EVALUATION FORM

In order for us to improve our continuing legal education programs, we need your input. Please complete this evaluation form and place it in the box provided at the registration desk at the end of the session. You may also mail the form to CLE Director, NYCLA, and 14 Vesey Street, New York, NY 10007.

Toto, We’re Not Just Looking at the IRC Anymore: Tax Research Resources, Techniques and Tips
Tuesday, April 8, 2014, 2014 6:00 PM – 9:00 PM

I. Please rate each speaker in this session on a scale of 1 - 4
(1 = Poor; 2 = Fair; 3 = Good; 4 = Excellent)

<table>
<thead>
<tr>
<th>Speaker</th>
<th>Presentation</th>
<th>Content</th>
<th>Written Materials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dan Jordan</td>
<td></td>
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<tr>
<td>Henry Stow Lovejoy</td>
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<td>Allan Pearlman</td>
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<tr>
<td>Lance Rothenberg</td>
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<tr>
<td>Michael Sardar</td>
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<tr>
<td>Anne Marie Zell</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

II. Program Rating:

1. What is your overall rating for this course? Excellent □ Good □ Fair □ Poor □

   Suggestions/Comments: ____________________________________________________________

   ____________________________________________________________

   A. Length of course: Too Long____ Too Short_____ Just Right_____

   B. Scheduling of course should be: Earlier____ Later_____ Just Right_____

2. How did you find the program facilities?

   Excellent □ Good □ Fair □ Poor □

   Comments: ____________________________________________________________

   ____________________________________________________________

PLEASE TURN PAGE OVER
3. How do you rate the technology used during the presentation?

   Excellent □     Good □     Fair □     Poor □

   Comments: __________________________________________________________

   ________________________________________________________________

4. Why did you choose to attend this course? (Check all that apply)

   Please Turn Over
   □ Need the MCLE Credits  □ Faculty  □ Topics Covered
   □ Other (please specify) ________________________________

5. How did you learn about this course? (Check all that apply)

   □ NYCLA Flyer     □ NYCLA Postcard    □ CLE Catalog   □ NYCLA Newsletter
   □ NYCLA Website  □ New York Law Journal Website □ NYCLA CLE Email
   □ Google Search  □ Other (please specify) __________________________

6. What are the most important factors in deciding which CLE courses to attend (Please rate the factors 1-5, 1 being the most important).

   ___ Cost
   ___ Subject matter
   ___ Location
   ___ Date and Time
   ___ Provider
   ___ Organization of which you are a member
   ___ Other________________________________________________________

6. Are you a member of NYCLA?               ___ Yes          ___ No

III   If NYCLA were creating a CLE program specifically tailored to your practice needs, what topics or issues would you want to see presented?
TOTO, WE’RE NOT JUST LOOKING AT THE IRC ANYMORE: TAX RESEARCH RESOURCES, TECHNIQUES AND TIPS

Prepared in connection with a Continuing Legal Education course presented at New York County Lawyers’ Association, 14 Vesey Street, New York, NY scheduled for April 8, 2014

Program Co-sponsor: NYCLA’s Taxation Committee

Program Chair & Moderator: Allan Pearlman, Law Office of Allan R. Pearlman

Program Co-chair: Michael Sardar, Kostelanetz & Fink, LLP

Faculty: Dan Jordan, NYCLA, Director of Library Services; Henry Stow Lovejoy, Kostelanetz & Fink, LLP; Lance E. Rothenberg, Hodgson Russ; Annmarie Zell, NYU Law School

This course has been approved in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of 3 Transitional and Non-Transitional credit hours; 3 Skills.

This program has been approved by the Board of Continuing Legal education of the Supreme Court of New Jersey for 3 hours of total CLE credits. Of these, 0 qualify as hours of credit for ethics/professionalism, and 0 qualify as hours of credit toward certification in civil trial law, criminal law, workers compensation law and/or matrimonial law.

ACCREDITED PROVIDER STATUS: NYCLA’s CLE Institute is currently certified as an Accredited Provider of continuing legal education in the States of New York and New Jersey.
Information Regarding CLE Credits and Certification

Toto, We’re Not Just Looking at the IRC Anymore: Tax Research Resources Techniques and Tips
April 8, 2014; 6:00 PM to 9:00 PM

The New York State CLE Board Regulations require all accredited CLE providers to provide documentation that CLE course attendees are, in fact, present during the course. Please review the following NYCLA rules for MCLE credit allocation and certificate distribution.

i. You must sign-in and note the time of arrival to receive your course materials and receive MCLE credit. The time will be verified by the Program Assistant.

ii. You will receive your MCLE certificate as you exit the room at the end of the course. The certificates will bear your name and will be arranged in alphabetical order on the tables directly outside the auditorium.

iii. If you arrive after the course has begun, you must sign-in and note the time of your arrival. The time will be verified by the Program Assistant. If it has been determined that you will still receive educational value by attending a portion of the program, you will receive a pro-rated CLE certificate.

iv. Please note: We can only certify MCLE credit for the actual time you are in attendance. If you leave before the end of the course, you must sign-out and enter the time you are leaving. The time will be verified by the Program Assistant. Again, if it has been determined that you received educational value from attending a portion of the program, your CLE credits will be pro-rated and the certificate will be mailed to you within one week.

v. If you leave early and do not sign out, we will assume that you left at the midpoint of the course. If it has been determined that you received educational value from the portion of the program you attended, we will pro-rate the credits accordingly, unless you can provide verification of course completion. Your certificate will be mailed to you within one week.

Thank you for choosing NYCLA as your CLE provider!
Toto, We're Not Just Looking at the IRC Anymore: Tax Research Resources, Techniques and Tips

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AGENDA

6:00 PM – 6:10 PM  Introductions and Announcements

6:10 PM – 6:45 PM  Federal Tax Research, Generally; Tax Databases

6:45 PM—7:20 PM  Tax Research: International Issues

7:20 PM – 7:30 PM  BREAK

7:30 PM – 8:05 PM  Research Tips and Suggestions; Tax Legislative History

8:05 PM – 8:45 PM  State and Local Tax Research

8:45 PM – 9:00 PM  Questions and Answers
Federal Tax Research Presentation

• Provide overview of select databases offering federal tax materials and demonstrate online searches
• Review key federal tax authority and secondary sources; Explain where to find that material in print and online
• Discuss research strategies and give tips
• Will not discuss the process of identifying tax issues in factual situations

Overview of Federal Tax Databases

• All-Purpose Legal Databases
  • Lexis /Lexis Advance
  • Westlaw/Westlaw Next
  • Bloomberg Law
• Databases With Tax Focus
  • Bloomberg BNA Tax & Accounting Center
  • RIA Checkpoint
  • CCH
  • Tax Analysts

• Other Databases
  • Hein
  • EBSCO
  • Proquest . . .

Free Resources
• Websites (government, organization, academic, law firm, legal research, tax research . . .)
• Blogs
Overview of Federal Tax Databases

- Content
  - Primary Authority
    - Current
    - Historical
  - Secondary Sources
  - Practice Tools & Transactional Materials

- Platform Design
  - Searching / Browsing Capabilities
    - Date limitations
    - Field searching
    - Boolean search operators
  - Links
  - Finding aids
  - Templates for citation pulls

Quick Look at Tax Databases

- RIA
- BNA
- CCH
- TA
Internal Revenue Code Basics

- Codification Location in U.S. Code (tit. 26)

- Organization

<table>
<thead>
<tr>
<th>Subtitle</th>
<th>Chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Income Taxes</td>
<td>1-6</td>
</tr>
<tr>
<td>B. Estate and Gift Taxes</td>
<td>11-15</td>
</tr>
</tbody>
</table>

- Citation
  - I.R.C. § or IRC § [section] (Year of Code)
    - 501=Code Section
    - c=subsection
    - 3=paragraph
  - Not Visible in Citation
    - Subtitle A: Income Taxes
    - Chapter 1: Normal Taxes and Surtaxes
    - Subchapter F: Exempt Organizations
    - Part 1: General Rule

Sources of Internal Revenue Code

- Current
  - Databases
  - Tax loose-leafs
  - Stand-alone publications
  - Sources offering U.S. Code

- Historical
  - Point in Time
    - Databases
    - Stand-alone publications / U.S. Code
  - Prior Codifications, Revenue Acts & Tracing History of Sections
    - Databases
    - History notes
    - Compiled legislative history collections

Further Reading
- Federal Tax Research Guide (Internal Revenue Code & Legislative History tabs)
Strategies for Finding Sections of Current IRC

- **Known Citation**
  - Use templates or browse to section
  - Type in citation
  - Scan and flip

Example: Using CCH, find IRC § 23 and a quick overview.

