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18.1 STEPS IN TAX RESEARCH

Once the tax issue is established, the following methodology is suggested to assist in your tax research. There are 6 major steps to tax research:

1. Establish the facts.

Evaluate the tax issue and obtain all relevant facts. To make a proper determination regarding a tax issue, it is necessary to ascertain and factually develop, i.e. document for the file, all the pertinent facts and circumstances pertaining to the issue under examination.

2. Organize what you need to do.

Establish the implications of the tax issue and tax law - the correct reporting of the item and whether it impacts future taxable events. There are two distinguishable categories in regards to this step - fact and law. Issues of fact are those involving dates, amounts, reasonableness, intent, and purpose. Issues of law are those involving well-established facts. Uncertainty may arise (1) in the language of the statute itself, (2) between the language of the statute and the intent of the statute, or (3) between interpretations of the statute.

3. Locate the references and resources (the focus of this chapter).

4. Evaluate the authority.

Evaluate the authorities (authoritative and references) and form recommendations towards the handling of the tax issue.

5. Develop conclusions and recommendations.

Make formal recommendations based on conclusions drawn from research.

6. Communicate the recommendations.

Communicate recommendations to the taxpayer/client. (Raabe, William

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A.; Whittenburg, Gerald E.; and Bost, John C., West's Federal Tax Research, (West Publishing Company, 1991), Chapter 2)

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18.2 OVERVIEW OF PRIMARY (AUTHORITATIVE) AND SECONDARY SOURCES

This step requires gathering pertinent information from sources such as Congress, the courts, federal and state governmental agencies, and various tax services.

Legal sources differ in the relative weight they are accorded. Some are binding authority; some are only persuasive in varying degrees; and some are useful only as tools for locating other materials. Researchers must evaluate the sources they find, and place them in the hierarchy of authority. The most important distinction is between primary (authoritative) and secondary sources. (Cohen, Morris L. and Olson, Kent C., *Legal Research In a Nutshell*, (West Publishing Company, 2000), Chapter 1)

- 18.2.1 Federal Primary Sources
- 18.2.2 Federal Secondary Sources

18.2.1 Federal Primary Sources

Primary authority (authoritative sources) comes from statutory, administrative, and judicial sources. [Caution: Some authoritative sources cannot be cited.]

Statutory sources include the Constitution, tax treaties, and tax laws that have been passed by Congress. Statutory authority is the basis for all tax provisions - the Internal Revenue Code (IRC).

Hierarchy of Tax Authorities:

Authority	Issued By	Binding On	Cite
Internal Revenue Code	Congress	All Taxpayers	IRC §
Legislative Regulations [Authorized by specific Code section (other than IRC §7805)]	Treasury	All Taxpayers	Reg. §
Interpretive Regulations (Issued under blanket authority of IRC §7805)	Treasury	All Taxpayers	Reg. §

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Temporary Regulations	Treasury	All Taxpayers	Temp. Reg. §
Proposed Regulations	Treasury	Not binding until final	Prop. Reg. §
Procedural Regulations	IRS	IRS (sometimes)	26 C.F.R. §
Revenue Rulings	IRS	All Taxpayers	Rev. Rul.
Revenue Procedures	IRS	All Taxpayers	Rev. Proc.
Letter Rulings	IRS	Taxpayer Who Requested	P.L.R. or Ltr.Rul.
Technical Advice Memorandum	IRS	Taxpayer on Whose Behalf Issued	T.A.M.
Acquiescence or Nonacquiescence	IRS	No one	Acq. Or Nonacq.

[Taken from "Tax Procedure and Tax Fraud" by Patricia T. Morgan, In a Nutshell Series]

Administrative authority functions to interpret and explain the applicable provisions of the IRC and the intent of Congress. These are the various rulings of the Treasury Department and IRS Regulations, Revenue Rulings, and other pronouncements.

Summary of IRS Rulings, Positions, and Practices			
Statement	Issued/Made By	Publicized	Reliability
Treasury Regulations	Secretary of the Treasury	Published in Federal Register	Most reliable statements of position
Revenue Rulings	Assistant Commissioners of Internal Revenue	Published in Internal Revenue Bulletin and collected in bound form in the Cumulative Bulletin	Intended to be relied on by IRS employees & taxpayers whose circumstances are substantially the same as described in the ruling
Letter Rulings	Assistant Commissioners	Available for inspection	Binding on IRS only as to party to

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	of Internal Revenue	under Sec. 6110, not published by IRS. Published in Internal Revenue Bulletin	whom issued
Revenue Procedures	Assistant Commissioners of Internal Revenue	Published in Internal Revenue Bulletin and collected in bound form in the Cumulative Bulletin	Same reliability as revenue rulings
Technical Advice	Assistant Commissioners of Internal Revenue	Available for inspection under Sec. 6110, not published by IRS	Same as letter rulings
Determination Letters	District Offices in most cases	Available for inspection under Sec. 6110	Binding only as to requesting taxpayer
Internal Revenue Manual	National Office	Available for inspection under Freedom of Information Act	Generally not binding on IRS
Information Releases	National Office	Published	May be binding on IRS
Information Letters	National Office/ District Offices	Issued to requester	Not binding
IRS Publications	National Office	Published	Not binding
Oral Communications	Any IRS official	Not Published	Generally not binding on IRS

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Judicial authority consists of the collected rulings of the various courts.

18.2.2 Federal Secondary Sources

Works that are not themselves law, but which discuss or analyze legal doctrine, are considered secondary sources.

These items include, but are not limited to:

- Tax Services: Annotated or Topical
- Journals
- Textbooks
- Treatises
- Newsletters, etc.

[An annotated tax service is one organized in IRC order like CCH. A topical service is organized by topic like RIA.]

18.3 STATUTORY SOURCE - THE INTERNAL REVENUE CODE

The Constitution of the U.S. is the source for all federal laws of the country, including both tax and nontax provisions. Statutory sources include the Constitution, tax treaties, and tax laws that have been passed by Congress. Statutory authority is the basis for all tax provisions - the IRC.

- 18.3.1 Legislative Process to the Federal Tax Law
- 18.3.2 Committee Reports
- 18.3.3 Organization and Contents of the Internal Revenue Code

18.3.1 Legislative Process to the Federal Tax Law

Most tax legislation begins in the House of Representatives. In the House, the Ways and Means Committee considers tax law changes. Upon approval by this committee, the bill is sent to the full House of Representatives for approval. The bill is then sent to the Senate, where it is referred to the Finance Committee. When the Finance Committee approves the bill, the entire Senate considers the proposal.

If any differences between the House and Senate versions of the tax bill exist (which frequently occurs), the bill is referred to a Joint Conference Committee to resolve such differences. Both houses of Congress must approve the compromise bill before it is forwarded to the President. If the President signs the bill, the new provisions are incorporated into the IRC. If the President vetoes the bill, it is not enacted unless Congress overrides the veto with a sufficient revote. (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., *West's Federal Tax Research*, (West Publishing Company, 1991), pg. 56)

At each step in the legislative process, the appropriate committee of Congress produces a Committee Report.

18.3.2 Committee Reports

As stated above, the appropriate committee of Congress produces a Committee Report explaining the elements of the proposed changes and the reasons for each proposal. Committee reports are generally considered the most authoritative sources of congressional intent. (Cohen, Morris L. and Olson, Kent C., *Legal Research In a Nutshell*, (West Publishing Company, 2000), Chapter 6) These reports can provide insight concerning the meaning of a specific phrase of the statute or the intention of Congress concerning a certain provision of the law. A Public Law number generally refers to committee Reports. An example would be the Tax Reform Act of 1986, which was designated as P.L. 99-514. "P.L." stands for Public Law. The prefix "99" refers to the session of Congress that passed the law. The suffix "514" indicates that this was the 514th bill that this session of Congress adopted.

