revenue Bulletin*, to avoid certain understatement of tax penalties. But use of such pronouncements for this purpose does not expand the general precedential value of these pronouncements with respect to determining a taxpayer's tax liability.

Written Determination Numbering System

Because the IRS issues thousands of Letter Rulings per year, it assigns a nine-digit document number to each written determination for identification purposes. The first four digits indicate the year in which the ruling was issued, the next two numbers denote the week, and the last three digits indicate the number of the ruling for the week. Thus, a lengthy but unique identifier is created for each pronouncement. For example, the number of a Letter Ruling can be interpreted as follows.

Ltr. Rul. 200917024, where

2009 is the year the Ruling is issued.

17 is the week of the year the Ruling is issued.

024 indicates that this is the twenty-fourth Ruling issued that week.

Before 2000, only a two-digit date was used to signify the year in which the ruling was issued (e.g., 9814026).

Locating Written Determinations

The tax researcher needs access to written determinations to complete many tax research projects. Selected written determinations can be found in summary form in the major tax services. However, if the tax researcher needs access to the full text of a large number of IRS pronouncements, an electronic database is the best approach. Consult Exhibit 4-2 for the online computer tax databases that contain the full text of IRS written determinations.

Other IRS Pronouncements

The IRS issues several other types of information that can be of value to the tax researcher, including acquiescences and nonacquiescences, the *Internal Revenue Bulletin*, Chief Counsel Memoranda, and other miscellaneous publications.

Acquiescences and Nonacquiescences

When the IRS loses an issue or decision in court, the Commissioner may announce an acquiescence or nonacquiescence to the decision. An **acquiescence** indicates that the court decision, although it was adverse to the IRS, will be followed in similar situations. The Commissioner determines, at his or her own discretion, the degree of similarity required before the IRS will follow the result that is unfavorable to itself.

A **nonacquiescence** indicates that the IRS disagrees with the adverse decision in the case and will follow the decision only for the specific taxpayer whose case resulted in the adverse ruling. If the IRS wishes to express agreement with only part of the decision that is settled in the taxpayer's favor, the Commissioner may non-acquiesce with respect to certain issues. Finally, an acquiescence or non-acquiescence is not issued if the IRS prevails in a court case, because it likely agrees with all pertinent holdings.

Nonacquiescence may indicate to the tax practitioner that the IRS is likely to challenge a similar decision for the taxpayer in a case that has a similar factual situation. However, the issuance of an acquiescence does not necessarily mean that the IRS agrees with the adverse decision, but only that it will not pursue the matter in a (similar and) subsequent case. Each of these items of information can be useful when the practitioner prepares for, or anticipates, a court challenge to the client's position in a tax matter.

As mentioned, if the IRS has acquiesced to a case, then the taxpayer can rely on that decision as a precedent that will be followed by agents for similar fact patterns. However, if the IRS has nonacquiesced, the taxpayer must evaluate whether to pursue a similar fact pattern in court. Such factors as the cost of litigation plus the probability of winning must be appraised before proceeding with a case similar to one with which the IRS has nonacquiesced.

Occasionally, the IRS changes (with an attendant retroactive effect on taxpayers) its acquiescence or nonacquiescence position by withdrawing the original pronouncement. For example, in *U.S. v. City Loan and Savings*, 287 F.2d 612 (CA-6, 1961), the court allowed the IRS to withdraw an acquiescence on an issue-by-issue, but not taxpayer-by-taxpayer, basis. This change may occur after only a short time passes or many years later. Such a change in the IRS's position typically is accompanied by a brief explanation of the reason for the change—for example, because of a contrary holding in a subsequent court case or a change in the agency's policy concerning the issue.

IRS acquiescence decisions are driven by related litigation costs, revenue effects, and administrative and policy directives. The Service issues acquiescences/nonacquiescences as **Actions on Decision (AOD)**, relative to the following court decisions.

- Regular Tax Court
- Memorandum Tax Court
- District Court
- Court of Federal Claims
- Courts of Appeal

IRS Actions on Decision are published in the *Internal Revenue Bulletin* and thereafter, in the *Cumulative Bulletin*. They are prepared by the office of the Associate Chief Counsel (Litigation). AODs are public documents, and they generally include:

- The issue decided against the government,
- The pertinent facts,
- A discussion of the reasoning supporting the acquiescence/nonacquiescence decision.⁹

Exhibit 4-6 reproduces an acquiescence from the *Cumulative Bulletin* in which the IRS indicates its position on a case. A citator (see Chapter 8) also can be used to locate and interpret acquiescence and nonacquiescence decisions.

After the IRS issues such a pronouncement, any reference to the citation for the case includes either the abbreviation “Acq” or “Nonacq” (or, occasionally,

⁹*Taxation with Representation Fund v. IRS*, 485 F. Supp. 263 (DDC, 1990).