- **Unknown Citation**
  - Consult an index
  - Scan IRC's TOC
  - Run Boolean/keyword search
  - Mine secondary sources for IRC citations

Other Legislative Materials

- **Legislative History Materials**
  - Hearings
  - Committee reports
  - Floor debates & votes
  - JCT materials esp. Bluebooks
  - Repealed provisions
  - Compiled legislative histories

- **Bills**
  - Proposed & pending
  - Historical
  - Recently Enacted Laws

Further Reading

- NYU Tax Research Guide (Legislative History tab)
Regulation Basics

- Most "formal and authoritative expression" of IRS's interpretation of the Code.
- "Regulations interpret and give directions on complying with the law."²
- Types of Regulations
  - Legislative
  - Interpretative
- Authority
- Codification location in Code of Federal Regulations (tit. 26)
- Typical Form: Treas. Reg. § 1.501(c)(3)-1
  - 1=Part=Subject of regulation (income)
  - 501(c)(3)=IRC Code Section
  - 1=Section of regulation

¹ Hickman, IRS Guidance, 2009 Mich. St. L. Rev. 239, 240. 2 Understanding IRS Guidance: A Brief Primer, IRS Website

Quick Overview of Regulatory Process

Initiating Event → Proposed Rule → Public Comment → Temporary Rule → Final Rule → Annual Codification

- Published in Federal Register and Internal Revenue Bulletin
- Public Comment Period / Possibly hearing(s)
- Published in Federal Register and Internal Revenue Bulletin (TD)
- Published in Federal Register and Internal Revenue Bulletin (TD)
- Published in Code of Federal Regulations

Same precedential weight as final rule
Source of Regulations

- Proposed, Temporary & Final Rules
  - Databases
  - Stand-alone publications
  - Tax loose-leafs

  - Print
  - Databases
    - Hein (Historical)
    - Free websites

Tracing Historical Changes
- History Notes
- Cumulative Changes series (RIA)

Ongoing Agency Work on New & Existing Regulations
- Semi-Annual Agenda

Strategies for Finding Regulations

- Deduce from related IRC section
- Link from IRC section
- Run Boolean/keyword search
- Consult an index
- Scan CFR's TOC
- Mine secondary sources for regulatory citations

Example: Using an index on BNA, find regulations relating to a safe-harbor for lobbying by public charities.

Example: Using Lexis Advance, find recent proposed regulations on political campaign activities of "social welfare" organizations, 501(c)(4) organizations.
IRS Guidance Basics

• Selection of Types
  • Revenue Rulings
  • Revenue Procedures
  • Announcements
  • Notices
  • Private Letter Rulings (PLR)
  • Technical Advice Memoranda (TAM)
  • Actions on Decisions (AODs)
  • IRS Publications
  • News Releases
  • Internal Revenue Manual (IRM)
  • Chief Counsel Advice
  • Field Service Advice (FSA)
  • General Counsel Memoranda

• Selection of Types (Con’t)
  • Information & Determination Letters
  • LMSB & LB&I Directives
  • Settlement Guidelines
  • Delegation Orders
  • Speeches by IRS Officials
  • Email advice from Chief Counsel Attorneys . . .

• Categories
  • Materials published in IRB
  • Taxpayer-specific advice
  • Documents officially disseminated to public (non-IRB)
  • Intra-Agency Material
  • Written Rulings
  • Misc . . .

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Rev. Rulings & Procedures, Notices & Announcements

• Revenue Ruling
  • “Published position of the IRS in regard to the interpretation or application of law to a hypothetical or simplified set of facts”\(^1\)

• Revenue Procedure
  • “Statement of procedures which affects the rights or duties of taxpayers . . . under the Code and related statutes.”\(^2\)

• Notice
  • “[P]ublic pronouncement . . . that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law.”\(^3\)

• Announcement

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\(^1\) Lowry, U.S. Federal Tax Research, 100-2d TAX. MGMT. PORT. (BNA) § III D1; 2. Treas. Reg. § 601.601(d)(2)(vi); 3. IRM § 32.2.2.3.3 (2004)
Internal Revenue Bulletin

- “[T]he authoritative instrument . . . for the announcement of official rulings, decisions, opinions, and procedures and for the publication of Treasury Decisions, Executive Orders, tax conventions, legislation, court decisions, and other items pertaining to internal revenue matters”

- “Items published in the Internal Revenue Bulletin are . . . king of the IRS jungle and generally trump other IRS pronouncements”

- Published weekly

- Compiled & indexed bi-annually in Cumulative Bulletin (until 2008)

- Finding Lists & Subject Index
- Bulletin-Index Digest System (1953-1993)

- Numbering System / Citation
  - 9=Bulletin issued the 9th week of 2014
  - 539=Page number
  - 1=Volume covering period from Jan. 1, 1970 to June 30, 1980
  - 127=Page number

1. Treas. Reg. § 601.601(d)(1); 2. Lowry, U.S. Federal Tax Research, 100-2d TAX. MGMT. PORT. (BNA), § III C

Select TP Specific Guidance

- Private Letter Ruling
  - “[W]ritten determination issued to a taxpayer . . . in response to the taxpayer’s written inquiry, filed prior to the filing of returns . . . A letter ruling interprets the tax laws and applies them to the taxpayer’s specific set of facts.”

- Technical Advice Memorandum
  - Advice “requested by IRS area offices after a return has been filed, often in conjunction with an ongoing examination.”

1. Rev. Proc. 2012-1 ; 2. IRM § 4.10.7.2.10 (01-01-2006)

Authority / Effect on Service

Availability

Numbering Scheme

UILC
Select Other IRS Guidance

- Internal Revenue Manual
  - “[S]ingle official compilation of policies, delegated authorities, procedures, instructions, and guidelines relating to the organization, functions, administration, and operations of the Service.”
- IRS Publications
  - “IRS Publications explain the law in plain language for taxpayers and their advisors. They typically highlight changes in the law, provide examples illustrating Service positions, and include worksheets.”

Sources of IRS Guidance

- Databases
  - IRS Guidance generally
  - Specific type of IRS Guidance
- Print Sources
  - Some tax loose-leaves
  - IRS Letter Rulings Reporter, IRS Positions Reporter
  - Stand-alone publications (e.g., Internal Revenue Manual)
- IRS Website
  - Internal Revenue Bulletin
    - Databases
    - Free websites
Strategies for Finding IRS Guidance

- Run Boolean/keyword search
- Mine secondary sources for citations to IRS guidance
- Use a finding list
- Consult digest-annotations in tax loose-leafs

Example: A client who adopted a foreign-born child wants to use an adoption credit. Because of delays in the finality of the adoption process she wants advice on which year to use the credit. Find citations for IRS guidance on this issue using a secondary source on the Tax & Accounting Center.

Example: A nonprofit organization client that represents victims of human trafficking wants information on the tax treatment of restitution payments under 18 U.S.C. § 1593. Find IRS guidance on this issue using a Boolean search on RIA.

Judicial Opinions Basics

- Courts Adjudicating Federal Tax Matters
  - U.S. Tax Court
  - U.S. District Courts
  - U.S. Court of Federal Claims
  - U.S. Court of Appeals
  - U.S. Supreme Court
- Tax Court
  - Regular decisions
  - Memorandum decisions
  - Summary decisions
  - Predecessor: Board of Tax Appeals (renamed Tax Court of the United States)
Sources of Judicial Opinions

- Reporters
  - Official reporters
  - Unofficial tax reporters
- Databases
  - Tax jurisprudence
  - Federal jurisprudence generally
- Court websites/Google Scholar
- Tax Loose-leaves

Finding Judicial Opinion Strategies

- Run Boolean/keyword search
- Consult notes/ digest-annotations of decisions in databases and tax loose-leaves
- Mine secondary sources for judicial opinion citations
- Use citators
- Use West’s Key Number system or a digest
Action on Decisions

- A legal memorandum in which the IRS announces its “future litigation position with regard to”1 an adverse ruling.