When a new tax law is passed, the Committee Report is printed in the IRS' weekly Internal Revenue Bulletin. The weekly IRS reports are reorganized and published every 6 months in the Cumulative Bulletin. However, texts of the 1954 Committee Reports relative to the IRC are found in the United States Code Congressional and Administrative News. All pre-1939 Revenue Act Committee Reports are reprinted in the 1939 Cumulative Bulletin.

Committee Reports can be found in:

- Cumulative Bulletins published by the Government Printing Office (GPO);
- Primary Sources published by Bureau of National Affairs (like the Tax Management Portfolios);
- Public Law Legislative History published by CCH;
- CCH's Citator Volume M-Z has a Committee Reports Index; and
- "Thomas" Federal Legislative Info.

Note: Even though you can use the Lexis/Nexis database to find Committee Reports, these searches can literally produce hundreds of pages of text. A suggested alternative would be to look in the Cumulative Bulletin or the Working Papers of BNA's Tax Management Portfolios, which sometimes contain the applicable Committee Report.

Under the FEDTAX Library using the file called LEGIS, you will be able to locate the Reports. If you have the report's number, you can enter for your search, "Cite" then in "()" put the Report's number.

Caution: Lexis/Nexis has Committee Reports dated from 1990. Access to these Reports dated prior to 1990 is questionable.

In addition to Committee Reports, there are the Floor Debate Reports. These reports include a summary of what was said on the House or Senate floor concerning the proposed bill. Floor debates are generally not as influential as Committee Reports. Floor Debate Reports can be found in the Congressional Record for the day of the debate.

The Congressional Record gives the following congressional history of a revenue act:

- The date the bill was introduced in the House Ways & Means Committee;
- The date it passed the House;
- The date it was introduced to the Senate Finance Committee;
- The date it passed the Senate;
- The date it was signed by the President.

The CCH Congressional Index or U.S. Code and Administrative News can trace this history.

18.3.3 Organization and Contents of the Internal Revenue Code

The IRC is part of the United States Code (USC), which is a codification of all of the federal laws of the U.S. The USC is organized alphabetically and assigned Title numbers. The IRC is Title 26 of the USC.

Organization of the IRC

1. Subtitles
2. Chapters
3. Subchapters
4. Parts
5. Subparts
6. Sections
7. Subsections (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., *West's Federal Tax Research*, (West Publishing Company, 1991), pg. 61)

IRC Citation

IRC §1031(a)(3)(B)(i)

- 1031 Section number 1031
- (a) Subsection a
- (3) Paragraph 3
- (B) Subparagraph B
- (i) Clause (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., *West's Federal Tax Research*, (West Publishing Company, 1991), pg. 65)

Summary of the IRC Subtitles and Chapters

(Listed are the most common subtitles and chapters that you may use for purposes of examining a tax issue.)

Subtitle A – Income Taxes

- Chapter 1 - Normal Taxes and Surtaxes
- Chapter 2 - Tax on Self-Employment Income
- Chapter 3 - Withholding of Tax on Nonresident Aliens & Foreign Corporations
- Chapter 4 - Repealed (Rules Applicable to Recovery of Excessive Profits on Government Contracts)

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Chapter 5 - Tax on Transfers to Avoid Income Tax
Chapter 6 - Consolidated Returns

Subtitle B - Estate and Gift Taxes

Chapter 11 - Estate Tax
Chapter 12 - Gift Tax
Chapter 13 - Tax on Certain Generation-Skipping Transfers
Chapter 14 - Special Valuation Rules

Subtitle C - Employment Taxes and Collection of Income Tax

Chapter 21 - Federal Insurance Contributions Act
Chapter 22 - Railroad Retirement Act
Chapter 23 - Federal Unemployment Tax Act
Chapter 23A - Railroad Unemployment Repayment Tax
Chapter 24 - Collection of Income Tax at Source
Chapter 25 - General Provisions Relating to Employment Taxes and Collection of Income Taxes at Source

Subtitle D - Miscellaneous Excise Taxes

Chapter 31 - Retail Excise Taxes
Chapter 32 - Manufacturers Excise Taxes
Chapter 33 - Facilities and Services
Chapter 34 - Policies Issued by Foreign Insurers
Chapter 35 - Taxes on Wagering
Chapter 36 - Certain Other Excise Taxes
Chapter 37 - Repealed (Sugar)
Chapter 38 - Environmental Taxes
Chapter 39 - Registration-required Obligations
Chapter 40 - General Provisions Relating to Occupational Taxes
Chapter 41 - Public Charities
Chapter 42 - Private Foundations and Certain Other Tax-Exempt Organizations
Chapter 43 - Qualified Pension, Etc., Plans
Chapter 44 - Qualified Investment Entities
Chapter 45 - Repealed (Windfall Profit Tax on Domestic Crude Oil)
Chapter 46 - Golden Parachute Payments
Chapter 47 - Certain Large Group Health Plans

Subtitle F – Procedure and Administration

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- Chapter 61 - Information and Returns
- Chapter 62 - Time and Place for Paying Tax
- Chapter 63 - Assessment
- Chapter 64 - Collection
- Chapter 65 - Abatements, Credits, and Refunds
- Chapter 66 - Limitations
- Chapter 67 - Interest
- Chapter 68 - Additions to the Tax, Additional Amounts, and Assessable Penalties
- Chapter 69 - General Provisions Relating to Stamps
- Chapter 70 - Jeopardy, Receiverships, Etc.
- Chapter 71 - Transferees and Fiduciaries
- Chapter 72 - Licensing and Registration
- Chapter 73 - Bonds
- Chapter 74 - Closing Agreements and Compromises
- Chapter 75 - Crimes, Other Offenses, and Forfeitures
- Chapter 76 - Judicial Proceedings
- Chapter 77 - Miscellaneous Provisions
- Chapter 78 - Discovery of Liability and Enforcement of Title
- Chapter 79 - Definitions
- Chapter 80 - General Rules

Subtitle I - Trust Fund Code

- Chapter 98 - Trust Fund Code

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18.4 ADMINISTRATIVE AUTHORITY - REGULATIONS AND RULINGS

Administrative authority functions to interpret and explain the applicable provisions of the IRC and the intent of Congress. These are the various rulings of the Treasury Department and the IRS. Regulations, Revenue Rulings, and other pronouncements are summarized as follows.

- 4-1 Pronouncements by the IRS
 - 4-1.1 Regulations
 - 4-1.2 Revenue Rulings
 - 4-1.3 Revenue Procedures
 - 4-1.4 Letter Rulings
 - 4-1.4(a) Private Letter Rulings
 - 4-1.4(b) Determination Letters
 - 4-1.4(c) Technical Advice Memorandums
- 4-2 IRS Acquiescence and Nonacquiescence
- 4-3 Internal Revenue Bulletin
- 4-4 Bulletin Index-Digest System
- 4-5 Chief Counsel Memoranda

Miscellaneous Publications and Assistance

IRS Publications - Pub 17, etc.

FTB Publications and Assistance

Public: Pub X, Tax News, GTAM, MATM, etc.