Exhibit 4-6: Action on Decision

ACTION ON DECISION 2003-01

January 10, 2003

SUBJECT: Doyle, Dane, Bernbach, Inc. v. Commissioner., 79 T.C. 101 (1982).

ISSUE: Whether an accrual method taxpayer must include in its gross income for 1975 amounts representing claimed refunds of New York State franchise taxes and New York City general corporate taxes paid for 1972 which became refundable by virtue of a net operating loss incurred in 1975 and carried back to 1972.

DISCUSSION: The Service issued an action on decision that non-acquiesced in the decision of Doyle, Dane, Bernbach, Inc. v. Commissioner, 1 C.B. 1. In a revenue ruling published elsewhere in this issue of the Internal Revenue Bulletin, the Service has concluded that New York State's approval of corporate franchise tax refund claims resulting from net operating loss carrybacks is not ministerial but involves substantive review. Accordingly, a New York State corporate franchise tax refund attributable to a net operating loss carryback is includible in the income of a taxpayer using the accrual method of accounting when the taxpayer receives payment or notice that the refund claim has been approved, whichever is earlier. SEE Rev. Rul. 2003-3.

RECOMMENDATION: Acquiescence. The action on decision approved on June 27, 1988 is withdrawn and replaced with this action on decision.

Reviewers:

NORMA ROTUNNO

Attorney Branch 2

Associate Chief Counsel

(Income Tax & Accounting)

Approved:

By B. JOHN WILLIAMS, JR.

Chief Counsel

“NA”) to indicate the subsequent development. The AOD itself should not be cited as an IRS precedent, though.

Internal Revenue Bulletin

The IRS's official publication for its pronouncements is the *Internal Revenue Bulletin*. Most IRS Revenue Rulings and Revenue Procedures, and the agency's acquiescences and nonacquiescences to regular Tax Court decisions, first are published in the IRB. This reference bulletin also includes the following information, all of which can be useful to the tax researcher.

- New tax laws, issued by Congress as Public Laws
- Committee Reports underlying tax statutes
- Procedural rules
- New tax treaties
- TDs (which become Regulations)
- Other notices

Interested parties can subscribe to the *Internal Revenue Bulletin* by contacting the IRS. Alternatively, some of the commercial tax services include subscriptions to, or

reproductions of, all of the issues of the *Internal Revenue Bulletin*. The *Internal Revenue Bulletin* is available by subscription in hard copy, and online in html and pdf formats.

The semiannual publication of the IRBs into the *Cumulative Bulletin* provides a permanent, bound, and indexed collection of the IRS documents. Citations to written determinations should be changed to the permanent version when the corresponding CB is printed.

Chief Counsel Memoranda

The office of the IRS's Chief Counsel periodically generates memoranda that may be of use to the tax researcher. Although the IRS does not publish these memoranda in any official document, they are available from commercial publishers. A **Technical Memorandum (TM)** is prepared in the production of a Proposed Regulation. A GCM is generated upon the request of the IRS, typically as a means to assist in the preparation of Revenue Rulings and Private Letter Rulings. In addition, the Chief Counsel's office gives various forms of advice to IRS offices and personnel. IRS Chief Council Pronouncements are summarized in Exhibit 4-7.

These documents are available for public inspection and can be found on most computer-based tax services.

Announcements and Notices

The IRS issues **Announcements and Notices** concerning items of general importance to taxpayers. Announcements are public pronouncements that have immediate or short-term value such as an approaching deadline for making an election. Notices contain guidance involving substantive interpretations of the Code or other provisions of the law that usually have long-term application. Exhibit 4-8 reproduces a typical Notice. Both Notices and Announcements are published in the weekly *Internal Revenue Bulletin*.

Exhibit 4-7: IRS Chief Counsel Pronouncements

Document	Purpose
Technical Memorandum (TM)	TMs are prepared in the production of a Proposed Regulation.
General Counsel's Memorandum (GCM)	GCMs assist in the preparation of Revenue Rulings and Private Letter Rulings.
Action on Decision (AOD)	AODs are prepared when the IRS loses a case in a court. They convey the IRS decision to acquiesce/nonacquiesce.
Field Service Advice (FSAs)	FSAs are nonbinding advice, guidance, and analysis provided by IRS National Office attorneys to IRS field personnel.
Chief Counsel Notices (CCNs)	CCNs are temporary directives the IRS national office uses to disseminate policies, procedures, instructions, and/or delegations of authority to Chief Counsel employees.
Service Center Advice (SCAs)	SCAs are guidance provided by the IRS National Office to IRS service centers and related IRS functions concerning their tax administration responsibilities.