- Three positions in Action on Decision (AOD)
  - Acquiescence
  - Acquiescence in result only
  - Nonacquiescence

- Sources of AODs
  - *Internal Revenue Bulletin* (abbr.)
  - Databases
  - *IRS Positions Reporter*
  - IRS Website

---

Tax Loose-Leafs

- Spiral-bound multi-volume sets that generally combine primary and secondary material

- Often group together related material and provide helpful reference tools like finding aids, indexes, tables and annotations to judicial and administrative materials

- Online Counterparts

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Examples

- Organized by Code Section
  - *Standard Federal Tax Reporter* (CCH)
  - *United States Tax Reporter* (RIA)
- Organized by Topic
  - *Federal Tax Coordinator* (RIA)
Secondary Sources Basics

• Uses
  • Learn a subject area & obtain overview of topic
  • Find citations to primary authorities and other secondary sources
  • Springboard to more detailed research
  • Learn new legal developments
  • Find descriptions and analysis of transactions

• Types of Secondary Sources
  • Tax loose-leafs (editorial components)
  • Treatises & BNA portfolios
  • Hornbooks & study aids
  • Journals & law reviews
  • Newsletters/magazines/ current awareness services
  • Legal encyclopedias
  • Congressional Research Reports
  • Blogs

Secondary Sources Quick Review

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Treatises</th>
<th>Periodical Articles</th>
<th>Current Awareness &amp; Magazines &amp; Blogs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Potential source of detailed explanation of law’s content, legislative history, application &amp; theory</td>
<td>Potential source for policy analysis, description of legislative history, and new perspectives</td>
<td>Provide alerts and explanations of new legal tax developments generally or those in a specialty</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Strategies</th>
<th>Treatises</th>
<th>Periodical Articles</th>
<th>Current Awareness &amp; Magazines &amp; Blogs</th>
</tr>
</thead>
</table>
|            | Boolean/keyword searches  
|            | Browse TOCs & content  
|            | Legal article indexes & tax article indexes (tax largely print only)  
|            | Citing materials        | Boolean/keyword searches  
|            |                         | Pushed to user through email & RSS feeds  
|            |                         | Browse TOCs & content        |                          |

<table>
<thead>
<tr>
<th>Sources</th>
<th>Treatises</th>
<th>Periodical Articles</th>
<th>Current Awareness &amp; Magazines &amp; Blogs</th>
</tr>
</thead>
</table>
| Current & Historical  
    Databases  
    Libraries | Databases (Remember: Hein, Proquest, Ebsco, Google Scholar, SSRN . . .)  
    Libraries | Databases  
    Libraries  
    Websites & Blogs |
Fed. Tax Research: Core Strategies

- Core Research Methods
  - Use an index or finding list
  - Run a Boolean/keyword search
  - Consult secondary sources for explanations, to lead to related materials and to find citations
  - Scan tables of contents
  - Follow cites in related authority
  - Pull by citation
  - Use a citator; Check citing materials

- Factors to Consider When Choosing Method
  - What you are looking for?
  - What is your depth of knowledge or information about the research issue or problem?
  - What resources do you have? What are their cost-effectiveness?

- Combination of Methods

Federal Tax Research Quick Tips

- Familiarize yourself with the primary and secondary materials offered by the databases and print resources available to you.

- Strategically select databases or print resources when researching. Factors to consider:
  - Availability
  - Resources Functionalities
  - Citation Needs
  - Cost

- Keep a guide of federal tax and IRS abbreviations handy. Database descriptions of various IRS guidance can be helpful.

- Don't forget about citators & indexes.

- Thread the needle when constructing Boolean/keyword searches. Take care selecting terms.
Bibliography

The following materials were consulted in the creation of this presentation. Some sources were also quoted in this powerpoint.

- ROBERT L. GARDNER ET AL., TAX RESEARCH TECHNIQUES (9th ed. 2012)
- Tina R. Green & Nikki L. Laing, IRS Alphabet Soup: Practical and Precedential Value of AODs, IRBs, TAMs and Other Guidance, 15 J. TAX PRAC. & PROC. 27 (2013)
- INTERNAL REVENUE SERVICE, INTERNAL REVENUE MANUAL
- JONI LARSON & DAN SHEAFFER, FEDERAL TAX RESEARCH (2d ed., 2011)
- Peter A. Lowy, U.S. Income: U.S. Federal Tax Research, 100-2d TAX. MGMT. PORT. (BNA)
Tax research: International Issues

Stow Lovejoy
Kostelanetz & Fink, LLP

Context for international tax issues

• Foreign activities of US taxpayers
  – Foreign tax credits
  – Subpart F
  – IC-DISCs; PFICs; etc
  – Expatriation
  – Foreign accounts / FATCA
• US activities of foreign taxpayers
  – Doing business in the United States
  – FDAP income withholding
  – FIRPTA
• Estate and gift tax issues
• Cross border mergers and acquisitions
• Transfer pricing
When faced with cross-border tax issue

• First determine the consequences under US tax law.
• Then determine whether and how those consequences are affected by any treaty between the US and a foreign country.
• In certain cases, determine whether foreign tax law affects the consequences.

US tax law sources

• Code
• Final regulations, proposed and temporary regulations
• Legislative history
• Cases
• Rulings and other IRS pronouncements
• Secondary sources
Where to turn?

• Official sources
• General services
  – Checkpoint, IntelliConnect, LexisNexis Tax Center
  – Standard Federal Tax Reporter, RIA
• Services targeted to “international”
  – Checkpoint International Tax Library, BNA International Portfolios
• Treatises
  – Isenbergh; Kuntz & Peroni; Andersen; Rhoades & Langer

Find the International Content
Find the International Content

Tax Treaties and other agreements

• Tax Treaties
  – Bilateral Income Tax Treaties
  – Bilateral Estate / Transfer Tax Treaties
  – Tax Information Exchange Agreements
  – Multilateral Agreements

• Intergovernmental Agreements under FATCA
Sources of Tax Treaty Law

- Treaty itself
- Model treaties
- Negotiating history
- Ratification history
- IRS interpretation and court cases

IRS.gov Treaty page
Model Treaties

- OECD Model Treaty
  - Extensive commentary
- US Model Treaty
  - Model Treaty Technical Explanation
- UN Model Treaties
OECD Model Treaty

U.S. Model Treaty
Negotiating History

- Contract theory of treaty – shared expectations
- Start with model treaties and commentary
- Records of negotiation – if available
- Treasury Technical Explanation

irs.gov for Technical Explanation
Ratification History

• Treaty and technical explanation submitted to Senate
• JCT Staff Explanation – may expand on or differ from Treasury Technical Explanation
• Senate Finance Committee Hearings and Report
• Senate Floor action
• Presidential signature and exchange of instruments of ratification

Commercial services
Commercial services

Subsequent Interpretation

- Court cases
- Revenue Rulings
- Letter rulings and technical advice memos
- Competent authority proceedings
Online resources

- [www.treasury.gov/resource-center/tax-policy/treaties/Pages/default.aspx](http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/default.aspx)
- [www.state.gov/s/l/treaty/tias/](http://www.state.gov/s/l/treaty/tias/)
- For estate tax treaties, irs.gov just gives a list
- CCH International Tax Treaty Expert Library
- BNA Tax Treaties Analysis
- Westlaw / RIA Tax Treaties / Checkpoint
- Tax Analysts Worldwide Tax Treaties (on Lexis)
- Many, many more

Traditional (Paper) resources

- CCH Tax Treaties
- RIA/WGL Tax Treaties
- RIA Federal Tax Coordinator O parts 3 and 4
- BNA Foreign Income Portfolios “Business Operations in ...” the specific country
- Tax Analysts Worldwide Tax Daily, Tax Notes International
- Treatises:
  - Isenbergh; Kuntz & Peroni; Andersen; Rhoades & Langer
## Foreign Tax Issues

- Should you be handling these at all?
  - What is the question? Is it a part of a US tax issue?
- Sources:
  - BNA Foreign Income Portfolios “Business Operations in” ...
  - Big Four publications and websites (DITS, etc.)
  - Tax Analysts
  - RIA’s Worldwide Tax Law: Complete
- Find a lawyer in the jurisdiction

## Where might foreign tax be relevant?

- Foreign tax credit rules
- Subpart F income
  - Foreign base company exclusion
- Choice of jurisdiction
- Foreign withholding taxes
On-line information

Example: Foreign clients investing in US property

• A family of nonresident aliens own real estate in New York through a US corporation owned by a Liechtenstein Anstalt.
• The family consists of residents of the UK, France, Hong Kong and Switzerland.
• The Liechtenstein trustee is forcing them out of Liechtenstein, and they ask you whether and where they can move without US tax.
Issues

• Section 897 – “FIRPTA”.
• Section 1441 and 1442 – withholding on payments to nonresident aliens and foreign corporations.
• Section 367.
• Will tax treaties affect these?
• What would be the best country for new domicile of trust / holding company?

Example: US citizen resident abroad

• Your client is a United States citizen who has lived and worked in the UK for many years and now has a substantial retirement fund balance as well as investment and banking accounts.
• She has not filed US federal income tax returns or FBARs.
Issues

• How to get current?
• Any treaty protection concerning taxation of UK based income?
• Any treaty protection for UK based retirement funds?

Example: US person with overseas business operations

• Your client is a US citizen and resident.
• He has a highly successful business in Hong Kong, which he owns directly.
• He also is entering this business in Japan, but plans to do so through a corporate entity.
• He asks your advice on how to structure his ownership.
Issues

• Taxation of income in each country.
• Choice of entity – flow through possible?
• Use of losses and foreign tax credits.
• Flow of capital between businesses.
• Flow of earnings back to the United States.
• Treaty network of each country.

Advantages of paper in research

• Hierarchical organization imposed on you (Code, regulations, analysis, annotations)
• Memorable / speed and ease of use
• Relational organization (subject matter)
• Special features
• Serendipity
CCH - Hierarchy

Overview

Corporate Distributions

A preliminary overview introducing the overall concept of the topic. This is for a quick review of the high points of the subject, including case law, regulations, decisions, rulings, and current following.