Internal: Audit Branch Procedure Statements (ABPS), GTA-Xaminer, Trends, Legal Branch: Legal Reference and Legal Bulletin Board. There will be further discussion in this chapter regarding other forms of tax services and publications.

The Secretary of the Treasury has the general responsibility for administering the tax law. The IRS is the division of the Treasury Department assigned to manage the day-to-day operations associated with the administration of the provisions of the IRC. To facilitate the IRS' administration of the tax laws, the Code authorizes the Treasury Secretary to prescribe the rules and regulations that are necessary to administer the Code (IRC §7805(a)).

- 18.4.1 Pronouncements by the IRS
- 18.4.2 IRS Acquiescence and Nonacquiescence
- 18.4.3 Internal Revenue Bulletin
- 18.4.4 Bulletin Index-Digest System

18.4.1 Pronouncements by the IRS

There are generally six types of pronouncements:

1. Regulations,
2. Revenue Rulings,
3. Revenue Procedures, and
4. Letter Rulings.
5. Chief Counsel Memoranda
6. Action on Decision

a. Regulations

Regulations are issued in the form of Treasury Decisions (TD), which are published in the Federal Register and, at a later date, in the Internal Revenue Bulletin. Before a TD is published in its final form, it must be issued in proposed form for a period of at least 30 days before it is scheduled to become final. Before and during the hearing process, the TD's are referred to as "Proposed Regulations." Unlike Final Regulations, proposed regulations do not have the effect of law.

"Final Regulations" are integrated with previously approved TD's and constitute the IRS Regulations. Found in Title 26 of the Code of Federal Regulations, final regulations are either interpretive or legislative. IRC § 7805(a) authorizes the Secretary of the Treasury to "prescribe all needful rules and regulations for the enforcement" of the statutes. Regulations issued pursuant to this broad authorization are referred to as Interpretive Regulations.

In contrast, Legislative Regulations are issued for Code sections in which Congress has included a specific grant of authority, allowing IRS experts to write rules for highly technical areas. (See, e.g., IRC §469(l): "The Secretary

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shall prescribe such regulations as may be necessary or appropriate to carry out provisions of this section, . . . ") Legislative regulations are regarded as having the force and effect of law. Therefore, a court is not free to strike down legislative regulations that are properly issued procedurally and that are within the scope of the legislative grant. (Morgan, Patricia T., *Tax Procedure and Tax Fraud In a Nutshell*, (West Publishing Company, 2000), Chapter 2.

Temporary Regulations are issued in response to congressional or judicial changes in tax law/interpretation. These types of regulations are effective immediately upon publication, but expire 3 years after issuance (per IRC §7805). IRC § 7805(e) requires that temporary regulations issued after November 20, 1988 also must be issued as proposed regulations. The issuance of these kinds of regulations is to provide the taxpayer with guidance concerning a new provision of the tax law. Temporary Regulations are treated as though they are final until Final Regulations are issued. Temporary Regulations must be followed until they are superseded, whereas Proposed Regulations, having been issued only to solicit comments and expose the IRS' proposed interpretation of the law, do not carry the full force of the law.

Because Treasury decisions have the specific approval of the Secretary of the Treasury, they are at the highest level of administrative interpretations of the IRC. This high rank is significant chiefly because of its binding effect on all IRS personnel including the Commissioner of the Internal Revenue. The Commissioner cannot change the regulations and the court will not sustain the Commissioner if a position contrary to the regulations is taken. Regulatory changes can only be made through the Treasury, not the courts. (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., *West's Federal Tax Research*, (West Publishing Company, 1991), pg. 80)

The section numbers of the Treasury Regulations are numbered in the same manner as the code section to which they relate, preceded by a numerical prefix indicating which tax is involved. The following table lists the major prefixes:

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Prefixes for Treasury Regulations

Income Tax	1
Estate Tax	20
Gift Tax	25
Generation Skipping Tax	26
Procedure and Administration	301
IRS Procedural Rules	601

Thus, any citation of an income tax Regulation that begins with the part number "1." and is followed by the number of the Code section to which it pertains.

Regulation Citation

Reg. §1.61-2(a)(1)

- 1. Type of Regulation
- 61 Related Code Section
- 2 Regulation Number
- (a) Regulation Paragraph
- (1) Regulation Subparagraph (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., *West's Federal Tax Research*, (West Publishing Company, 1991), pg. 82)

Whenever a Code section is amended, existing regulations should be reconsidered. They may no longer be relevant or may even be invalid. If a regulation appears to contradict statutory language, check the date of its most recent TD to see if it predates the Code section. (Richmond, Gail Levin, *Federal Tax Research-Guide to Material and Techniques*, (The Foundation Press, Inc., 1997) pg., 87)

1. Revenue Rulings

Revenue Rulings (abbreviated "Rev. Rul.") are official pronouncements of the national office of the IRS in which the Code and Regulations are applied to specific factual situations for the purpose of informing and advising taxpayers. Rev. Ruls. do not carry the force and effect of a Regulation. A

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ruling is an informal statement of the Service's position. Rev. Ruls. may be relied on and cited if the facts and circumstances are "substantially the same" as those described in the revenue ruling. They can be found weekly in the Internal Revenue Bulletin (I.R.B.) and later in the Cumulative Bulletin (C.B.).

A regulation has priority over a revenue ruling in the event of conflicting positions.

A court may declare a revenue ruling invalid, however, the IRS is bound by the ruling until such time as it is revoked or modified. Court cases may be cited which support a reporting position that opposes the government's position as reflected in the revenue ruling.

Citation of a Revenue Ruling - Temporary Citation

Rev. Rul. 95-45, IRB 1995-4, p. 10. (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., West's Federal Tax Research, (West Publishing Company, 1991), pg. 85)

95 Year Ruling was issued (1995)
45 Ruling number for that year
IRB 1995 Reference to the IRB
4 Weekly issue of the IRB
p, 10 First page in the IRB that includes the Ruling

Citation of a Revenue Ruling - Permanent Citation

Rev. Rul. 95-45, 1995-1 CB 54 (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., West's Federal Tax Research, (West Publishing Company, 1991), pg. 87)

95 Year Ruling was issued
45 Ruling number for that year
1 Volume number of the CB
CB Reference to the CB
54 First page in the CB that includes the Ruling

The current status of a revenue ruling or other IRS rulings is contained in the most current index to the CB. It is crucial to verify the ruling has not been superseded or revoked.

2. Revenue Procedures

Revenue Procedures (abbreviated "Rev. Procs.") deal with the internal practice and procedures of the IRS in its administration of the tax laws. They are statements of procedure that affect the rights and duties of taxpayers or other members of the public under the Code, or information that should be a matter of public knowledge. While they have less force and effect than Treasury Regulations, the IRS is bound by them and taxpayers may rely upon them.

Revenue Procedures are first published in the weekly I.R.B. Later, they are included in the C.B. Like Revenue Rulings, Rev. Procs. are first adopted temporarily and later become permanent.

The first three Rev. Procs. issued by the IRS each year details the rules concerning how to request a private ruling, national office advice request, and issues on which they will not rule.

Because the IRS often reviews revenue rulings and procedures for their continued relevance, it is important to verify the current status of the ruling or procedure. The following is a list of terms and their definitions frequently used in revenue rulings and procedures.

Terminology Used in Revenue Rulings and Procedures:

Amplified: Describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to "A", and the new ruling holds that the same principle also applied to "B", the earlier ruling is amplified (compare to modified, which is described below).

Clarified: Is used in those instances where the language in a prior

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ruling is being made clear because the language has caused, or may cause, confusion. It is not used where a position in a prior ruling is being changed.