Exhibit 4-8: IRS Notice**Notice 2007-10**

This notice announces that the Treasury and the Internal Revenue Service (IRS) will amend §301.7701-2(b)(8) of the Procedure and Administration Regulations to add the Bulgarian aktzionerno druzhestvo entity to the list of entities that are always treated as corporations under section 7701 of the Internal Revenue Code (Code).

BACKGROUND

The IRS and Treasury issued final regulations concerning the classification of business entities under section 7701 of the Code on December 18, 1996 (check-the-box regulations). See generally, TD 8697 (1997-1 C.B. 215; 61 FR 66584) and §§301.7701-1 through 3. Under the check-the-box regulations, a business entity generally can elect its classification for federal tax purposes. However, §301.7701-2(b)(8) provides a list of certain foreign business entities that are always classified as corporations for federal tax purposes (the per se corporation list).

On December 16, 2005, the IRS and Treasury published regulations (TD 9235, 2006-4 I.R.B. 338; 70 FR 74658) under section 7701 of the Code adding certain foreign business entities to the per se list of corporations. These regulations were in response to the adoption by the Council of the European Union of a Council Regulation (2157/2001 2001 O.J. (L 294)) (the EU Regulation) that recognized a new business entity, the European public limited liability company (Societas Europaea or SE).

The SE is a public limited liability company. The EU Regulation provides general rules that govern the formation and operation of an SE, and supplements those rules for specified issues and issues it does not otherwise address by reference to the laws with respect to public limited liability companies for the country in which the SE has its registered office. An SE must have a registered office in one of the Member States of the European Economic Area (which includes all Member States of the European Union plus Norway, Iceland, and Liechtenstein). For further background see TD 9197 (2005-1 CB 985; 70 FR 19697) and Notice 2004-68 (2004-2 CB 706).

As of January 1, 2007, Bulgaria will become a member of the European Union. Accordingly, an SE will be eligible to have its registered office in Bulgaria and those SEs with a registered office in Bulgaria will, to a certain extent, be subject to the laws of the public limited liability company in Bulgaria. As a result, and consistent with TD 9235, it is appropriate for the IRS and Treasury to add the public limited liability company for Bulgaria to the per se list.

DISCUSSION

The IRS and Treasury will issue temporary and proposed regulations that will modify §301.7701-2 to include the Bulgarian aktzionerno druzhestvo on the per se corporation list. This entity has been identified as the public limited liability company in Bulgaria.

EFFECTIVE DATE

The temporary and proposed regulations to be issued adding the Bulgarian aktzionerno druzhestvo to §301.7701-2(b)(8) generally will apply to such entities formed on or after January 1, 2007. However, they shall also apply to an entity formed before such date upon a 50 percent or greater change of ownership subsequent to such date.

The principal author of this notice is Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Ronald M. Gootzeit at (202) 622-3860 (not a toll-free call).

Miscellaneous Publications

The IRS publishes numerous general and specialized documents to help taxpayers. Some of the more common ones include the following.

Publication 3, *Armed Forces' Tax Guide*

Publication 17, *Your Federal Income Tax*

Publication 225, *Farmer's Tax Guide*

Publication 334, *Tax Guide for Small Business*

Publication 463, *Travel, Entertainment, Gift, and Car Expenses*

Publication 519, *U.S. Tax Guide for Aliens*

Publication 520, *Scholarships and Fellowships*

Publication 589, *Tax Information on S Corporations*

Each of these documents is available directly from the IRS, both in print and electronic formats. See Exhibit 4-9 for an excerpt from an IRS publication from the IRS web site. In addition, several of the commercial tax publishers offer copies of these lay-oriented publications. Furthermore, any library that is designated as a government depository receives all of these documents in hard copy. Finally, many of the above publications can be ordered from the IRS in Spanish-language editions.

Although the IRS Publications contain useful information, the tax researcher must be careful when relying on them. IRS Publications typically do not cite the Code, Regulations, or other authority on which the information included therein is based. In fact, the IRS disclaims any responsibility for damages that the taxpayer may suffer in erroneously relying on its Publications, and it may, in fact, take

Exhibit 4-9: IRS Publication 3 (Armed Forces' Tax Guide) Excerpt

Armed Forces Reservists

If you are a member of a reserve component of the Armed Forces and you travel more than 100 miles away from home in connection with your performance of services as a member of the reserves, you can deduct your travel expenses as an adjustment to income on line 33 of Form 1040 rather than as a miscellaneous itemized deduction. The deduction is limited to the amount the federal government pays its employees for travel expenses. For more information about this limit, see Per Diem and Car Allowances in chapter 6 of Publication 463.

Member of a reserve component. You are a member of a reserve component of the Armed Forces if you are in the Army, Navy, Marine Corps, Air Force, or Coast Guard Reserve, the Army National Guard of the United States, the Air National Guard of the United States, or the Reserve Corps of the Public Health Service.

