

Conducting Federal Tax Research

by Mark Popielarski

Researching tax law can pose some unique challenges—particularly for attorneys who do not specialize in this area but need to locate information and keep up to date on this subject as part of their overall practice. Depending on an individual client's needs and situation, tax research can implicate international, foreign, federal, state, and local laws. This article highlights important research considerations and techniques when conducting federal tax research.

Overview of Federal Tax Legal Materials

To understand some of the special considerations implicated in researching federal tax law, it is important first to explore the various sources of tax law and the government entities responsible for generating this content. The complex interaction between statutory, regulatory, case law, and legislative history provides attorneys numerous options for gaining context and insight regarding a wide variety of tax issues.

Statutory Law

The Internal Revenue Code (IRC), codified in Title 26 of the U.S. Code, was originally enacted in 1939. Since that time, the IRC has undergone frequent updating and revision to reflect the needs and priorities of the federal government when it comes to collecting revenue. Subsequent to its original enactment, the IRC underwent two significant overhauls. The first major revision occurred in 1954 and witnessed not only substantial additions and modifications to the tax law, but also massive structural changes to how the IRC was organized. After enactment of the 1954 version, tax law continued to evolve, but it was not until 1986 that the IRC saw its next major revision. While federal tax law continues to change, the IRC of 1986, with its subsequent amendments, is the primary statute currently in force.

Regulations and Administrative Guidance

As part of the Department of Treasury, the Internal Revenue Service (IRS) is the primary federal authority responsible for promulgating tax regulations¹ and producing administrative guidance.² The complex nature of federal tax laws makes the administrative guidance produced by the IRS extremely valuable for conducting this kind of research. The IRS publishes several types of guidance documents—including Revenue Rulings, Revenue Procedures, Private Letter Rulings, forms, and publications—that are useful when researching tax law.

Certain types of guidance, such as Revenue Rulings and Revenue Procedures, may be cited as authority by all taxpayers.³ Revenue Rulings provide the IRS interpretation of how the agency would apply tax law in a particular hypothetical factual scenario, while Revenue Procedures provide instructions for filing tax returns and other procedural matters related to an IRS position. However, this form of guidance may be rendered obsolete by changes in the tax law or revoked by a subsequent Revenue Ruling or Revenue Procedure.

In contrast, some forms of guidance may be relied on only by the party who requests it. Through a Private Letter Ruling, taxpayers can request guidance about how the IRS might treat a prospective transaction. If the transaction already has been completed, the taxpayer may choose to seek a Determination Letter concerning its tax implications. Although this guidance only applies to the IRS and the party who requests it, these materials can still be useful when conducting legal research because they offer some insight into how the IRS might treat a comparable transaction.

A final category of guidance produced by the IRS may not be relied on as authority by any taxpayers. Nevertheless, these resources can provide valuable instruction and insight into how the agency plans to handle various tax matters. For external parties, the



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IRS produces many tax forms, instructions for these tax forms, and various other publications designed to assist taxpayers, preparers, and attorneys. The Internal Revenue Manual delineates the official instructions supplied to IRS personnel concerning the agency's organization, administration, and operation. Although this manual is not intended for use by external parties, it can provide valuable insight into IRS priorities and interpretation of tax law.

Tax Cases

When litigating a tax claim, the choice of venue and precedential value of decisions typically is more complex than nontax litigation. At the trial level, claims may be litigated in one of three venues: U.S. Tax Courts, U.S. District Courts, or the Court of Federal Claims. U.S. Tax Courts, which hear most tax cases, produce three types of decisions, two of which have precedential value. Tax Court "Regular" decisions, which involve novel issues of law, and "Memorandum" decisions, which analyze existing law within a particular factual context, have precedential value, while brief "Summary" opinions have no precedential value. U.S. District Courts can also hear tax cases and are the only venue that provide taxpayers the option of a jury trial; however, the issues of cost and time limit the number of cases these courts hear. Decisions from the U.S. Tax Courts and U.S. District Courts are appealed to the appropriate appellate courts. The Court of Federal Claims hears controversies involving taxpayer refunds. Its decisions have precedential value for the Court of Federal Claims and Court of Appeals for the Federal Circuit, to which the Court of Federal Claims decisions are appealed.

Tax Legislative History

While conducting federal legislative history research has been addressed in a previous Legal Research Corner article,⁴ some important distinctions exist between normal federal legislative histories and those involving tax laws. Tax bills must originate in the U.S. House of Representatives and are referred to the Ways and Means Committee. If a tax bill proceeds to the Senate, the Finance Committee bears primary responsibility for screening potential tax laws. Each of these committees can produce valuable reports that provide useful context for understanding the complex language included in the Tax Code. In addition to the House and Senate Committees, the Joint Committee on Taxation (JCT), which comprises ten members with equal representation from the Ways and Means and Finance Committees, issues reports concerning matters of tax legislation. The JCT's "General Explanation of Tax Legislation,"⁵ also known as the Bluebook, provides information and context about tax laws enacted in a given legislative session. Because these Bluebooks can provide some valuable insight and context, judges may choose to consult these resources when determining legislative intent. However, unlike regular House and Senate committees, the JCT does not possess the actual authority to participate in the bill markup process. Therefore, these Bluebooks are considered less authoritative than normal committee reports.