- Distinguished:** Describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.
- Modified:** Is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to "A" but not to "B", and the new ruling holds that it applies to both "A" and "B", the prior ruling is modified because it corrects a published position.
- Obsolete:** Describes a previously published ruling that is not considered determinative with respect to future transactions.
- Revoked:** Describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.
- Superseded:** Describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling(s).
- Supplemented:** Is used in situations in which a list, such as a list of name of countries, is published in a ruling and that list is expanded to include additional names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes an aggregate list as contained in the original and all subsequent rulings. The new ruling supersedes all prior rulings in the series.
- Suspended:** Is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a

Service study.

Definitions came from the Cumulative Bulletin's section called "Definition of Terms".

3. Letter Rulings

Letter Rulings are issued in several forms:

- Private Letter Rulings,
- Determination Letters, and
- Technical Advice Memorandums

IRC §6110(k)(3) specifically limits the precedent use of any of these written determinations "written determinations may not be used or cited as precedent." They cannot be cited as authority in a tax matter, but can be used as guidelines in respect to a tax problem. Although these Letter Rulings cannot be cited as precedence in defending a tax position, their analysis and conclusion can be presented.

The FTB generally follows federal regulations, procedures, and rulings where provisions of the California tax law substantially conform to provisions of the IRC. (FTB Notice 89-277; R&TC §§17024.5(d) and 23051.5(d)) However, federal regulations and procedures are not binding on the department for California tax purposes if an authorized FTB officer or employee publicly indicated in writing that the FTB would not follow a particular ruling or procedure (FTB Notice 89-277).

While there is no official publication that maintains Letter Rulings, Private Letter Rulings are available on most computerized tax research services such as Lexis/Nexis and CCH. CCH also has a Private Letter Ruling tax service called Private Revenue Service Letter Rulings, where the pronouncements are provided in summary form in a binder. Full text of the determinations is available through the IRS, the Daily Tax Report (Bureau of National Affairs), IRS Private Letter Rulings (Washington Service Bureau, Inc.) and Tax Notes (Tax Analysts and Advocates).

- Private Letter Rulings (PLR)

PLR's (private rulings or letter rulings) are issued by the IRS (National Office of the IRS) in response to a taxpayer's request for the Service's position on a specific tax issue. A PLR is issued only to the taxpayer who requested the Ruling. However, this Ruling can be used as "substantial authority" upon which the taxpayer (any taxpayer, not just the taxpayer requesting the PLR) may rely to avoid certain statutory penalties.

Although PLR's are an important source of IRS information, they cannot be cited as authority. Their analysis and conclusion, however, can be presented as the basis for an audit determination.

PLR's many times serve to inspire the issuance of Revenue Rulings describing similar situations. The IRS will issue Rev. Ruls. in situations where they determine a need. For example, increased public interest in a particular issue, or numerous PLR requests.

- Determination Letters

The office of the local IRS District Director issues determination Letters. These letters generally deal with issues and transactions not overtly controversial, but are completed transactions rather than proposed. Generally, determination letters concern inquires regarding employee plans and exempt organizations.

Only the taxpayer to whom it is issued may rely on a determination letter, and may be revoked or modified if found to be in error.

- Technical Advice Memoranda (TAM)

A TAM is issued by the IRS' National Office, which makes it similar to a PLR but not a Determination Letter. An IRS agent requests a TAM during the course of an examination. The request, based on a completed transaction, is made in situations where the agent's local office cannot provide satisfactory technical guidance. Like PLR's, a TAM may be relied on only by the taxpayer

for whom the technical advice was requested. Other taxpayers cannot rely upon the TAM.

Although we can use the TAM's analysis and conclusions to support an audit determination, it cannot be cited as authority. TAM's can lead to the creation of a Rev. Rul.

4. Chief Counsel Memoranda

A General Counsel's Memorandum (GCM)/Technical Memoranda/Actions on Decisions (AOD) is generated upon the request of the IRS. The GCM typically is requested to assist the IRS in the preparation of Rev. Ruls. and PLR's. GCM's are seldom issued except to repeal old GCM's. Like Private Letter Rulings and Technical Advice Memorandums, GCM's cannot be cited as authority but can be used as a guideline in arriving at an audit recommendation. GCM's also qualify as "substantial authority". The full text of the memoranda is unofficially published in Tax Notes as well as in Lexis. IRS Positions by CCH maintains these publications as well.

5. Action on Decision

An Action on Decision (AOD) is prepared when a significant adverse decision is rendered against the IRS by a trial or appellate court. The text of the AOD recommends the action, if any, that the IRS should take in response to the adverse decision. The recommendation is summarized as acquiescences, a Nonacquiescences, or an acquiescence in result only.

18.4.2 IRS Acquiescence and Nonacquiescence

When the IRS loses a regular decision in the Tax Court (TC), the Commissioner of the IRS may acquiesce or nonacquiesce to the decision.

If the Commissioner acquiesces, this indicates that the TC decision, although it was adverse to the IRS, will be followed in similar situations.

If the Commissioner nonacquiesces, the IRS disagrees with the adverse decision in the case and will follow it only for the specific taxpayer whose case resulted in the adverse ruling.

An acquiescence or nonacquiescence is not issued if the IRS prevails in a regular TC case, since the IRS agrees with the pertinent holdings.

Nonacquiescence may indicate to the tax practitioner that the IRS is likely to challenge a similar decision for the taxpayer in a case that has a similar fact situation. The issuance of an acquiescences does not necessarily mean that the IRS agrees with the adverse decision, but rather only that it will not pursue the matter.

Acquiescence and nonacquiescence are indicated in the citations of TC decisions in the tax services and citators. An "A" or "Acq" is contained in parentheses after the citation to indicate acquiescence, "NA" or "Nonacq" to indicate nonacquiescence. (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., West's Federal Tax Research, (West Publishing Company, 1991), pg. 96)

IRS acquiescence and nonacquiescence are published in the I.R.B. prior to 1993 and, thereafter, in the C.B. The I.R.B. index lists acquiescence and nonacquiescence alphabetically and in code section order. Beginning in 1993, the use of acquiescence and nonacquiescence expanded to cover civil tax cases, memorandum Tax Court Opinions, U.S. district courts, Claims Court and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the I.R.B.

(Note: In regard to IRB's prior to 1993 - a statement that "prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular TC opinions The Cumulative Bulletin 1993-1 was the first CB after Cumulative Bulletin 1992-2 to publish the acquiescence/non-acquiescence decisions in this manner. To better understand this, you may want to refer to the Cumulative Bulletins.)

18.4.3 Internal Revenue Bulletin

The Internal Revenue Bulletin (I.R.B.) is the IRS's official publication of its pronouncements. You will find publications of:

- IRS Revenue Rulings

- Revenue Procedures
- Acquiescence and nonacquiescence to regular Tax Court decisions (prior to 1993)
- Acquiescence/nonacquiescence to other courts (beginning in 1993)
- New tax (public) laws
- Committee Reports
- New Tax Treaties
- Treasury Decisions (which become Regulations) and
- Other notices.