How to report. If you have reserve-related travel that takes you more than 100 miles from home, you should first complete Form 2106, Employee Business Expenses, or Form 2106-EZ, Unreimbursed Employee Business Expenses. Then include in the total on line 33 of Form 1040 your expenses for reserve travel over 100 miles from home, up to the federal rate, from line 10 of Form 2106 or line 6 of Form 2106-EZ. Write "RC" and the amount of these expenses in the space to the left of line 33 of Form 1040. Subtract this amount from the total on line 10 of Form 2106 or line 6 of Form 2106-EZ and deduct the balance as an itemized deduction on line 20 of Schedule A (Form 1040). See Armed Forces reservists under Miscellaneous Itemized Deductions, later.

positions that are contrary to those that are included in the Publications in certain court cases or appeals hearings.

These documents are prepared from the government's point of view. For instance, if a lower court has ruled against the IRS on a given matter that is addressed in a Publication, the text of the document probably will not mention the possibility that the IRS's official position will be found to be incorrect on appeal. Although IRS Publications can be the source of some basic information that is useful for laypersons, or in a tax compliance context, the tax researcher should not rely on or cite such a reference in a professional research report.

SUMMARY

Administrative pronouncements provide the tax researcher with a significant amount of information from and about the IRS. The primary IRS pronouncements that are of interest to the tax researcher include the Regulations, Revenue Rulings, Revenue Procedures, and Letter Rulings. The tax practitioner who performs competent research must

be aware of the content and format of each of these items, know how to locate them, appreciate the precedential value of each, and understand how each might affect the client's tax problem. Exhibit 4-10 summarizes the most commonly encountered IRS pronouncements.

Exhibit 4-10: Common IRS Pronouncements

Pronouncement	Purpose
Regulation	The official Treasury or IRS interpretation of a portion of the <i>Internal Revenue Code</i>
Revenue Ruling	The IRS's application of the tax law to a specific fact situation
Revenue Procedure	A statement of IRS practice or procedure that affects taxpayers or the general public
Announcement Notice	IRS release that has immediate or short-term value Guidance involving substantive interpretations that has longer-term application
Private Letter Ruling	Statement issued by the National Office of the IRS at a taxpayer's request, applying the tax law to a proposed transaction
Determination Letter	Statement issued by the District Director in response to a taxpayer request, concerning the application of the tax law to a specific completed transaction
Acquiescence	Acceptance by the IRS of a court decision that was held in the taxpayer's favor. Published as an Action on Decision.
Nonacquiescence	Notice that the IRS still disagrees with a court decision that was held in the taxpayer's favor. Published as an Action on Decision.
Treasury Decision	A Regulation is promulgated or amended
Technical Advice Memorandum	A letter ruling issued on a completed transaction, usually during an audit

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.

Acquiescence	Private Letter Rulings
Actions on Decision (AOD)	Proposed Regulations
Announcements and Notices	Regulations
Cumulative Bulletin	Revenue Procedures
Determination Letter	Revenue Rulings
General Regulations	Technical Advice Memorandum
Internal Revenue Bulletin	Technical Memorandum (TM)
Legislative Regulations	Temporary Regulations
Nonacquiescence	Treasury Decisions (TD)

DISCUSSION QUESTIONS

1. What department and agency of the U.S. government has the responsibility to administer the Federal tax laws?
2. Section 7805(a) of the *Internal Revenue Code* authorizes the IRS to perform what activities?
3. The IRS issues numerous pronouncements. Name the four that are the most important in conducting Federal tax research.
4. Define the terms *Regulation* and *Treasury Decision*. Where are TDs published so that interested parties can comment on them?
5. “A tax researcher should not ignore Proposed Regulations.” Comment on this statement.
6. Define and distinguish between *General* and *Legislative* Regulations.
7. In the citation, Reg. §1.212-3, what do the “1,” the “212,” and the “3” indicate?
8. Answer the following questions about this citation: Reg. §20.2039-1(a).
 - a. What does the “20” stand for?
 - b. What does the “2039” stand for?
 - c. What does the “1” stand for?
 - d. What does the “(a)” stand for?