Free Research Resources for Federal Tax Law

Many research options are available to attorneys conducting tax research. Depending on the individual attorney's need, paid subscription resources such as Thomson Reuters' RIA Checkpoint, IntelliConnect's CCH products, Bloomberg BNA's Tax and

Accounting platform, and the Tax Analysts' publications serve as excellent products for conducting this kind of research. However, for attorneys who need to leverage free resources as part of a cost-effective legal research strategy, a substantial amount of tax information can be located online.

Statutes and Regulations

The Government Publishing Office's Federal Digital System (FDSys)⁶ platform provides free access to PDF copies of the U.S. Code, Statutes at Large, Code of Federal Regulations, Federal Register, and legislative history documents such as committee reports.⁷ Congress.gov provides robust search features and a user-friendly interface that permits users to search bills and laws spanning the past several decades. Selecting the Browse option permits the user to focus the search on specific subject/policy areas, including tax (see Figure 1).⁸

Attorneys looking for a regularly updated, but unofficial, version of the Code of Federal Regulations can find this information on the government's Electronic Code of Federal Regulations (e-CFR) website.⁹ Public announcements and publication of proposed, temporary, and final regulations can also be researched through the online Federal Register¹⁰ portal and the IRS's Internal Revenue Bulletin (IRB).¹¹

Administrative Material

To help attorneys research and understand the constantly changing and evolving body of federal tax law, the IRS publishes a wide variety of administrative guidance, such as Revenue Rulings and Revenue Procedures, in the IRB and its annual compilation known as the Cumulative Bulletin. Attorneys interested in keeping up to date on the proposal and publication of IRS administrative materials can subscribe to the IRS Newswire,¹² covering changes in tax laws and other helpful updates, and Guidewire,¹³ which updates subscribers concerning new guidance, notifications, and announcements.

The IRS has a wealth of administrative information on its website, but searching the website for relevant material can be challenging. A particularly effective alternative is to employ Google's Advanced Search feature.¹⁴ Among its options, the Advanced Search permits users to restrict their search to a particular domain (e.g., .gov), website (e.g., irs.gov), or subsection of a website. Google's Advanced Search also permits users to further limit their search parameters by file type, which can be useful when searching for government information because many of these documents are published as PDFs.

A lack of uniform standards concerning the archiving of online information sometimes means that useful research material that once was on the site is no longer available. Attorneys who encounter this problem may still be able to retrieve this information through the Internet Archive's Wayback Machine.¹⁵ Over the past decade, the Internet Archive has crawled the information available on many websites and archived this material in a chronologically searchable database. As a result, it is possible to "go back in time" and view a particular Web page as it existed in previous years. Gaps may exist between dates in which the website was scanned and certain links may be broken, but the Wayback Machine is still a good option for retrieving "born digital" information that otherwise has disappeared online.

Figure 1



Tax Cases

While FDSys is gradually adding case law to its database, Google Scholar¹⁶ currently serves as a useful free resource for conducting case law research. Google Scholar allows researchers to restrict their case law searching to specific courts, including tax-oriented ones such as the Tax Court, Court of Federal Claims, and Board of Tax Appeals (see Fig. 2).