Distributions Generally

A distribution to a corporation in respect of its undistributed earnings and profits, as defined in IRC §301 and §322, respectively, to individuals, estates, or trusts is subject to current income tax. The IRC provides that any income tax due under §301 and following, except for items of depreciation and depletion, is the income of the corporation for the taxable year in which it is distributed. Moreover, a distribution to a corporation in respect of its undistributed earnings and profits is generally subject to tax under the provisions of the IRC.

Distributions of Property

A distribution of property to a corporation in respect of its undistributed earnings and profits is subject to current income tax. The distribution is treated as a dividend, regardless of whether the property distributed is appreciated or not, unless the corporation is insolvent at the time of the distribution.

Cashing and Profits

A dividend may be defined generally as a distribution of earnings of profits. "Earnings and profits" mean the amount realized from the sale of property or from the performance of services for others, less the cost of such property or services, if any. The amount so realized is subject to income tax, and the amount realized is subject to income tax, and the amount realized in excess of such cost is subject to income tax. The amount realized in excess of such cost is subject to income tax, and the amount realized in excess of such cost is subject to income tax.

Wrappers Up To Corporation

Generally,

Special features

CCH Standard Federal Tax Reporter

Citator A-M

Current Supplements

2012 Index

Tax Planning Tax Rates

1-800-835-4000
Get to know a service

• CCH Standard Federal Tax Reporter
• BNA Portfolios
• RIA Federal Tax Coordinator
• Treatises, e.g.
  – Bittker & Eustice
  – McKee, Nelson & Whitmire
Legal Research -Tax-

Legal Resources for Tax Research
And the NYCLA Library

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Legal Research Overview

Types of Legal Literature

Primary Source Material

Secondary Source Material

Finding Tools
Types of Legal Literature

Primary
- The Law

Secondary
- Commentary on the Law

Finding Tools
- Assists in finding Primary and Secondary Source materials

Types of Legal Literature

Primary
- Cases
- Constitutions
- Statutes
- Treaties
- Administrative Regulations
- Administrative Decisions, opinion, letters, & internal documents
- Municipal Rules, Regulations & Decisions

Secondary
- Text books
- Treatises
- Legal Encyclopedias
- ALRs
- Law Reviews
- Headnotes
- Notes of Decisions
- Practice Commentaries
- Non-legal Materials

Finding Tools
- Shepards
- Keycite
- Digests
- Bibliographies
- Index to Legal Periodicals
- Legal Resources Index /LegalTrac
- IndexMaster
- Other Indexes
  - Subject
  - Table of Cases
  - Table of statutes
  - Conv. Tables
Formats for legal Information

Formats of Legal information have changed through time. Some continue to have vibrancy, while some are now disused.

A now disused format

Cuneiform
Example of a cuneiform legal source

Hammurabi’s Code

For example, the 8th law of the Code reads: “If any one steal cattle or sheep, or an ass, or a pig or a goat, if it belonged to a god or to the court, the thief shall pay thirty fold; if they belonged to a freed man of the king he shall pay tenfold; if the thief has nothing with which to pay he shall be put to death.”

Formats for legal Information

This stele, found at the Louvre, contains the text of Hammurabi’s code, circa 1800 BCE.
Formats for legal Information

The Oral tradition:

Formats for legal Information

The Oral Tradition continues:
Formats for legal Information
Hand written 13 Century Law, Iceland

Formats for legal Information
Books
Formats for legal Information

Microforms / Microcards

Modern alternate formats:

CDs
Formats for legal Information

Online sources:

Mobile Formats

• If not now, when?
Less Usual Formats

New York County Lawyers’ Association Online Resources:

Westlaw - 23 Patron Terminals
Lexis - 1 Patron Terminal
Cost: *No Charge to members*

Training: Every month
Limitations: Onsite only

*Most NYCLA Members qualify for off-site access to Legal Resources through the NYSL-ABC.*
The U.S Constitution and Tax Research

Tax research rarely involves the Constitution though it contains several specific provisions for taxation.


Uniformity Clause: Art I, section 8, clause 1.

Export Clause: Art I, section 9, clause 5.

Income Tax: 16th Amendment

Statutory Scheme

*United States Code* Title 26: Internal Revenue Code of 1986

Prior Versions: Internal Revenue Code of 1954

Internal Revenue Code of 1939

It is important for tax attorneys to monitor pending legislation.

Researchers should be mindful of the enactment date, the effective date and the sunset date of tax code provisions.

The NYCLA Library relies on the USCA (Westlaw) and the USCS (Lexis) for copies of the current code.

An unannotated version of the Internal Revenue Code can be found on Loislaw.

Superseded versions of the Internal Revenue Code are in the NYCLA Library in old USCA volumes (superseded) and in older editions of CCH Tax publications.
Individual Revenue Acts

First published as slip laws and then bound in Public Law number order into:

*United States Statutes at Large.*

Also found in the *US Code Congressional Administrative News* (West)

The NYCLA Library has *United States Statutes at Large* going back to 1789.

**Westlaw:**

- **US-PL-OLD** - Public Laws since 1972
- **US-PL** - Public Laws from the current session

Pending and Potential Legislation

Track through Library of Congress *THOMAS* website.

Track through:

**Westlaw:**

- *Federal Taxation Congressional Bills (FTX-BILLTXT)*

**Lexis:**

- *Congressional Bills and Bill Tracking - Current Congress (BILLS file)*
Legislative History

• The NYCLA Library has selective compiled Legislative histories, for example:

  – Seidman, Jacob Stewart
    Legislative history of federal income and excess profits tax laws, 1953-1939
    Prentice-Hall
    c1954.

    Tax Management Inc.

    Tax Management Inc

Legislative History

• The NYCLA Lexis subscription includes
  The CIS / Historical Index which helps identify legislative histories materials from 1789 through 1980, and
  The CIS Legislative Histories which identifies materials and provides links to documents where possible.
Treasury Regulations

There are two types of tax regulations:

-Legislative Regulations – written by IRS experts under a specific grant of authority under an IRC section,

-General Authority Regulations - interpretive regulations written by the Treasury Department under the authority of IRC 7805(a). Will be upheld by the courts unless the regulations clearly contravene congressional intent.

Title 26 Code of Federal Regulations contains temporary and final regulations and are numbered based on the underlying Code section. The CFR is kept up-to-date by the Federal Register.

Proposed regulations appear in the Federal Register and their project numbers do not reflect the Code Section. This factor makes online searching a valuable approach to find proposed regulations by Code section, project number or subject matter.

Many Tax Code sections lack regulations. Because of changes in the underlying statutes, other regulations fail to reflect current law.


Semiannual Agenda of Regulations - www.federalregister.gov/articles/2012/02/13/2012-1652/semiannual-agenda-of-regulations
Types of IRS Pronouncements

*Revenue Rulings* – rulings on matters of general interest, applying the law to a particular situation. Not as authoritative as a Treasury regulations. May be retroactively applied unless stated otherwise, subject to IRC sec. 7805(b). Not deemed of general interest. All published in the *Internal Revenue Bulletin* and Cumulative Bulletin.

*Revenue Procedures and Procedural Rules* – published statements of IRS practices and procedures. Published in the *Internal Revenue Bulletin* and Cumulative Bulletin. The first issued each year establishes procedures for obtaining letter rulings, determination letters, closing agreements and sets fees; the second deals with requests for technical advice; and the third lists areas in which the IRS will not grant rulings.

*Notices, announcements and other items* – notices are for guidance, announcements are for time sensitive matters.

Publically Released Pronouncements

As a result of freedom of information requests the following documents, which are not binding on the IRS, are also available:

*Private Letter Rulings*- illustrate IRS policy as applied to an individual’s circumstance.

*Technical Advice Memorandum*- issued by the IRS National Office to a local office.

*Actions on Decisions*-Indicates a decision whether to appeal an adverse court decision.

*General Counsel Memorandum*-show reasoning and authority for revenue rulings.

*Internal Revenue Manual*- IRS operating policies.

*Chief Counsel Advice*- field service advice and service center advice.

*Chief Counsel Bulletins*- discussing bankruptcy, criminal, litigation and FOIA news.

*Litigation Guideline Memorandum*- litigation strategy.

*Industry Specialization Program* – auditing advice by industry.
Trial Courts for Tax Cases

Federal trial courts dealing with Tax matters:

United States District Courts – Taxpayer must pay amount in dispute and seek refund.
  - allows jury trials.

United States Court of Federal Claims - Taxpayer must pay and seek refund.
  - appeals to the U.S. Supreme Court.

United States Tax Court – Decisions published officially.
  - Memorandum Decisions published unofficially.
  - Both have value as precedent.

United States Bankruptcy Courts - involving priority liens and related matters.
  - Also issues substantive tax rulings.