9. Answer the following questions about this citation: Reg. §1.274-6T(a)(2).
 - a. What does the “1” stand for?
 - b. What does the “274” stand for?
 - c. What does the “6T” stand for?
 - d. What does the “(a)” stand for?
 - e. What does the “(2)” stand for?
10. Give the number that is associated with each of the following categories of Regulations.
 - a. Estate Tax Regulations
 - b. Income Tax Regulations
 - c. Gift Tax Regulations
 - d. Procedural Regulations
 - e. Employment Tax Regulations
11. Give the type of Regulation associated with each of the following Regulation numbers.
 - a. 31
 - b. 301
 - c. 25
 - d. 601
 - e. 20
12. What are Temporary Regulations? What weight do they carry in the tax researcher’s analysis?
13. The burden of proof is on the taxpayer to prove that a provision of the Regulations is improper. How could this affect one’s tax research?
14. In general, what is the effective date of a new Regulation?
15. Give at least three locations where a tax researcher can find the complete text of a Regulation.
16. What is a Revenue Ruling?
17. Describe the structure of a typical Revenue Ruling.
18. Where are Revenue Rulings initially published by the IRS? Where are the rulings permanently published in hardbound editions?
19. Explain each of the elements of this citation: Rev. Rul. 2009-32, 2009-12 I.R.B. 621.
20. Explain each of the elements of this citation: Rev. Rul. 96-41, 1996-2 C.B. 8.
21. What is the correct citation for Revenue Ruling 2002-55, which is found on page 529 of the second *Cumulative Bulletin* volume for 2003?
22. What is the correct citation for Revenue Procedure 94-36, which is found on page 682 of the first *Cumulative Bulletin* volume for 1996?
23. What resources are available to help the tax researcher who wishes to check the current status of a Revenue Ruling?

24. Of what relevance to the tax practitioner is a Revenue Procedure?
25. Where can a tax researcher find copies of Revenue Procedures?
26. Construct the permanent citation for the fifth Revenue Procedure of 2009, which was published in the second week of the year. It is published on page 164 of the appropriate document.
27. Identify three types of Letter Rulings that are of interest to the tax researcher. Indicate whether each of these rulings is published by the IRS.
28. Which office of the IRS issues Private Letter Rulings? Who requests such a ruling? What kinds of issues are addressed therein?
29. Sometimes a Private Letter Ruling is generalized and included in an official IRS publication. What form does this recast private ruling take?
30. What is a Determination Letter? Which office of the IRS issues Determination Letters? What kinds of issues are addressed therein?
31. What is a Technical Advice Memorandum? Who requests it? What kinds of issues are addressed therein? Does the IRS include Technical Advice Memoranda in any official publication?
32. Discuss the precedential value of Private Letter Rulings, Determination Letters, and Technical Advice Memoranda. What role do these items play in conducting tax research?
33. Which IRS documents are open to public inspection under §6110?
34. What is the precedential value of an IRS written determination under §6110?
35. Explain each of the elements of this citation: Ltr. Rul. 9615032.
36. Where can a tax researcher find copies of written determinations?
37. The most important IRS publications are the *Internal Revenue Bulletin* and the *Cumulative Bulletin*. How often is each of these documents published? Name six items that typically are published in the *Cumulative Bulletin*.
38. Explain each of the elements of this citation: Rev. Proc. 2004-16, 2004-10 I.R.B. 559.
39. Explain each of the elements of this citation: Rev. Proc. 2009-41, 2009-2 C.B. 317.
40. Distinguish between a citation with “I.R.B.” in it and one with “C.B.” in it.
41. Discuss the difference between a Revenue Ruling and a Revenue Procedure.
42. In what publication(s) would a tax researcher find the official listing of the IRS acquiescences and nonacquiescences to a Tax Court decision?
43. Can the IRS change its position on acquiescences or nonacquiescences?
44. Must the IRS acquiesce or nonacquiesce to every issue in a court decision?

45. What is the purpose of each of the following?
 - a. Technical Memorandum (TM)
 - b. General Counsel's Memorandum (GCM)
 - c. Action on Decision (AOD)
46. What is the purpose of each of the following?
 - a. Field Service Advice (FSA)
 - b. Chief Counsel Notices (CCN)
 - c. Service Center Advice (SCA)
47. Give the title of each of the following.
 - a. Publication 17
 - b. Publication 225
 - c. Publication 334
48. Give the title of each of the following.
 - a. Publication 3
 - b. Publication 463
 - c. Publication 520
49. What is an IRS Notice? When is it used? In your opinion, could a tax practitioner rely on an IRS Notice as authority for a tax return position?
50. Why should the tax researcher exercise caution in relying on an IRS publication, such as published instructions to tax forms, in undertaking a research project?

EXERCISES

51. Locate Revenue Ruling 99-56. Explain the effect of that ruling on previous Treasury Department pronouncements.
52. Briefly describe the subject of each of the following Letter Rulings. State the type [Private Letter Ruling (PLR), Field Service Advice (FSA), Service Center Advice (SCA), etc.] of each Letter Ruling.
 - a. 200034026
 - b. 200113016
 - c. 200113020
 - d. 200113023
53. Correctly cite the italicized sentence indicated by the dart (▶) in the following passage from the Regulations.

SEC. 1.162-21 FINES AND PENALTIES.

- a. In general.