Tax Legislative History

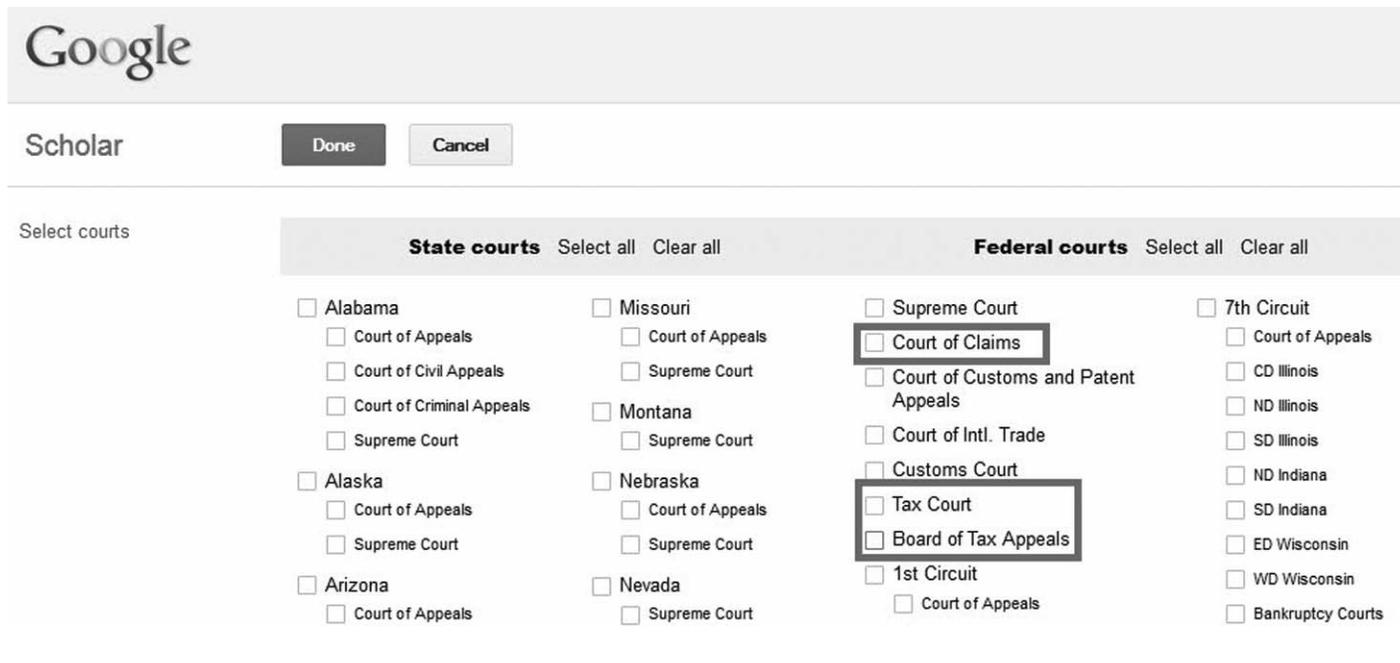
There are several free resources attorneys can use to research individual tax legislative history documents. In addition to an agency or legislative committee’s website, a significant amount of legislative history material for the past several decades is available through the FDSys platform. Also, attorneys researching committee hearings and floor debates concerning tax-related bills can access content dating back to the early 1980s through the C-Span Video Library.¹⁷ Finally, JCT Bluebooks covering tax legislation for a given session of Congress are available on the committee’s website.¹⁸

Individual tax legislative history documents can be useful, but combing through all the necessary documentation may be time consuming. Many commercial services offer compiled legislative histories. Some products are tax-specific; others are not. Attorneys whose subscription platforms do not include access to these compiled legislative histories may be able to access such content through local academic institutions.

Conclusion

Federal tax law is a dynamic, constantly evolving practice area. Attorneys who need to effectively conduct research on this subject may have to look beyond statutory, regulatory, and case law. A wealth of administrative guidance exists to provide context and help fill in the gaps. Many specialized subscription tax services are available to help attorneys, but for lawyers who do not have access to these platforms and publications, there are numerous free online research tools. Finally, for attorneys who need more information about how to conduct federal tax research, many publications are available that provide greater depth of treatment.¹⁹

Figure 2



Notes

1. Codified federal tax regulations can be found in Title 26 of the Code of Federal Regulations (CFR), with initial publication occurring in the Federal Register and the IRS's IRB.

2. Administrative guidance, such as Revenue Rulings and Revenue Procedures, are published weekly in the IRB. Currently, the IRS maintains an online archive of this publication going back to July 7, 2003, at www.irs.gov/irb. These weekly publications are compiled into two annual volumes known as the *Cumulative Bulletin*.

3. Revenue Rulings and Revenue Procedures are organized chronologically by year and order of publication (e.g., Rev. Rul. 2011-3 and Rev. Proc. 2013-6).

4. Compton, "Researching Federal Legislative History," 39 *The Colorado Lawyer* 67 (Nov. 2010), www.cobar.org/tcl/tcl_articles.cfm?articleid=6777.

5. Joint Committee on Taxation, Joint Committee Bluebooks, www.jct.gov/publications.html?func=select&id=9.

6. U.S. Government Publishing Office, FDSys, www.gpo.gov/fdsys.

7. Like most electronic resources, coverage dates will vary. Browsing all available collections will provide the available date range for each resource type.

8. Congress.gov, Browse for . . . , www.congress.gov/browse.

9. U.S. Government Publishing Office, e-CFR, www.ecfr.gov.

10. Federal Register, www.federalregister.gov.

11. IRS, www.irs.gov/irb.

12. IRS, Subscribe to IRS Newswire, www.irs.gov/uac/Subscribe-to-IRS-Newswire.

13. IRS, Subscribe to IRS GuideWire, www.irs.gov/uac/Subscribe-to-IRS-GuideWire.

14. Google, Advanced Search, www.google.com/advanced_search.

15. Internet Archive, Wayback Machine, archive.org.

16. Google Scholar, scholar.google.com.

17. C-Span, Video Library, www.c-spanvideo.org/videoLibrary.

18. Joint Committee on Taxation, *supra* note 5.

19. E.g., Richmond, *Federal Tax Research: Guide to Materials and Techniques* (8th ed., Foundation Press, 2010); Lowy, "Legal Authorities in U.S. Federal Tax Matters—Research and Interpretation," *100-3rd Tax Mgmt. (BNA) U.S. Income* (2014); Hotchkiss, "Federal Income Taxation," *Specialized Legal Research* 3-1 (Penny Hazelton ed., 2014). ■