Locating Decisions

Decisions of the U.S. Supreme Court, U.S. Courts of Appeals, and the U.S. District Courts are published in the usual reporters:

- U.S. Reports (West's Supreme Court Reporter) (Lexis- L. Ed 2d)
- Federal Reporter
- Federal Supplement
- U.S. Court of Federal Claims Reporter
- U.S. Tax Court Reports
- Board of Tax Appeals Reports
- West's Bankruptcy Reporter

In addition, cases from these courts, including otherwise unreported cases, appear in these unofficial reporters:

  - Westlaw – <FTX-all>


- Tax Court Reports - in conjunction with CCH Tax Court Reports (CCH)
Looseleaf Services, and Encyclopedias

NYCLA Library holdings:

*Tax Management Portfolios - U.S. Income & Estates, Gifts and Trusts*
Portfolios cover narrow areas of tax law in great depth.
Portfolios include analysis, worksheets-checklists and a bibliography.
Master index by subject and by code section
Discontinued at NYCLA Library 2012

*Merten's Law of Federal Income Taxation*
Available via Westlaw - <MERTENS>

Historical Collection
*Standard Federal Tax Reporter and related services (CCH)*
– 1915 through 2004

Treatises

Corpus Juris Secundum, Internal Revenue volumes - via Westlaw <CJS-FTX>
Employee Fringe and Welfare Benefit Plans – via Westlaw <EMPFRINGE>
Nonqualified Deferred Compensation Plans - via Westlaw <NQDCOMPPL>
Qualified Deferred Compensation Plans - via Westlaw <QDCOMPP>
Qualified Deferred Compensation Plans Forms – via Westlaw <QDCOMPPFMS>
Qualified Retirement Plans – Via Westlaw <QRP>
Tax Aspects of Real Estate Investments - via Westlaw <TAREI>
McGaffey Legal Forms with Tax Analysis – via Westlaw <ML-LF>
continued...
More Treatises

*Terminating Derivative Transactions: Risk Mitigation* – via Westlaw <PLIREF-TDT>

*Practical Guide to Estate Planning (CCH)* – via Loislaw

*Price on Contemporary Estate Planning (CCH)* – via Loislaw

*Multistate Guide to Estate Planning (CCH)* – via Loislaw

*Estate and Gift Tax Handbook (CCH)* – via Loislaw

*Estate and Retirement Planning Answer Book (CCH)* – via Loislaw

*Circular 230* – via Westlaw <FTX-CIRC230>

IRS sites on the Internet

Internal Revenue Service:  www.irs.gov
Treasury Department:  www.ustreas.gov
Library of Congress:  thomas.loc.gov
House Ways & Means Committee:  waysandmeans.house.gov
Senate Finance Committee:  finance.senate.gov
Joint Committee on Taxation:  jct.gov
United States Tax Court:  ustaxcourt.gov
White House:  www.whitehouse.gov
Blogs of Interest

TaxProf Blog: <taxprof.typepad.com>

Mauledagain: <mauledagain.blogspot.com>

Ataxingmatter: <ataxingmatter.blogs.com/tax/>

Hammurabi’s Code

See:

avalon.law.yale.edu/ancient/hamframe.asp
First, recall this moment early in the film *Butch Cassidy and the Sundance Kid*. Butch’s Hole-in-the-Wall gang members are restless, unhappy, rebellious, and Butch’s leadership is being challenged by way of gun- or knife-fight by the younger, faster, stronger Harvey Logan:

```
112 BUTCH

moving through the gang toward Logan He is unarmed and a
knife is offered him by one of the gang.

BUTCH

Not yet.  
(moving up to
Logan now)
Not til Harvey and me get all
the rules straight.

LOGAN

Rules?  In a knife fight? No
rules!

As he finishes speaking Butch delivers the most aesthetic-
ally exquisite kick in the balls in the history of the
modern American cinema.
```

1From the screenplay by William Goldman
Next, consider the following set of facts:

A small, Brooklyn-based business, we’ll call it Wobbly T-Widget Fabricators (for our purposes, “WTF”) holds a boutique niche in the construction industry. In addition to the owner, there are five full-time employees and a part-time bookkeeper. One sunny autumn morning the owner discovers that his company’s bank account is frozen pursuant to a bank levy issued by a field agent of the DTF’s Civil Enforcement and Collection Division.

The levy order seeks just under $15,000 in unpaid NY State tax. While to some the $15,000 at issue may not seem enormous, to this little business it is the current universe: all of the money the business has is in the frozen operating account, and the levy order has frozen pretty much everything in that account.1

The owner explained to counsel that without access to the company’s funds, he will not be able to pay for materials needed to complete already contracted jobs. Hence, instead of getting paid upon completion of these contracts, WTF will be subject to lawsuits for breach of contract by failing to complete the jobs. In addition, he will not be able to pay his workers, making it additionally difficult to complete jobs, and will expose WTF to further liability and litigation for unpaid earnings.

As counsel to WTF, your mission, if you choose to accept it, is to undo the bank levy or as much of it as can be undone, as quickly as possible. If the levy is to be lifted, it will happen by proposing a collection alternative less onerous than levying.

The bank provides a copy of the DTF levy order to WTF’s owner. It is signed by one (we’ll call her) Field Agent Ratched. In telephone conversation with Agent Ratched, WTF’s counsel is informed that the levy order will not be undone simply by sweet persuasion.

QUERY: Under what circumstances will the DTF release a bank levy? Under what circumstances with the DTF refuse to release it?

1The question whether a business apparently so undercapitalized can or even should be or stay in business is a separate issue. Assume this business does good work and the owner and workers would like to continue and to build a thriving, well-capitalized operation.

Law Office of Allan R. Pearlman
116 West 23rd Street, Suite 500, New York, NY 10011 tel. 646.827.4257
In conversation with counsel, Agent Ratched states that for the DTF to even consider releasing the levy, WTF must:

1) pay at least 25% of the total amount due;

2) file all outstanding unfiled tax returns (in this case WTF was delinquent in filing one corporate tax return);

3) enter into an Installment Payment Agreement (IPA) to pay off remaining balance within twelve months;

4) remain current in all future filings and payments until completion of the payment agreement;

5) filing and first payment must be done and complete within 48 hours;

6) these conditions are subject to approval by Agent Ratched’s supervisor.

**FURTHER QUERIES:**

1. Will DTF lift the levy at least enough to enable WTF to make the 25% down payment and to pay WTF’s accountant to provide WTF with the delinquent tax return for filing?

   a. While DTF Publication 125, “The Collection Process,” states that a basis for releasing a levy may be that it will facilitate collection of the delinquent tax liability, are there are guidelines or rules by which DTF agents may determine whether and when to release a levy?

2. What rule or guideline requires Agent Ratched to demand a 25% initial payment? Or is this at the DTF agent’s discretion?
3. Why require this all to be done within 48 hours?

4. What rule or guideline suggests or requires the remaining amount to be paid within 12 months? DTF representatives have stated that Installment Payment Plans must be paid off in 12, 24, 36, or 48 months. Are the time frames based upon the amount due? The type of tax? The history of the taxpayer? Something else? All of the above?

5. How much discretion does a DTF collection agent have? If there are rules why do they seem to be hidden, gleanable only crumb by crumb?

WTF agreed to everything Field Agent Ratched demanded, provided that the DTF lift the levy at least enough to enable WTF to access funds to make the first payment, and allow an extra week to submit the one delinquent corporate tax return.

Despite WTF’s agreement to the DTF’s terms, Agent Ratched would not take “yes” for an answer, rejected everything and leaving the levy in place.

But all was not lost. Counsel to WTF made an application to the DTF’s Office of Taxpayer Rights Advocate. Counsel succeeded here, getting nearly half the levy released, literally hours before WTF’s bank would have been forced to cut a check for the full amount levied and mail it to the DTF in compliance with the levy order.