No deduction shall be allowed under section 162(a) for any fine or similar penalty paid to—

 - (1) The government of the United States, a State, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;
 - (2) ▶ *The government of a foreign country; or*
 - (3) A political subdivision of, or corporation or other entity serving as an agency or instrumentality of, any of the above

54. Correctly cite the italicized sentence indicated by the dart (▶) in the following passage from the Regulations.
- SEC. 1.1362-1 ELECTION TO BE AN S CORPORATION.
- a. In general.
Except as provided in section 1.1362-5, a small business corporation as defined in section 1361 may elect to be an S corporation under section 1362(a). An election may be made only with the consent of all of the shareholders of the corporation at the time of the election. See section 1.1362-6(a) for rules concerning the time and manner of making this election.
- b. ▶ *Years for which election is effective.*
An election under section 1362(a) is effective for the entire taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, until the election is terminated.
55. Briefly describe the subject of each of the following Letter Rulings. State the type [Private Letter Ruling (PLR), Field Service Advice (FSA), Service Center Advice (SCA), etc.] of each Letter Ruling.
- a. 200414014
b. 200235002
c. 200411001
d. 199950003
56. What is the subject of each of the following Revenue Rulings?
- a. Rev. Rul. 2007-4
b. Rev. Rul. 2006-36
c. Rev. Rul. 2003-73
d. Rev. Rul. 95-29
57. What is the subject of each of the following Revenue Procedures?
- a. Rev. Proc. 2007-11
b. Rev. Proc. 2005-78
c. Rev. Proc. 2001-45
d. Rev. Proc. 98-11
58. What is the subject of each of the following IRS Announcements?
- a. Announcement 2006-52
b. Announcement 2004-90
c. Announcement 99-27
59. What is the subject of each of the following IRS Notices?
- a. Notice 2007-2
b. Notice 2007-91
c. Notice 95-50
60. What is the subject of each of the following IRS Notices?
- a. Notice 89-114
b. Notice 99-51
c. Notice 2000-28
61. What is the subject matter of each of the following Technical Advice Memoranda?
- a. TAM 9015001
b. TAM 199914034
c. TAM 200050005

62. What is the subject matter of each of the following Technical Advice Memoranda?
 - a. TAM 200703019
 - b. TAM 200651033
 - c. TAM 9853001
63. Briefly describe the subject matter of each of the following TDs.
 - a. T.D. 8346
 - b. T.D. 8780
 - c. T.D. 8915
64. For each of the following Code sections, how many Treasury Regulations have been issued? Give the total number of such Regulations and the number of the last Regulation.
 - a. §102
 - b. §143
 - c. §301
 - d. §385
65. For each of the following Code sections, how many Treasury Regulations have been issued? Give the total number of such Regulations and the number of the last Regulation.
 - a. §25A
 - b. §119
 - c. §180
 - d. §305
66. What is the current status of each of the following Revenue Rulings?
 - a. Rev. Rul. 95-35
 - b. Rev. Rul. 94-17
 - c. Rev. Rul. 87-34
67. What is the current status of each of the following Revenue Rulings?
 - a. Rev. Rul. 2002-80
 - b. Rev. Rul. 2001-31
 - c. Rev. Rul. 98-13
68. Locate the pronouncement at 1989-1 C.B. 76.
 - a. What is the number assigned to this written determination?
 - b. What is the issue(s) addressed in this written determination?
 - c. What is the holding in this written determination?
69. Locate the pronouncement at 2000-2 C.B. 333.
 - a. What is the number assigned to this written determination?
 - b. What is the subject matter discussed in this written determination?
70. Locate the pronouncement at 2004-10 I.R.B. 550.
 - a. What is the number assigned to this written determination?
 - b. What is the subject matter discussed in this written determination?
71. Locate the pronouncement at 2007-17 I.R.B. 990.
 - a. What is the number assigned to this written determination?
 - b. What is the subject matter discussed in this written determination?

72. Locate the pronouncement at 2006-40 I.R.B. 528.
- What is the number assigned to this written determination?
 - What is the subject matter discussed in this written determination?
73. What is the current status of each of the following IRS pronouncements?
- Notice 2001-26
 - Revenue Ruling 2000-41
 - Revenue Procedure 89-31
 - Announcement 99-110
74. What is the current status of each of the following IRS pronouncements?
- Notice 2004-29
 - Revenue Ruling 2004-28
 - Revenue Procedure 93-15
 - Announcement 99-41
75. A member of a tax-exempt business league makes deposits into a strike fund. The contribution reverts to the taxpayer if the fund is terminated. Are these deposits tax deductible?
- Database to search:* IRS Letter Rulings
Keywords: business, league, strike, fund
76. Can proceeds from a life insurance policy be included in a decedent's gross estate if the policy was purchased by an S corporation for an employee-shareholder?
- Databases to search:* the Code and IRS Letter Rulings
Keywords: Sec. 2042, life, insurance, estate, inclusion
77. Is a veterinary medical corporation a "personal service corporation" for purposes of the required use of the flat 35 percent tax rate?
- Database to search:* Revenue Rulings
Keywords: veterinary, personal, service, corporation
78. Are homeowners who claim an itemized deduction for interest paid on adjustable rate mortgages and then receive refunds in a later year required to show the refunds as taxable income?
- Database to search:* Notices
Keywords: adjustable, rate, mortgage, refund
79. Are points paid by homebuyers on VA and FHA loans deductible in the year the house is purchased?
- Database to search:* Revenue Procedures
Keywords: loan, origination, fees, VA, FHA