18.4.4 Bulletin Index-Digest System

In the I.R.B., a comprehensive index of matters is published quarterly consisting of 4 separate services:

- Income Tax, Publication 641
- Estate and Gift Taxes, Publication 642
- Employment Taxes, Publication 643
- Excise Taxes, Publication 644

The System contains separate finding lists for Revenue Rulings and Procedures, Public Laws amending the IRC, and Treasury Decisions amending the pertinent Regulations. There are a number of special finding lists for each of the following:

- Supreme Court Decisions
- Certain Tax Court Decisions
- Revenue. Rulings and Revenue Procedures issued under Tax Conventions
- Miscellaneous items published in the Bulletin
- Lists of Revenue Rulings and Revenue Procedures
- Actions relative to published Revenue Rulings and Revenue Procedures
- Public Laws that have been published in the Bulletin, and
- Tax conventions and related items published in the Bulletin

A major portion of the System consists of digests, i.e. - brief summaries of:

- Revenue Rulings and Procedures,
- Supreme Court decisions,

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- Adverse (to the government) TC decisions in which the Commissioner has announced acquiescence or nonacquiescence, and
- Executive Orders, Treasury Department Orders, Delegation Orders, and certain other miscellaneous items that have been published in the C.B.

The Bulletin Index-Digest System is organized to identify the IRS' position on any tax issue published in the IRB. It can be used by "Subject Matter" or "Code Section."

The "Subject Matter" approach is one that entails:

- Scanning of the list of topical headings under which the digests are arranged,
- The identification of a key word or words that best describe the research issue,
- A review of the digests that are indexed under the chosen key word or words, and
- A selection of the relevant digests for further study.

The "Code Section" approach is one that entails:

- A location in the System finding lists of the desired Code or Reg. Section that pertains to the issue,
- Identification of those items that are listed under the selected Code or Reg. Section that pertains to the research issue, and
- Scanning related digests for the chosen items to ascertain whether the facts that are addressed in the identified Bulletin digest are substantially the same as those of the client for whom the research is being conducted.

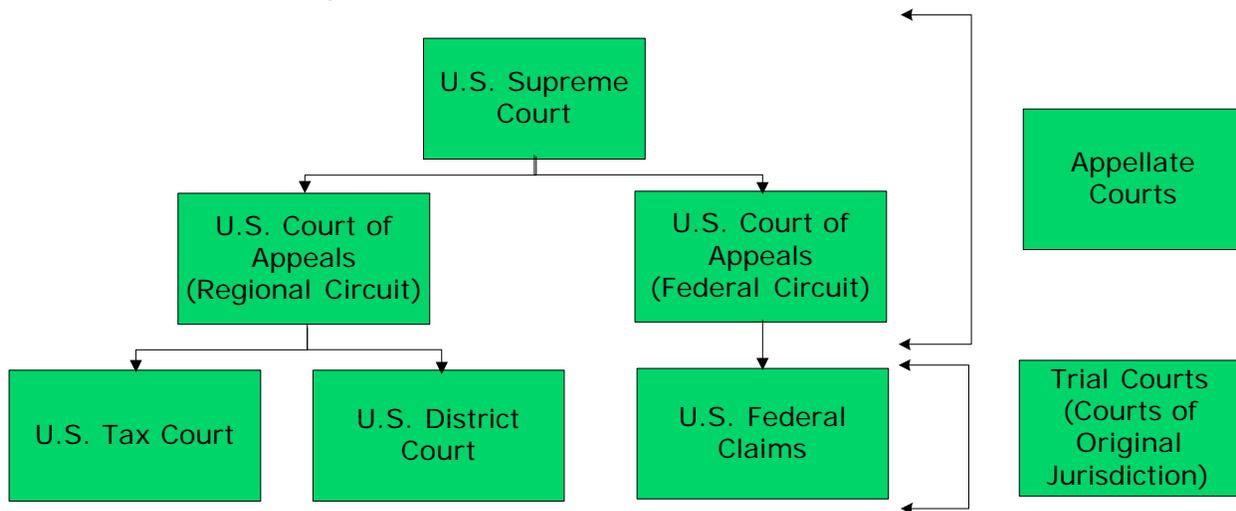
The System does not have a finding list for revenue rulings, revenue procedures, Supreme Court decisions or Actions on Decisions of the Tax Court that relate to the 1939 Code. (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., West's Federal Tax Research, (West Publishing Company, 1991), pg. 98)

18.5 FEDERAL JUDICIAL INTERPRETATIONS

Judicial interpretations are those that are determined under the federal court system. When additional issues regarding the proper interpretation or intended application of the law, which are not answered either in the law itself or in the administrative pronouncements, the judicial system is left with this task.

For the federal system, all litigation between the taxpayer and the government begins in a trial court. Following is a pictorial elaboration of the federal court system.

The Federal Court System



Note that prior to October 1, 1982, decisions of a court called the U.S. Court of Claims (now the U.S. Court of Federal Claims) could be appealed only to the U.S. Supreme Court.

- 18.5.1 Tax Courts (TC)
- 18.5.2 The District Court
- 18.5.3 U.S. Court of Federal Claims
- 18.5.4 U.S. Courts of Appeal
- 18.5.5 Supreme Court
- 18.5.6 The Federal Judicial Obstacle Course: Selected Attributes of the Trial-Level Courts

18.5.1 Tax Courts (TC)

The TC, referred to as the Board of Tax Appeals (BTA) prior to 1943, issues “regular” and “memorandum” decisions by judges who have more expertise in handling tax matters. There are a total of 13 circuits in the U.S.; the state of California is in the 9th Circuit. A regular decision generally involves a new or unusual point of law, as determined by the Chief Judge of the Court. If the Chief Judge believes, however, that the decision concerns only the application of existing law or an interpretation of factual questions, the decision is issued as a memorandum decision. Note that the Court has not always strictly followed this policy. Memorandum decisions may address significant points of law or other issues. (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., West’s Federal Tax Research, (West Publishing Company, 1991), pg. 116)

Because the TC is a national court, it hears cases that may be appealed to the Courts of Appeal (refer to chart above - The Federal Court System) in different geographical regions or Circuits. The TC would follow the Court of Appeals that has jurisdiction over the taxpayer whose case is before the TC (Jack E. Golsen and Sylvia H. Golsen vs. Commissioner, 54 TC 742(1970)). If the Court of Appeals that has jurisdiction over the taxpayer has not ruled on the matter, the TC will decide the case on the basis of its own interpretation of the item under dispute. This Golsen rule means that the TC may issue opposite rulings based on identical fact patterns for taxpayers who can be differentiated solely by the geographical area in which they live.

An example of jurisdictional precedence can be found in *Selfe v. U.S.*, 778 F.2d 769, 86-1 USTC 9115, 57 AFTR 2d 86-464 (11th Cir. 1985)]. In this case, the 11th Circuit rendered a decision regarding shareholder guarantees as qualifying indebtedness in an S corporation (refer to S Corp 090000 for a detailed analysis of this case and the ramifications thereof). California follows 9th circuit decisions, therefore, we are not obligated to follow the *Selfe* decision rendered in the 11th Circuit. In addition, *Selfe* severely limited its application through facts and circumstances. As a result, subsequent TC cases have taken contrary positions by distinguishing the fact patterns.

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It should be noted that distinguishing between the circuits is one point of reference that can be used in arriving at a tax recommendation and should not be used as a stand-alone point of reference.

Temporary Citation - Tax Court Regular Decision

Manson Western Corp., 76 TC -, No. 91 (1981) (Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., West's Federal Tax Research, (West Publishing Company, 1991), pg. 116.)

Manson Western Corp.	Case Name
76	Volume Number of Tax Court Reporter
TC	Reference to Tax Court Reporter
No. 91	Tax Court Decision Number
(1981)	Year Opinion was Issued

Note: Temporary citations include no page numbers for the case because it has not yet been published.