As for our tale from the old, wild west, while taxpayers may aspire to the creativity and effectiveness of Butch Cassidy, they also a need not to have the fate of Harvey Logan. We expect such things, gunfights, knife fights, “aesthetically exquisite” kicks to an opponent’s most tender areas from our storied criminals – Butch, Sundance, Harvey – we should be able to expect something different from the State of New York.
Toto, We're Not Just Looking at the IRC Anymore:
Tax Research Resources, Techniques and Tips

State and Local Tax Research

NYCLA Course ID: C040814

Tuesday, April 8, 2014,
6:00 PM – 9:00 PM

Prepared and Presented By

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I. STATE TAXATION -- OVERVIEW

A. Multiple Types of Taxes

1. Personal Income Taxes
2. Corporate Income (Franchise) Taxes
3. Sales & Use Taxes
4. Property Taxes
5. Payroll Taxes
6. Gross Receipts Taxes
7. Excise Taxes
8. Estate and Gift Taxes

B. Multiple Layers of Taxation

1. State Taxation
2. Local Taxation
   i. City
   ii. County
   iii. Municipal
   iv. School District
3. Multiple States

C. Multiple Aspects to State Tax Problems

1. Civil Tax Issues
2. Criminal Tax Issues
3. Compliance
4. Audit
5. Collection
6. Litigation
7. Transactional/Planning

II. SOURCES OF STATE TAX RESEARCH

A. Traditional Online Third-Party Research Services

1. Westlaw
2. Lexis
3. RIA Check Point
4. CCH Intelliconnect
5. Bloomberg Law
B. Libraries

1. NYCLA Library
   https://www.nycla.org/index.cfm?page=library

2. Georgetown University: Tax Research - State and Local
   www.law.georgetown.edu/library/research/guides/state_local_tax.cfm

C. Many More Sources, see below

III. SOURCES OF STATE TAX AUTHORITY

A. Constitution

1. U.S. Constitution
   e.g.: --Due Process Clause, U.S. Constitution, amend. XIV, § 1
   --Commerce Clause, U.S. Constitution, Art. I, § 8, cl. 3.
   --Twenty-First Amendment, U.S. Constitution, amend. XXI

2. New York State Constitution

B. Statutes

1. New York Tax Law
2. New York City Administrative Code
3. Other State Statutes
4. Local Ordinances

C. Regulations

1. New York Codes, Rules and Regulations
2. New York City Administrative Code

D. Case Law

1. Division of Tax Appeals
2. Tax Appeals Tribunal  

3. State Courts  

E. Administrative Guidance

1. **Technical Memoranda (TSB-M)**
   - A TSB-M describes changes to the law, regulations, or Department policies; most are specific to particular taxes.
     
     -- TSB-M-14(2)C, Summary of Budget Bill Corporation Tax Changes Enacted in 2013
     
     -- TSB-M-14(3)S, Application of the Sales Tax Resale Exclusion to Purchases of Equipment by Cable and Satellite Television Service Providers

2. **Advisory Opinions (TSB-A)**
   - An Advisory Opinion is issued at the request of a taxpayer. It is limited to the facts set forth therein and is binding on the department only with respect to the taxpayer to whom it is issued and only if the taxpayer has fully and accurately described all relevant facts.
     
     -- TSB-A-12(1)C, (2)S (Whether Petitioner's payment processing service is subject to sales and use tax, and whether performance of the service in New York would give nexus to the merchants who receive payment from their customers through the service for purposes of sales and use tax and corporation tax.)
     
     -- Pending Advisory Opinions  
     [www.tax.ny.gov/pubs_and_bulls/advisory_opinions/pending_ao_issues.htm](www.tax.ny.gov/pubs_and_bulls/advisory_opinions/pending_ao_issues.htm)

3. **Important Notices (N-Notice)**
   - An Important Notice usually announces a singular event, such as an update to a previously issued tax form or instruction, or
to announce a new due date for filing returns and making payments of tax because of a natural disaster.

-- N-12-11, Announcement Regarding Hurricane Sandy
-- N-13-2, Estimated Tax Penalty Relief for Farmers and Fishermen

4. **Tax Guidances (NYT-G)**

- An NYT-G is an informational statement of the Department's interpretation of the law, regulations, and Department policies and is usually based on a particular set of facts or circumstances.

-- NYT-G-07(2)C, (3)S, Taxation of Internet Telephony

5. **Publications (Pub)**

- A Publication contains topics of interest to taxpayers. Most publications are specific to a particular tax; others address multiple taxes.

-- PUB-3, Guidebook of Resources For Tax Practitioners
-- PUB-125, The Collection Process - Procedures of the NYS Tax Department to Enforce Collection of Finally Fixed Tax Liabilities

6. **Tax Bulletins (TB)**

- A Tax Bulletin is a web-based guidance that provides tax information in simplified language on topics of interest to taxpayers.

-- TB-MR-575, Mortgage Recording Tax on Mortgage Transactions After a Deed in Lieu of Foreclosure (January 6, 2014)

7. **Audit Guidelines**

- **Nonresident Audit Guidelines** (June 2012) (These guidelines explain the tax law and regulations concerning residency,
discuss audit policies and procedures regarding the subject, and
address various technical and complex issues through examples
and explanations.)

See Also:

- Multistate Tax Commission Sales and Use Tax Audit Manual


F. Legislative History

1. New York State Legislature
   http://public.leginfo.state.ny.us/menuf.cgi

2. New York's Legislative History & Research Service
   http://www.nyls.org/

   http://iarchives.nysed.gov/PubImageWeb/listCollections.jsp?id=68007

G. Federal Statutes Affecting State Taxation

1. Enacted Federal Laws

   i. Public Law 86-272

   => prohibits a state from imposing a net income tax if a company’s only in-state activities are solicitation of orders for sales of tangible personal property which are sent outside the state for approval or rejection and are filled from outside the state.

   ii. 4 U.S.C. Section 114(a)
→ provides that no state may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such state as determined under the laws of such state.

2. Proposed Federal Legislation
   i. Marketplace Fairness Act

   → If enacted, it would grant states the authority to compel online and catalog retailers ("remote sellers"), no matter where they are located, to collect sales tax at the time of a transaction.

IV. ADDITIONAL SOURCES OF STATE TAX GUIDANCE

A. Agency Websites

1. New York State Department of Taxation and Finance
   http://www.tax.ny.gov/

2. New York City Department of Finance

3. Division of Tax Appeals & Tax Appeals Tribunal
   www.nysdta.org/

4. New York City Tax Appeals Tribunal

5. Taxpayer Protection Bureau, Office of the Attorney General
   http://www.ag.ny.gov/bureau/taxpayer-protection-bureau

B. Applicable Tax Return Instructions

1. Form 1040, U.S. Income Tax Return

2. Form IT-201-I, Resident Income Tax Return
3. Form IT-203-I, *Nonresident and Part-Year Resident Income Tax Return*

C. **Press Releases**

1. New York State Department of Taxation and Finance
   [www.tax.ny.gov/press/rel/pressrel.htm](http://www.tax.ny.gov/press/rel/pressrel.htm)
   - Governor Cuomo Announces Initial Results of Tax Scofflaw Driver License Suspension Initiative (March 17, 2014)
   - Governor Andrew M. Cuomo’s Press Release: Governor Cuomo Announces New Regulations to Protect Consumers Who Hire Tax Preparers (March 3, 2014)

2. New York State Office of the Attorney General

3. New York County District Attorney’s Office

D. **Agency Organization Charts**

1. Department of Taxation Telephone Contact List
   [http://www.tax.ny.gov/help/contact/telephone.htm](http://www.tax.ny.gov/help/contact/telephone.htm)

2. Department of Taxation Organization Chart
   [http://www.tax.ny.gov/about/dtf_org.pdf](http://www.tax.ny.gov/about/dtf_org.pdf)

E. **Books, Periodicals, and other Secondary Sources**


2. Richard D. Pomp, *State and Local Taxation* (7th ed. 2011); authoritative two-volume treatise


7. Timothy P. Noonan, “Noonan’s Notes on Tax Practice,” *State Tax Notes, Tax Analyst*; monthly column:


8. Debra S. Herman, “U.S. Supreme Court Update,” *Journal of Multistate Taxation and Incentive*; monthly column addressing state tax issues pending before the Court.

F. **Freedom of Information Law**

1. Freedom of Information Law, Public Officers Law, Section 84 *et seq.*

2. Committee on Open Government
   [http://www.dos.ny.gov/coog/foil2.html](http://www.dos.ny.gov/coog/foil2.html)

3. Ability to obtain relevant Department records pertaining to the underlying liability
V. HYPOTHETICAL: RESIDENCY AUDIT FACT PATTERN

Taxpayer is domiciled in New Jersey and has a business on Staten Island to which he commutes daily. He also purchased a multi-family apartment building near his business in New York, both as an investment and to house his parents who lived in the building’s first floor apartment. He files as a resident of New Jersey and as a nonresident of New York. Now he is under audit.

Q: What is the issue here? A: Statutory Residency

Does he maintain a permanent place of abode ("PPA") in New York?

Research Steps:

1) Pull income tax statutes
e.g.: - Tax Law § 605(b)(1)(A) (domicile)
      - Tax Law § 605(b)(1)(B) (statutory resident)

2) Pull regulations
   - 20 N.Y.C.R.R. § 105.20(e)(1) (mere camp or cottage not a PPA)

3) Pull New York case law
   => examine relationship with the abode
     (N.Y. Ct. App. February 18, 2014)
   => taxpayer himself must have a "residential interest" in the property

4) Pull Nonresident Audit Guidelines

5) Pull books and periodicals
e.g.: - Paul R. Comeau, Mark S. Klein, and Timothy P. Noonan, New York Residency and Allocation Audit Handbook (CCH 2014)

6) Develop your case and work through issues with auditors
VI. HYPOTHETICAL: COLLECTION FACT PATTERN

Taxpayer comes to your office. He’s in a panic. He’s a doctor at a hospital a few towns away. He is also an investor in a popular, local restaurant. Auditors have previously assessed him personally for a sales tax liability of the restaurant. Collection agents are now attempting to garnish his wages at the hospital job and to levy his bank accounts. Further, he received a letter from the DMV threatening suspension of his driver license. What defenses can he mount? What can he do?