RESEARCH CASES

80. Lance asks you to explain why his employer, the Good Food Truck Stop, an establishment that employs more than thirty waiters/waitresses, included \$2,400 in tip income on his Form W-2 for the year. Lance always has kept track of the tips he actually received, and he has reported them in full on his tax return.
- Partial list of research material:* §6053; Rev. Proc. 86-2, 1986-1 C.B. 560

81. Joe incurred \$38,000 of investment interest expense in the current year. He also generated \$35,000 in dividend income and had a \$65,000 passive loss for the year. What is the amount of Joe's interest deduction?
Partial list of research material: §163; Reg. §1.163-8T; Announcement 87-4, 1987-3 I.R.B. 17
82. Georgia won the Massachusetts lottery, which means that she will receive \$28,000 a year for the next thirty years. Georgia purchased the lucky ticket in March, and was selected the winner in June. Georgia regularly spent \$100 a month on lottery tickets, one-third for Massachusetts tickets and two-thirds for Vermont tickets.
- What is Georgia's gross income from this prize?
 - Is there any corresponding deduction?
- Partial list of research material:* §74; Rev. Rul. 78-140, 1978-1 C.B. 27
83. Dieter won the lottery this year, which means that he will receive \$400,000 a year for the next thirty years. The present value of Dieter's prize is about \$3,750,000. Conscious of the tax benefits of income shifting, Dieter irrevocably assigned one-fifth of every annuity payment to his daughter Heidi. What are the effects of these events on Dieter's taxable income?
Partial list of research material: §74; Rev. Rul. 58-127, 1958-1 C.B. 42
84. Ace High and Lady Luck live together and have pooled their funds for several months to purchase food and other household necessities and to buy an occasional state lottery ticket. Ace used part of these pooled funds to buy a lottery ticket that won \$3,000,000. When they discovered that the lottery proceeds could be paid only to one recipient under state law, Ace and Lady executed a "separate ownership agreement." The agreement created an equal interest in the ticket for both Ace and Lady. Must Ace pay gift tax on the transfer of a one-half interest in the ticket to Lady? What is the value of the gift?
List of research material: Ltr. Rul. 9217004
85. Shaky Savings & Loan has a depositor named Olive who opened an account last year. At that time, Olive gave Shaky her Social Security number as a taxpayer identification number (TIN). The IRS notified Shaky that Olive's Social Security number was invalid. This year, Shaky asked Olive for a corrected number, which she provided. Later this year, the IRS notified Shaky that the new Social Security number also was invalid. What should Shaky do at this point about backup withholding on Olive's account? Prepare (in good form) a research memorandum to the file.
86. Alpine Corporation is a qualified small business corporation eligible to elect S corporation status. Albert is a shareholder in Alpine. On February 1 of the current year, Albert dies before signing the proper S corporation election form. The stock passes to Albert's estate. Ellen is appointed executor of Albert's estate on May 1 of the current year. On March 10 of the current year, Alpine filed Form 2553, the election form to be an S corporation, properly signed by all March 10 shareholders, and Ellen (the executrix) on behalf of Albert. Is this a valid S corporation election? Prepare (in good form) a research memorandum to the file.
87. Joe Bacillus, owns Bacillus's Italian Restaurant. A friend of Joe's who owns a sports bar comes to Joe and wants to form a partnership with Joe to buy an old

building, renovate it, and then move both the restaurant and the sports bar into it along with other tenants. Joe would like to make this investment. He needs approximately \$200,000 for his share of the buy-in of the partnership that will purchase, renovate, and manage the building. However, because of other recent large expenses, Joe finds himself short of cash at the present time. His only large liquid asset is his self-directed IRA, which currently owns \$225,000 in stock and bonds. Joe proposes that he direct the IRA to sell the securities and to use the proceeds to invest in the building renovation partnership. Conduct appropriate research (including a computer search) to determine if Joe's plan is workable. Prepare (in good form) a research memorandum to the file.

88. The Pima and Southern Railroad (PSRR) is a small railroad operating in rural Arizona. It exists by carrying freight to remote areas of the southwest. This year the PSRR needs to replace a thirty-mile section of its track. The PSRR has bids from a contractor to replace the track for the following amounts.