Permanent Citation-Tax Court Regular Decision

Once the Government Printing Office publishes the decision in a permanent bound edition of the regulation TC cases, the temporary citation becomes obsolete.

Manson Western Corp., 76 TC 1161 (1981)

Manson Western Corp.	Case Name
76	Volume Number of Tax Court Reporter
TC	Reference to Tax Court Reporter
1161	First Page in the Tax Court Reporter that Includes the Case
(1981)	Year Opinion Issued

Note: A more traditional citation would be Manson Western Corp. v. U.S. or Manson Western Corp. v. Commissioner. The citation in the example above is common practice (where defendant in action is omitted) because it is the government who is the defendant and such reference could be inferred from the notation for the court in which the lawsuit is heard.

Temporary Citation-Tax Court Memorandum Decision

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(Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., West's Federal Tax Research, (West Publishing Company, 1991), pg. 119)

Walter Johnson, TC Memo 1975-245

Walter Johnson	Case Name
TC Memo	Reference to TC Memo Decision
1975	Year Opinion was Issued
245	Memo Decision Number

Permanent Citation - Tax Court Memorandum Decision

(Raabe, William A.; Whittenburg, Gerald E.; and Bost, John C., West's Federal Tax Research, (West Publishing Company, 1991), pg. 120)

Walter Johnson, 34 TCM 1056 (1975)

Walter Johnson	Case Name
34	Volume Number of the TCM Reporter
TCM	Reference to the TCM Reporter
1056	First Page in the TCM Reporter that Includes the Case
(1975)	Year Opinion Issued

Note: Above is a CCH citation. An example of a Prentice Hall Citation is: PH TC Memo Dec. ¶75,245

18.5.2 The District Court

Federal district courts hear cases involving legal issues that are based upon the entire body of federal law and the U.S. Constitution, not just the IRC. Therefore, these judges are typically generalists.

There are three sources for finding district court decisions:

- West Publishing has the Federal Supplement Series - abbreviated as 'Fsupp'.
Ex: Simons-Eastern v. U.S., 354 FSupp 1003 (D.Ct. Ga., 1972)
- Prentice Hall had the American Federal Tax Reports - abbreviated as 'AFTR'. The second series of this reporter is in use where '2d' will follow

after 'AFTR'.

Ex: Simons-Eastern v. U.S., 31 AFTR2d 73-640 (D.Ct. Ga., 1972)

- Commerce Clearing House has the U.S. Tax Cases - abbreviated as "USTC".

Ex: Simons-Eastern v. U.S. 73-1 USTC ¶ 9279 (D.Ct. Ga., 1972)

Note: the Research Institute of America (RIA) purchased Prentice Hall (PH).

18.5.3 U.S. Court of Federal Claims

On October 1, 1982, two new courts replaced the U.S. Court of Claims: the U.S. Claims Court and the U.S. Court of Appeals for the Federal Circuit. In 1992, the Claims Court was renamed the U.S. Court of Federal Claims. (Morgan, Patricia T., Tax Procedure and Tax Fraud In a Nutshell, (West Publishing Company, 2000), Chapter 6.)

The U.S. Court of Federal Claims is located only in Washington, D.C. but is authorized to hold sessions throughout the country. While the judges do hear a large number of tax refund cases, they generally are not specialists in technical tax law.

The Court of Federal Claims must follow the decisions of the former Court of Claims, the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court. Unlike the TC or federal district courts, the U.S. Court of Federal Claims is not bound by the regional Circuit Courts of Appeal that have ruled on similar issues or by the Court of Appeal for the Circuit in which the taxpayer works or resides (Golsen rule). This may be important to a taxpayer whose Circuit has held adversely to his or her position on the disputed issue.

Like the federal district courts, West, PH, and CCH publish the U.S. Claim Court citations. These are example citations for finding U.S. Claim Court cases by these publishers:

(West) Ambrose v. U.S., 4 ClCt 352 (1984)

(PH) Ambrose v. U.S., 53 AFTR2d 84-650 (ClCt).

(CCH) Ambrose v. U.S., 84-1 USTC ¶9185 (ClCt)

Note: Since October 30, 1992, cases decided by the U.S. Court of Federal Claims can also be found in the U.S. of Federal Claims Reporter (Fed. Cl.).

18.5.4 U.S. Courts of Appeal

This is the first level of the federal appellate courts. It considers both tax and nontax litigation. The 11 Courts of Appeal are organized geographically into circuits.

Like the federal district courts and U.S. Claims Court, West, PH and CCH publish the Court of Appeals citations. These are example citations for finding U.S. Court of Appeals cases by these publishers:

(West) D.C. Crummey v. U.S., 397 F2d 82 (CA-9, 1968)

(PH) D.C. Crummey v. U.S., 22 AFTR2d 6023 (CA-9, 1968)

(CCH) D.C. Crummey v. U.S., 68-2 USTC ¶12,541 (CA-9)

18.5.5 Supreme Court

The U.S. Supreme Court is an appellate court and the highest court in the nation. This is the final level of appeal and the sovereign legal authority. The cases are heard in Washington, D.C. A U.S. citizen does not have an automatic right to have his or her case heard by the Supreme Court. The Court's permission to present the case is petitioned by a Writ of Certiorari. Under this procedure, "certiorari is granted" when the Court decides to hear the case; "certiorari is denied" if the Court refuses to hear the case. Neither the citizen nor the government can appeal a Supreme Court decision.

If the Court denies the petition for certiorari, the Supreme Court is not "upholding", or in any way confirming, a lower court decision. Only about a dozen tax cases are heard each year.

The following publishers make U.S. Supreme Court citations: West, PH, CCH, Lawyer's Cooperative, and GPO. These are example citations for finding U.S. Supreme Court citations by these publishers:

(West) Helvering v. Clifford, 60 Sct 554 (1940)

(PH) Helvering v. Clifford, 23 AFTR 1077 (USSC, 1940)

(CCH) Helvering v. Clifford, 40-1 USTC ¶ 9265 (USSC)

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(Lawyer's Cooperative) Helvering v. Clifford, 84 L.Ed. 788(1940)
(GPO) Helvering v. Clifford, 309 US 331 (1940)

18.5.6. The Federal Judicial Obstacle Course: Selected Attributes of the Trial-Level Courts

Item	Tax Court	District Courts	Court of Federal Claims
Jurisdiction	Tax cases only	Legal issues - based on entire U.S. Code	Monetary claims against U.S.
Judges	Tax law specialists	Tax law generalists	Tax law generalists
Domain	National court, but judges travel	Limited geographical area	National court, but judges travel
Jury Trial Available	No	Yes	No
Number of judges hearing the case	One, reviewed by Chief Judge - "en banc" hearing for certain issues	One	One to five
Small Cases division available	Yes	No	No
Payment of tax	Trial, then payment	Payment, then trial	Payment, then trial
Precedents court must follow	Supreme Court; pertinent Circuit Court; Tax Court	Supreme Court; pertinent Circuit Court; own District court	Supreme Court; Federal Circuit Court; Claims Court

18.6 CALIFORNIA LAW

- 18.6.1 The California Legislative Process
- 18.6.2 Legislative Intent
- 18.6.3 The California Code
- 18.6.4 The California Regulations
- 18.6.5 California Rulings
- 18.6.6 The California Court System

18.6.1 The California Legislative Process

Like the federal process, there is a multi-step process that creates tax law for California. For a summary and pictorial diagram of California's legislative process see Exhibit 18.1.