Q: What is the issue here? A: Responsible Person Liability for Sales Tax

1) Pull sales tax statutes
e.g.: - Tax Law § 1131 (responsible officer)
    - Tax Law § 1133 (responsible officer)

2) Pull regulations
    - 20 N.Y.C.R.R. § 526.11 (responsible officer)

3) Pull administrative guidance
    - TSB-M-13(4)I (addressing license suspension)

4) Pull New York Case Law

5) Pull Driver License statutes
    - Tax Law section 171-v
    - N.Y. Veh. and Traf. Law section 510.4-f(2).

6) Pull Department Publications
    - Pub 900, Important Information for Business Owners (discussing, inter alia, personal liability)

7) Pull practitioner articles

8) Pull press releases
    - Governor Cuomo Announces Initial Results of Tax Scofflaw Driver License Suspension Initiative (March 17, 2014)
9) File a Freedom of Information Law Request  
=> See what’s in the audit file to establish personal liability

But wait, is this a partnership or an LLC?

10) Pull sales tax statutes  
    - Tax Law § 1131 (responsible officer)  
    => In the case of a partnership or LLC, section 1131(1) of the Tax Law provides that each partner or member is a responsible person regardless of whether the partner or member is under a duty to act on behalf of the partnership or company. This means that these persons can be held responsible for 100% of the sales and use tax liability of a business.

11) Pull administrative guidance:  
    - TSB-M-11(6)S (April 14, 2011)  
    => The Department recognizes that per se liability for partners and LLC members can result in harsh consequences for certain partners and members who have no involvement in or control of the business’s affairs. Accordingly, the department has developed the following new policy that provides some relief from this per se personal liability for certain limited partners and members.

    => limited partners may demonstrate that they were not under a duty to act on behalf of the partnership

    => eligible LLC members (< 50% ownership) may demonstrate that they were not under a duty to act on behalf of the entity
VII. HYPOTHETICAL: NEXUS FACT PATTERN

Petitioner is incorporated under the laws of California. It is a retailer of bottled wine, which it sells through its website and on-line catalogs. Petitioner possesses an out-of-state direct shipper's license, pursuant to §79-c of the Alcoholic Beverage Control Law, which authorizes it to sell bottled wine directly to New York State residents who are 21 years of age or older for their personal use if certain conditions are met. It transports its goods to New York exclusively through common carriers. Petitioner has no employees or agents of any kind in the state and it has no place of business or property in the state. Does Petitioner need to collect sales tax on its sales of bottled wine to customers in New York?

Q: What is the issue here? A: Sales Tax Nexus

Research Steps:

1) Pull sales tax statutes
   e.g.: -Imposition statute: Tax Law § 1105(a)
        -Retail sale definition: Tax Law § 1101(b)(4)
        -Applicable exemption?: Tax Law § 1115

2) Pull regulations

3) Pull U.S. Supreme Court Case Law
   e.g.: -Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)
       ⇒ Jurisdiction to tax under U.S. Constitution requires “substantial nexus”
       ⇒ “Substantial nexus” for sales taxes requires in state physical presence

4) Pull New York Case Law
       ⇒ slightest presence in state can be enough

5) But wait, pull U.S. Constitution
   -U.S. Constitution, amend. XXI, Section 2

   ⇒ the Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system

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VIII. HYPOTHETICAL: CLOUD COMPUTING FACT PATTERN

Cloud computer company provides services on-line to its customers located throughout the tri-state area. Customers pay subscription fees for services provided by the company over the internet and through the use of software, hardware and servers. Should the company charge, collect, and remit sales and use taxes on its sales or are these nontaxable activities?

Q: What is the issue here?  A: Taxable Transfer of Possession?

1) Pull sales tax statutes
e.g.: - Tax Law § 1105(a) (sale of TPP)
- Tax Law § 1105(c) (sale of information service)
- Tax Law § 1101(b)(4) (retail sale)
- Tax Law § 1101(b)(14) (definition of TPP, including pre-written software)

2) Pull regulations
e.g.: - 20 N.Y.C.R.R. § 526.7(c)(1) (rental, lease and license to use)
- 20 N.Y.C.R.R. § 526.7(e)(4) (transfer of possession, actual or constructive, right to use or control or direct the use of)

3) Pull Guidance, advisory opinions
e.g.: - Activities that in 2006 were considered by the Department to be tax-free services are now regularly being treated as subject to tax. Compare In re Tower Innovative Learning Solutions, Advisory Opinion, TSB-A-06(5)S (02/02/06) (online education services not taxable); with In re SkillSoft Corporation, Advisory Opinion, TSB-A-09(3)S (01/29/2009) (online education services taxable); and In re MindLeaders, Inc., Advisory Opinion, TSB-A-09(2)S (01/21/09) (same).

- “The accessing of Petitioner’s software by Petitioner’s subscribers constitutes a transfer of possession of the software, because the subscriber gains constructive possession of the software and gains the ‘right to use, control or direct the use’ of the software.”

⇒ New York has taken an aggressive stance in treating SaaS as the taxable sale of pre-written software; concluding that there is a transfer of possession or control over the
vendor’s software. This evolution has occurred largely through advisory opinions.

4) Pull New York case law
   e.g.: - *In re Sungard Securities Finance LLC*, DTA No. 824336, Div. Tax App., ALJ Unit (February 6, 2014)

   “In sum, petitioner uses its own specialized proprietary software to verify, synthesize (or process), secure, format for customer viewing, and archive its customers' own transactional data. Petitioner obtains its customers' transactional data via ancillary software furnished without additional charge by petitioner. This software cannot function independently of Smart Loan, is not capable of being altered or manipulated by a customer, and serves to provide a secure connection between petitioner and its customers for the receipt of petitioner's customers' transactional data and the return thereof, as processed, to such customers”

   “Under all of the facts, petitioner is not selling tangible personal property in the form of prewritten computer software, by direct or constructive license, but rather is providing an information service under Tax Law §1105(c)(1), (9)…”

   => The first case to address SaaS and cloud computing in New York. Held: Taxpayer was not selling taxable pre-written software, because no transfer of possession. But, Taxpayer was selling a taxable information service. However, it qualified for an exemption from taxation.

5) But, Pull New Jersey Authority
   e.g.: - *New Jersey Division of Taxation, Regulatory Services Branch*, Technical Bulletin, TB-72 (07-03-13) (addresses the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to the sale of cloud computing.)

   “SaaS providers offer the use of software on a per transaction basis, through a service contract, or by subscription. SaaS providers do not transfer software to their customers. Rather, SaaS providers only allow customers to access software through remote means.”

   => Just across the Hudson River, the treatment of cloud computing is vastly different. New Jersey has concluded that there is no transfer of possession over a SaaS vendor’s
software, and therefore, the vendor is not selling taxable pre-written software.

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The information contained throughout this Outline is for informational purposes only. Information and examples are merely illustrative and are not intended to be exhaustive.

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Faculty Biographies
Dan Jordan

Dan Jordan has held various Law Librarian positions since 1980. He is a 1980 graduate of the University of the Pacific, McGeorge School of Law in Sacramento, California and a 1982 Masters in Library Science graduate from Pratt Institute in Brooklyn, New York. His BA is from Brooklyn College. Mr. Jordan has worked in legal academia for most of his career and also has experience working in law firm libraries. He has been the Director of Library Services at NYCLA since May 2008. He is a member of the California Bar.
Henry Stow Lovejoy

Counsel

Henry Stow Lovejoy concentrates his practice on matters of federal and state taxation, including both tax planning and representation of clients in civil and criminal tax controversies. He has broad experience in many areas of the tax law, with particular expertise in the taxation of financial products and cross-border transactions.

Prior to joining Kostelanetz & Fink, LLP, Mr. Lovejoy worked as a banker at several large international banks, as well as an independent adviser to financial institutions and high net worth individuals. He began his career as an associate at Sullivan & Cromwell. He is admitted to both the New York and New Jersey bars, and has been active in the Tax Sections of the New York State Bar Association, the New Jersey State Bar Association, and the American Bar Association.

Stow Lovejoy Representative Matters

- Represented numerous clients making voluntary disclosures of offshore bank accounts.
- Advised non-US family groups on structuring of investment in US real property.
- Advised multinational family with respect to structure of worldwide business under US tax law.
- Represented investment partnerships on IRS disallowance charitable deductions for donating historic façade easements with respect to landmark buildings.
- Represented whistleblowers reporting over one billion dollars of unpaid income taxes to the IRS Whistleblower Office.
- Represented individual investors in oil and gas drilling partnerships on IRS challenges to deductions.
- Advised commodities exporter on export incentives under the Internal Revenue Code.
- Represented investor in “distressed asset” tax shelter partnership at audit and in Tax Court.
- Represented individuals and S corporation in contest of state tax allocation of “nowhere sales” to home state.

