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2022

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Recommended Citation

Brown, Kincaid C., "Tax Law Is an Ideal Subject for Advanced Legal Research" (2022). *Law Librarian Scholarship*. 47.

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Tax Law Is an Ideal Subject for Advanced Legal Research

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Introduction

Tax law is an ideal regulatory area for advanced legal research classes when you want to teach a comprehensive research topic putting together all of the various case, regulatory, legislative, and analytical sources that are needed in the real world. Since everyone pays taxes, tax is accessible and a good starting point to expend from the first-year common law focus, especially for those students resistant to regulatory research. Every regulatory area is different in terms of agency practice, resources, and the tools available, but tax law is an ideal example area because the tools used by law firms are great and can help push researchers along so that students can get a better grasp of the ways statutes, regulations, and other administrative guidance all fit together. Tax, like other regulatory areas, is technical, precise, and complicated, and since everyone cares about their taxes, especially corporations, and accordingly big law, there is a wealth of quality resources outside of Lexis and Westlaw for students to become familiar with using.

The need to update

Tax law is constantly changing so it is a great topic to use to drum the importance of making sure your law is still good. And, it is not just using citators to verify your caselaw—many Internal Revenue Code provisions call for annual inflationary calculations and amounts¹ which are handled in the administrative guidance. Many very particular numerical points of the legal scheme—inflation adjustment, credit amounts, exemption

¹See, e.g., I.R.C. § 132(f)(6).

calculations, etc.—change every single tax year, so every researcher needs to be mindful of finding the appropriate current law. The constant annual change to administrative legal information and the frequency of changes to the Internal Revenue Code itself also make tax law a useful topic to use to teach students about the appropriate uses of statutory history and legislative history in the larger legal research construct.

There is a wealth of (good) tax resources

Tax law is well-covered in Lexis and Westlaw. Both platforms have topical pages devoted to tax, accept both United States Code and Internal Revenue Code citations in the big search bar, and have continued to grow their collections of administrative materials that are important to tax. Improvements in versioning and historical statutory and regulatory materials aids tax research, like other regulatory areas. But the game does not end with Lexis and Westlaw; for tax there are other major players as well—Bloomberg Law includes the former BNA tax materials; CCH VitalLaw and RIA Checkpoint migrated the big tax looseleaf services, and their other publications, online; Tax Analysts is a major publisher of tax commentary; OECDiLibrary includes international and comparative tax publications; the Internal Revenue Service website includes a wealth of information; Lexis has an entire stand-alone Lexis Tax platform; and the Joint Committee of Taxation publishes an explanation of tax legislation every Congressional year. This array of resources and titles allows you to push students outside their Lexis and Westlaw comfort zone, to delve into how databases vary, to add data to an understanding that search boxes and algorithms differ, and to grasp that there is a multitude of ways to research a single issue. Law firms use these resources; many tax attorneys prefer them to Lexis and Westlaw and, as such, experience with them can lead toward success when a student gets to the firm.

An addendum to the wealth of good resources is that this includes excellent secondary sources. All of these databases include wide-ranging practitioner-focused analysis and commentary sources. CCH VitalLaw and Checkpoint link out to analytical sources at the section and subsection level, available from the migration of their looseleaf services online. Westlaw allows for filtering of related resources at the section and subsection level. Bloomberg Law includes the in-depth Tax Portfolios.

The need for authoritative sources

Because tax law trickles down to every taxpayer's life, there is a lot of information on the free web about doing your taxes. This includes Internal

Revenue Service publications that are written in “plain English” to help individuals file their own taxes. These publications can be a great starting point for understanding some concepts and getting grounded on a tax law research area,² but they do not tell the entire story and should not be cited as authority. As such, these are great sources to have a refresher with students about primary versus secondary sources and the authoritativeness gap between the two.

It is easy to move from statutory section to regulatory section

The numbering scheme for tax regulations also makes tax a good case point in teaching the linkage and importance of utilizing both statutes and regulations when researching in regulated areas. Although the *Code of Federal Regulations* includes information about the statutory authority sections agencies relied on in their rulemaking, the numbering scheme for tax regulations also overtly links a regulatory section with the most relevant Internal Revenue Code section. This makes moving from the United States Code to the most relevant tax regulations a pretty easy task. For example, take 26 C.F.R. § 1.195-2. The “1” before the period refers to the C.F.R. part, here “1” equaling income tax, so you know this regulation deals with income tax before you even read it. Other examples are “20” for estate tax and “301” for tax procedure and administration. The “195” identifies the Internal Revenue Code section—25 U.S.C. § 195. The “2” after the hyphen identifies this regulation as the second regulation relating to 25 U.S.C. § 195. So when you are in an I.R.C. section in Westlaw or Lexis you can skim the C.F.R. sections and know instantly where you should probably start. Another interesting thing about tax regulations is that many are written in a question-and-answer format³ where the regulation is anticipating the questions that a researcher might have for going to the regulation and then supplying the regulatory answer, sort of like in a website frequently asked questions (FAQ).