18.6.2 Legislative Intent

Federal law expresses its congressional intent in the way of Committee Reports. California legislative intent (for a bill) can be found in the following:

- California State Tax Reporter (CCH)
- West's Annotated California Codes

The CCH California State Tax Reporter maintains the State Legislature Committee Reports. West's Annotated California Codes does not provide the intent, but provides a good source of legislative history.

In regards to the Lexis/Nexis database, the following is available:

- To find Committee events, check the California legislative committee analysis for California legislation from 1989. This can be done by issue or bill number/committee. Use the Library called "CODES", the File called "CACOMM", and enter the state bill number (s.b. #) or issue.

This allows you to analyze the intent of the legislation for the tax law and summarize what took place for this bill in committee.

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- To view California bill summaries and texts, use the Library called "CODES", the File called "CABILL", and enter the issue.
- To see what all 50 states are doing in regards to summaries and legislative history of bills pending in state legislatures, use the Library called "CODES", select the File called "STTRCK", and enter the issue.
- If you are interested in a particular state, use the Library "CODES" and select the File for the particular state. For instance, the state of Georgia would be under the file "GATRCK", the state of Tennessee, "TNTRCK".

If you were interested in tracking the legislation that took place for a particular year (1994 for instance), use the Library "CODES", the file "TRCK94" (to track the year 1994), and enter the issue.

The Lexis/Nexis database researches the full text and summaries of bills dating back to 1991, which is available for all 50 states.

18.6.3 The California Code

In 1993, the California Code was organized into three portions:

- Personal Income Tax Law (PITL) - Part 10
- Administrative Law- Part 10.2
- Corporation Tax Law (CTL) - Part 11

Each portion has its own topical index, cross-reference chart, and detailed law table of contents. Prior to 1993, administrative provisions were contained in both Parts 10 and 11. Beginning in 1993, a new Part (Part 10.2) was created to omit duplication of administrative provisions under both the PITL and CTL. As a result, repealed sections were renumbered and placed in Part 10.2.

The California code is organized as follows:

- Title,
- Division,
- Part,

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- Chapter,
- Article,
- Section,
- Subdivision,
- Paragraph,
- Subparagraph,
- Clause, and
- Subclause

Following is a comparison of the organization between the federal and California codes:

Federal Term	Example	California Term	Example
U.S. Code	Internal Revenue Code	California Code	Revenue & Taxation Code
Title	26 - Income, Employment, Estate, & Gift Tax Provisions	TITLE	18 - Public Revenues
Subtitle	A - Income Taxes	Division	2 - Other Taxes
Chapter	1 - Normal Surtaxes	Part	10 - PIT Law 10.2 - Administrative Law 11 - Corp Tax Law
Subchapter	A - Determination of Tax Liability	Chapter	3 - Computation of Taxable Income
Part	IV - Nonrefundable Credits	Article	II - Items Specifically Included in Gross Income
Subpart	A - Nonrefundable Personal Credits	No Comparable Term	----- ---
Section	21 - Child Care Credit	Section	17052.6 - Child Care Credit
Subsection	(e)	Subdivision	(a)
Paragraph	(4)	Paragraph	(2)

The information provided in the Franchise Tax Board's internal procedure manuals does not reflect changes in law, regulations, notices, decisions, or administrative procedures that may have been adopted since the manual was last updated.

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Subparagraph	(A)	Subparagraph	(A)
Clause	(i)	Clause	(i)
Subclause	(II)	Subclause	(II)

Source: Legislative Services Bureau's Legislative Bill Analysis Handbook for Program Staff Contacts.

The California Code utilizes two types of languages:

- Independent language or "stand alone" language, and
- "Pick-up language" (incorporation of federal law by reference).

Independent language ("stand alone") provisions are sections that do not rely on the IRC to determine California law.

"Pick-up language" (incorporation of federal law by reference) is that which California does not automatically conform to added/amended provisions of the IRC. The incorporation process requires specific language in state law. In some instances, there are substantial portions of federal law incorporated into California law, such as an entire subchapter. However, there are situations where an individual section or subsection may be incorporated by reference. When federal language is incorporated, there is usually a "related to" clause that describes the subject area. These clauses are descriptive in nature and are not intended to be a limitation. In general, the "related to" clause is merely the title of the section (or subsection) of federal law that is being incorporated.

California's conformity with federal law can be found in various publications. Bock and CCH - California Income Tax Laws and Regulation Annotated also contains a cross-reference listing.

In situations involving "pick-up language", it is crucial to determine which version of the IRC is applicable. Refer to the end of the amended/added provision. This section contains all prior readings of the code and/or public law and the applicable conformity date(s).

Since the IRC is constantly changing, it was necessary for California to create the concept of a "specified date" to identify which version of the IRC California has conformed. The "specified date" freezes state law to that

which is already known and precludes unintended conformity to subsequent changes in federal law. Changes in federal law do not automatically change state law. The State legislature must first review federal changes and modify the "specified date" before such changes can become effective.

Note: R&TC section 17024.5(a)(1) has not been modified since 1998. Unless specifically provided in the code for all years beginning on or after January 1, 1998, the applicable version of the IRC is as it read on January 1, 1998. R&TC section 17024.5, however, contains a partial list of federal provisions that are not applicable for state purposes.

In regards to the Lexis/Nexis database, use the Lexstat feature to retrieve a code section. For example, if you were looking for Idaho Code section 63-3027b, you would enter: lxt id code 63-3027b.

If you want to research all of the 50 states' codes for a particular issue, use the Library called "CODES", select the File called "ALLCDE", and enter your issue. If you want a particular state, use the same Library ("CODES"), the File for that particular state (California, use the File "CACODE"), and enter your issue.

18.6.4 The California Regulations

Although Federal Treasury Regulations are applicable to California law, there may be exceptions due to California's own "set" of regulations.

The California Regulations are organized as follows:

Title,
Division,
Chapter,
Subchapter,
Article, and
Section

California regulations are in Title 18, Public Revenues, Division 3, and Franchise Tax Board. The remainder of California's regulations fall under

their perspective Chapters, Subchapters, etc. There may not always be a subchapter or an article for the regulation.

The resource for finding California Regulations is Barclays Official Code of Regulations (a loose-leaf binder) or a binder containing a CCH publication of the regulations. Because the regulation numbers in large part parallel the law section, the regulation text also follows the law text in CCH - California Income Tax Laws and Regulations Annotated.

California regulations can be found at any on-line research service, such as Lexis/Nexis, RIA and CCH.

18.6.5 California Rulings

Generally, there are two types of California Rulings: Published and Private Advance Rulings/Correspondence (See FTB Notice 1989-277).

- Published Rulings

Published Rulings are issued as an on-going effort to keep the public informed about FTB's interpretation of certain tax laws and to provide general procedures to be followed by taxpayers with respect to administrative procedures. Published Rulings consists:

- Legal Rulings,
- FTB Notices, and
- Informal Announcements or News Releases.

- Legal Rulings

Legal Rulings are state equivalents to the IRS Revenue Rulings, and are issued to publish FTB's official conclusion on how the law is applied to a specific set of facts. Legal Rulings are mere interpretation of existing tax law and therefore have retroactive effect, unless otherwise stated in the ruling.