Cost of new track	\$ 5,000,000
Installing new track	3,000,000
Road bed grading and improvements	2,500,000
Removing old track (net of salvage)	1,500,000
Total	\$12,000,000

The old track is fully depreciated, and the cost shown is net of \$200,000 salvage value received for the scrap metal. The new track is an improved type, and it is expected to last thirty-five to forty years. The controller of PSRR, Casey Jones, comes to you and wants to know the tax treatment of the above expenditures. He specifically wants to know if any costs can be deducted or if all must be capitalized and written off over a period of years. He is also concerned about any potential problems with the uniform capitalization rules under §263A. Prepare (in good form) a research memorandum to the file.

89. Your client, Ned Bovine, purchased a \$2 million life insurance policy from the Nickel Life Insurance Co. (NLIC) of Dime Box, Texas. Ned's wife is the beneficiary of the policy. The policy was purchased ten years ago when Nickel Life Insurance was a mutual insurance company. In the current year, Nickel Life Insurance converted from a mutual company to a stock company in a tax-free reorganization. As part of the conversion, Ned received 800 shares of the new publicly traded (NASDAQ) Nickel Life Insurance Company. Three weeks after receiving the shares, Ned sold all his shares at \$15 each. The total premiums paid by Ned on the policy before the conversion were \$20,000.
- Locate the IRS pronouncement(s) that deals with this situation. State the pronouncement number(s).
 - Review the IRS pronouncement(s). Does it raise a need for new information to solve this question?
 - Are you able to reach a conclusion about the research question from this IRS pronouncement(s)? If so, what is your conclusion(s)?
90. At age sixty-five, Carlota's financial position was better than her health. She had a large balance in an IRA that she wanted to move to a different IRA. Carlota withdrew \$100,000 from the IRA and planned to roll the funds over into another IRA. Unfortunately, she died before completing the rollover. Carlota's son, Andres, discovered, a week after her death, what his mother had done. Andres was both executor of Carlota's estate and beneficiary of her IRA.

Can Andres, in his role as executor, complete the rollover for his deceased mother by depositing the \$100,000 in another IRA within the sixty-day rollover period?

- a. Locate the IRS pronouncement(s) that deals with this situation. State the pronouncement number(s).
 - b. Review the IRS pronouncement(s). Does it raise a need for new information to solve this question?
 - c. Are you able to reach a conclusion about the research question from this IRS pronouncement(s)? If so, what is your conclusion(s)?
91. The Venganza Tribe is a Federally recognized Indian tribal government described in IRC §7701(a)(40)(A). The Venganza Tribe would like to invest some of its cash resulting from its newly opened casino in a real estate development, Vista de Basura, Inc. Vista de Basura, Inc. is an S corporation. Is the Indian tribal government an eligible shareholder for S corporation purposes?
- a. Locate the IRS pronouncement(s) that deals with this situation. State the pronouncement number(s).
 - b. Review the IRS pronouncement(s). Does it raise a need for new information to solve this question?
 - c. Are you able to reach a conclusion about the research question from this IRS pronouncement(s)? If so, what is your conclusion(s)?
92. Fred Forgetful parks his personal car on a hill in sunny California and fails to properly set the brake or curb the wheels. As a result of Fred's negligence, the car rolls down the hill, damages Lucky's front porch, injures Lucky (who was sitting on the porch), and damages Fred's car. Due to the accident, Fred is forced to pay the following unreimbursed amounts.

Medical expenses for Lucky's injuries	\$5,500
Repairs to Fred's car	7,000
Repairs to Lucky's porch	8,500
Fine for traffic violation	275

Using only the Regulations and Code, determine which of these payments, if any, would qualify for casualty loss treatment (before any percentage limitations) as to Fred.

93. Your client, Mustang Racing Parts, Inc. (MRP), is engaged in the production, transmission, distribution, and sale of racing headers for Ford Mustangs (inventory property). The client is also involved in the distribution of other racing parts manufactured by other suppliers (inventory property). During the tax year, MRP produces numerous identical dies and molds using standardized designs and assembly line techniques (noninventory property). The dies and molds are mass-produced. MRP uses the dies and molds to produce particular automobile racing components and does not hold them for sale. The dies and molds have a three-year recovery period for purposes of §168(c). The client wants to know if it can elect to use the "simplified service cost method" to calculate the amount capitalized under §263A on the dies and molds.
- a. Locate the IRS Letter Ruling that deals with this situation. State the Letter Ruling number.
 - b. Review the IRS Letter Ruling. Does it raise a need for new information to solve this question?
 - c. Are you able to reach a conclusion about the research question from this IRS Letter Ruling? If so, what is your conclusion(s)?