Presentations

- “The STARS Transaction Decision and other Recent Applications of the Economic Substance Doctrine,” ABA Tax Section, Banking and Savings Institutions
Bar Admissions
- New York Bar, 1979
- New Jersey Bar, 2004
- U.S.D.C. Southern District of New York, 1979
- U.S. Court of Claims
- U.S. Tax Court, 2008

"Recent Substance over Form and Debt vs Equity Cases," ABA Tax Section, Banking and Savings Institutions Committee, January 25, 2013, Orlando, FL.

"Is there a Financial Transactions Tax in your Future?" ABA Tax Section, Banking and Savings Institutions Committee, September 14, 2012, Boston, MA.

"Foreign Tax Credits, Economic Substance and the Future," ABA Tax Section, Banking and Savings Institutions Committee, February 17, 2012, San Diego, CA.

"Façade Easements: Historic Preservation or Tax Shelter?" ABA Tax Section, Individual & Family Taxation Committee, September 25, 2009, Chicago, IL.
Allan R. Pearlman


In addition to representing taxpayers in front of the IRS or New York State’s Department of Taxation and Finance, or both, Mr. Pearlman litigates non-tax issues, including, for example, arguing appeals in New York State’s Appellate Division, First and Second Departments. He has challenged a medical malpractice verdict as well as a New York Human Rights law determination.

Mr. Pearlman briefed and argued a federal constitutional First Amendment freedom of speech and freedom of association issue in a criminal matter in federal district court in the Eastern District of New York.

He is the author of the guide for attorneys, New York Subpoena for Actions Outside New York, which is available as an immediate digital download at http://NYSubpoenaForActionsOutsideNY.com. This addresses the arcane but sometimes absolutely essential issue of how a litigant (or, of course, counsel) in a litigation pending in a state court outside New York may compel an uncooperative nonparty witness located in New York to appear for deposition or to produce documents and things relevant to the case being litigated outside of New York.

In October 2013, he was appointed chair of New York County Lawyers’ Association’s Committee on Taxation. Prior to that, from 2010 through 2013, he served as co-chair of NYCLA’s Cyberspace Law Committee.

During his tenure in the Cyberspace Law Committee, he organized numerous public forums and CLEs on topics ranging from: internet domain name dispute resolution procedures, intellectual property in the digital age, vote-counting technology (“Do the Ayes Have It?”), and internet website terms of use, disclaimers and privacy policies (“Click on the Dotted Line”).

The public forums he has organized at NYCLA have been covered by Court TV and NPR and have featured such speakers as a member of The New York Times editorial board, a staff writer for the New Yorker magazine, a member of the New York State Board of Elections, and a computer expert who testified before the United States Congress regarding Bush v Gore.

He also successfully represented New York Times Best-Selling author Robin Cook (Coma and approximately 30 other bestselling novels) in his effort to take control of the internet domain name which is his name, Robin Cook, plus “dot com.” See the decision at http://domains.adrforum.com/domains/decisions/1391337.htm which had been previously registered by an interloper with no legitimate claim to the author’s good (and famous) name.
Allan Pearlman received his BA in American Culture from University of Michigan, Ann Arbor, where he was twice awarded the coveted Hopwood Writing Award.

He earned his JD from Rutgers School of Law-Camden. In 1994, he was awarded the NYCLA Criminal Justice Section’s Public Service Fellowship based on an essay competition.

He is AV-rated by Martindale-Hubbell Peer Review.

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Michael Sardar

Associate

Michael Sardar joined Kostelanetz & Fink, LLP in 2009. Mr. Sardar’s practice focuses on all stages of civil and criminal tax controversies. He represents taxpayers before the Internal Revenue Service, state tax authorities, the Department of Justice, and local prosecutors; as well as taxpayers in New York State and City residency audits. Mr. Sardar has successfully represented scores of clients with unreported foreign assets who have repatriated over half a billion dollars of offshore assets. Mr. Sardar recently secured a favorable non-jail sentence for a client facing federal criminal charges relating to undeclared foreign bank accounts. He also recently convinced the New York County District Attorney’s Office to abandon a criminal investigation of his client and successfully resolved the case in a civil manner. Mr. Sardar also has vast experience representing clients making voluntary disclosures to the Internal Revenue Service and state tax authorities. He is also a member of the Committee on Personal Income Taxation, New York City Bar Association. Mr. Sardar is the Vice-Chair of the New York County Lawyers’ Association (NYCLA) Taxation Committee.

Prior to joining Kostelanetz & Fink, Mr. Sardar was a tax associate in the New York office of Heller Ehrman, LLP, where his practice focused on federal and state transactional tax matters. While at Heller Ehrman, Mr. Sardar also advised many nonprofit organizations on federal and state tax issues including general tax exemption and Unrelated Business Income Tax (UBIT). Mr. Sardar received his B.B.A., summa cum laude, from Baruch College in 2004, and his J.D. in 2007 from Cornell University Law School.
Analysis of the Penalties for Willful Failure to File Reports of Foreign Bank Accounts, New York University 68th Institute on Federal Taxation, Matthew Bender, May 2010
Minimizing Penalties for Unreported Foreign Accounts, Business Crimes Bulletin. Volume 17, Number 8, April 2010
The FBAR and the Fifth Amendment

Education
- Baruch College, BBA in Marketing Management (2004), summa cum laude
- Cornell Law School, J.D. (2007)

Bar Admissions
- New York, Second Department, 2008
Areas of Practice: State and local tax controversy and planning

Professional Experience: Mr. Rothenberg concentrates his practice in state and local tax controversy and planning. His experience includes assisting Fortune 100 companies and high-net-worth individuals facing a wide range of multistate tax issues, including insurance premium tax, corporate income and franchise tax, sales and use tax, and personal income tax, as well as federal income tax issues. Mr. Rothenberg represents clients in all phases of administrative audit and appeal, in collection proceedings, in voluntary disclosure matters, and, if necessary, in litigation in administrative and state courts.

Presentations: Mr. Rothenberg has lectured on various tax topics, including the following:

- Faculty, "Sales and Use Tax in New York," Lorman Education Services, Albany, NY, September 18, 2013
- Faculty, "Multistate Sales and Use Tax," Lorman Education Services, Parsippany, NJ, July 30, 2013
- Faculty, "New York Sales and Use Tax: Services, Computer Software, and Digital Products," Lorman Education Services, Carle Place, NY, December 11, 2012
Panelist, "Tri-State Residency Update," Hodgson Russ New York Summer Seminar Series, June 20, 2012
Presenter, "Selected Hot Topics in New York State Taxation," Nassau Chapter All-Day Taxation Conference, New York State Society of CPAs, Uniondale, NY, December 4, 2011
Presenter, "Selected Hot Topics in New York State Taxation," Adirondack Chapter Annual Tax Conference, New York State Society of CPAs, Lake Placid, NY, December 1, 2011
Presenter, "Selected Hot Topics in New York State Taxation," Mid-Hudson Chapter Annual Taxation Conference, New York State Society of CPAs, Newburgh, NY, November 18, 2011
Faculty, "New York Sales and Use Tax Nexus," Lorman Education Services, New York, NY, August 24, 2011
Moderator, "Ethical Issues When There Is a Personal Connection With a Client," American Bar Association, Taxation Section, Teleconference and Audio Webcast, June 1, 2011
Panelist, "What if Uncle Jim Is Under Audit or Your Client Wants to Give You a Porsche? Ethical Issues When There Is a Personal Connection With a Client," American Bar Association, Taxation Section, Midyear Meeting, Boca Raton, FL, Standards of Tax Practice Committee, January 21, 2011

Publications: Mr. Rothenberg has published the following articles:

- Author, "The Ethics of a Personal Connection to the Client," American Bar Association, General Practice, Solo & Small Firm Division's GP Solo Magazine (Vol. 28, No. 6, September 2011); included in GP Solo's "Best Articles Published by the ABA" section, a compilation of magazine, journal, and newsletter articles published in ABA periodicals
- Author, "What if Uncle Jim is Under Audit or Your Client Wants to Give You a Porsche? Ethical Issues When There is a Personal Connection with a Client," American Bar Association Section of Taxation News Quarterly (Vol. 30, No. 3, Spring 2011)

Honors/Awards: Articles editor, American University Law Review; recipient, Laura E. Turley Award for outstanding publication in the Law Review

Professional Associations: Former secretary, State and Local Tax Committee of the New York City Bar Association; member, American Bar Association, Taxation Section

Admitted to Practice: New York, New Jersey, District of Columbia, Virginia

Education:
B.A., cum laude, George Washington University
J.D., cum laude, Washington College of Law, American University
LL.M. in taxation, New York University School of Law