Numbers don’t have to be your enemy

In all research it is important to be careful with numbers. Anecdotally, many law students are not confident of their math skills and when reading sometimes skip over numbers to get to words. As such, tax research helps

²See, e.g., Internal Revenue Serv., U.S. Dep’t Of The Treasury, Pub. No. 15-B, Employer’s Tax Guide to Fringe Benefits. It is an annual publication that is published each tax year and is available online at <https://www.irs.gov/publications/p15b>.

³See, e.g., 26 C.F.R. § 1.132-9.

reinforce that numbers are as important or useful as words in a couple dimensions. First, as with anything in law, details matter, and in tax ignoring the numbers is going to get you a bad result whether the numbers in question are dollar amounts, percentages, days, or something else. When applying the law in tax, you may end up calculating a number that can be an objective measure of a student's analysis and application of a law since a number has a universal meaning, unlike many words (or facts⁴). Second, numbers are very useful in the legal research process with the databases, especially Lexis and Westlaw. Numbers can be used as search terms allowing for a manner of specificity that is difficult to get with words; numbers are powerful either in the initial search or when a researcher is searching within their results. Numbers are also available to use in many of the Lexis and Westlaw facets for limiting search results, including the ability to limit results by an I.R.C. subsection.

To be successful in your research, you must use the database tools

Tax is incredibly voluminous. As such, it is going to be the rare case indeed where a search is going to pull up everything a researcher needs. Although this is true in legal research in general, it is definitely true in tax law research. The first aspect of this is that you must use the editorial add-ons that were our friends in the print world—tables of contents and indexes. As with all statutory or regulatory research, the table of contents is the single most efficient way to get to a definitions section, but it can also help you find something else relevant along the way or at least give you the framework the tax law is built upon. And using the index in tax can help students find the relevant terms of art and concepts that they need going forward. Second, tax will force researchers to become active users of the databases' search within and filtering tools as they are key in wading through results to increase research efficiency. Third, the databases also have many affordances that push researchers to other sources that could be helpful like analysis in CCH, related regulations in Bloomberg Law, or administrative guidance in Lexis' a "Notes to Decisions."

Tax regulatory research has its own language

Legal sources in tax are often referred to using unique designations in the tax community, requiring tax researchers to really dive deeply into the tax regulatory world to understand what the status of the law is and

⁴The Talking Heads, *Crosseyed and Painless* (Warner Bros. Records, 1980); "...Facts all come with points of view / Facts don't do what I want them to / Facts just twist the truth around..."

how it analogizes to more typical *Federal Register/Code of Federal Regulations* research. IRS guidance and most secondary sources generally discuss the tax regulatory landscape using the alternate designations, some of which follow here. Tax regulations are also known as “Treasury Regulations,” and final regulations published in the CFR are also known as “Treasury Decisions.” A proposed regulation is discussed as a “Notice of Proposed Rulemaking” (NPRM). Additionally, “reliance regulations” will be proposed when the IRS needs to provide guidance quickly; reliance regulations include a statement that taxpayers can rely on the proposed regulation when filing tax returns. There are also “temporary regulations” that are good for three years from issuance and then come off the books.

Administrative guidance is plentiful (and important)

The IRS promulgates a wealth of administrative guidance, also known as “IRS determinations,” which can help clear up some lingering questions. Revenue rulings are an authoritative determination that will, in order to provide uniformity of interpretation, apply the law to a specific fact situation, discuss applicable legal sources, and include a holding. Revenue procedures, also authoritative, outline procedures to comply with tax law or provide return filing information; revenue procedures can help you avoid math by providing inflation calculations and dollar amounts, and also will discuss how changes in the law are handled. Notices and announcements are used to provide expedited, short-term, substantive, or procedural guidance on issues that would otherwise be covered by a regulation, revenue ruling, or revenue procedure. There are also determinations that can be illustrative, but can only be relied upon by a specific taxpayer—Private Letter Rulings and Technical Advice Memoranda.

In conclusion, tax is tailor-made for teaching advanced legal research concepts. I hope these points encourage you to take the tax plunge!