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If a Legal Ruling is published, the ruling can be cited as an interpretation of the tax law. Legal Rulings are not authoritative, however, they can be cited as FTB's official interpretation of the tax law. The Board of Equalization as well as the California court system may consider and attribute some weight to Legal Rulings in their decisions. For example, in *Tenneco West, Inc. v. Franchise Tax Board*, (1991) 234 Cal. App. 3d 1510, the court relied on FTB Legal Ruling 413, concluding that the apportionment factor in the year of the installment sale should be applied against subsequent receipt of the installment payments, rather than the apportionment factor in the year of receipt for installment payments.

Legal Rulings can be found at any on-line research service, such as Lexis/Nexis, RIA, and CCH, as well as FTB's legal web page. The more recent Legal Rulings are cited as "Legal Ruling 01-04 or FTB LR 2001-4", which identifies the year of the ruling as well as the legal ruling number.

- FTB Notices

FTB Notices are state equivalents to the IRS Revenue Procedures and Notices, and are generally issued to provide information concerning procedural compliance issues, well-established principles, statutory changes, court decisions, new or revised FTB publications, proposed regulations, or other matters of an administrative nature. Unlike Legal Rulings, FTB Notices are not offered as substantive interpretation of the tax law, therefore are not generally cited by auditors.

FTB Notices can be found on the FTB's legal web page.

- FTB Informal Announcements or News Releases

Informal Announcements or News Releases are information sources published by the FTB to inform taxpayers of certain tax laws, important court or administrative decisions, or policy by FTB. Informal Announcements or News Releases can be found in the Tax News newsletter, FTB's website (www.ftb.ca.gov), speaking engagements provided by FTB to the public, etc.

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- Private Advance Rulings and Correspondence

FTB answers inquiries of individuals and organizations, when appropriate in the interest of sound tax administration, about their status for tax purposes and the tax effects of their acts or transactions. FTB has the discretionary authority to issue advance rulings. FTB will normally decline to issue an advance ruling in areas including, but not limited to, where:

- The request involves an area in which the IRS has announced that it will not issue advance rulings, including alternative plans of proposed transactions and hypothetical situations;
- Either the taxpayer's name or identifying number is not provided;
- The requester is a professional preparer or representative acting on behalf of a taxpayer and has not provided his or her legal analysis and conclusion with the request;
- The law is clear and reasonably thorough research would provide the answer;
- State and federal law are the same (unless a specific statutory or regulatory authority requires such a ruling);
- The answer to the question depends on factual issues. For example: whether a unitary business exists, or the value of property as of a certain date; and
- The question involves an issue that is subject to an existing audit, appeal or protest with respect to that taxpayer or where the issue is currently on appeal or in court.

Otherwise, FTB issues three types of private advance rulings:

- Chief Counsel Rulings,
 - Opinion Letters, and
 - Information Letters
-
- Chief Counsel Rulings

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Chief Counsel Rulings are the FTB counterparts to the IRS Letter Rulings. A Chief Counsel Ruling is a written statement that interprets and applies California tax law to the taxpayer's specific set of facts.

R&TC section 21012(a)(1) provides that taxes, interest, additions to tax and penalties may be relieved if a person's failure to make a timely return or payment was due to the person's reasonable reliance on the written advice of a legal ruling by the chief counsel, and all the conditions set forth in R&TC section 21012(b) are met. Thus, only the taxpayer making the request will be entitled to rely on these rulings, and can be relieved of tax, penalties, interest, and additions as long as all the conditions set forth in R&TC section 21012(b) are met, which includes the following:

The person or representative requested in writing that the FTB advise him or her whether a particular prospective activity or transaction is subject to tax, and fully described the facts and circumstances of the transaction or activity in the request. If the request is for a Chief Counsel Ruling, the request shall specifically so state.

The FTB responded in writing, stating whether the described activity is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

The person reasonably relied on the advice and did not remit the tax due. The ruling was not rescinded or revoked before the taxpayer relied on it or before the occurrence of the procedure, transaction or activity.

There has not been a change in applicable state or federal law or in the taxpayer's facts and circumstances.

- Opinion Letters

Opinion Letters are the FTB counterparts to the IRS Determination Letters. Opinion Letter is a written statement that applies the principles and precedents previously announced by the FTB to a specific set of facts. It is issued when a determination can be made based on clearly established rules in a statute, regulations, or based on a conclusion in a Legal Ruling, Board of Equalization opinion or court decision that specifically answers the question presented.

A taxpayer making the request for Opinion Letters is also entitled to R&TC section 21012(a)(1) relief as long as R&TC section 21012(b) requirements are met.

- Information Letters

Information Letters are the FTB counterparts to the IRS Information Letters. An information Letter provides a general discussion of a well-established interpretation of tax law without applying it to a specific set of facts. Information Letters are only advisory and have no binding effect on the FTB; therefore the relief provisions of R&TC section 21012 do not apply.

18.6.6 The California Court System

The California court system for tax cases is generally comprised of three tiers;

1. Superior Court,
2. Court of Appeals, and
3. Supreme Court.

Any case issued for publication within the California court system is citable; however, the higher the court, the more precedence the case will have to an auditor.

Superior Courts

Superior Courts have exclusive original jurisdiction over tax cases (Cal. Civ. Proc. Code §86(a)(1)). If a taxpayer is subject to an audit examination by the FTB and a tax assessment was issued and affirmed by the protest unit, the taxpayer has the option of taking its case directly to Superior Court or to the Board of Equalization (See Cal. Civ. Proc. Code Section 6-6(d) for Board of Equalization proceedings). If a taxpayer chooses to take its case to the Superior Court, they must first pay the tax assessment and file a claim for refund (California Constitution, Article XIII, Section 32). In *Dan J. Agnew v.*

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State Board of Equalization, (1999) 21 Cal.4th 310, the court held that the payment of accrued interest and penalty was not a prerequisite to either an administrative refund claim or a subsequent action for refund of taxes; the only requirements are that the tax be paid and a claim for refund be filed.

The Superior Court will generally hear arguments of the case and review the facts submitted to the court before reaching its decision. Once the decision is reached, either party can appeal the decision to the Court of Appeals.

Court of Appeals

All tax cases decided by the Superior Court can be appealed to the Court of Appeals for further review. The Court of Appeals will determine if the Superior Court reached the correct decision by generally affirming or reversing the Superior Court's decision (Cal. Civ. Proc. Code §904.1). The Court of Appeals will generally make its decision based on correct legal standards and evidence provided during the Superior Court, and rarely will they hear new evidence at the appeals level. Once the Court of Appeals issues their decision, either party can appeal to the Supreme Court for further review.

Supreme Court

Supreme Court has sole discretion as to whether or not they will review the Court of Appeals decision (California Constitution, Article VI, Section 12).

Board of Equalization

As an alternative to the California court system, taxpayers in a tax case can appeal the findings of the FTB to the State Board of Equalization (BOE) as long as taxpayers exhaust all administrative remedies. The BOE is comprised of five elected Board Members, serving as the appellate body in final actions of the FTB. The five elected members issue opinions and render decisions interpreting and defining California's income tax laws after obtaining all relevant facts about the case.

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Once the elected members render a decision, either party, within 30 days of the decision, can petition the BOE for a rehearing. If the rehearing is denied, then the proceeding at the BOE ends. FTB has no other recourse once the proceeding ends with the BOE. However, taxpayers who are not satisfied with the decision reached by the BOE can find additional relief by going through the State court system as discussed above.

The information provided in the Franchise Tax Board's internal procedure manuals does not reflect changes in law, regulations, notices, decisions, or administrative procedures that may have been adopted since the manual was last updated.

18.7 USING CITATORS

A citator is a book or set of volumes which lists all federal court cases involving matters of taxation under Title 26 of the U.S. Code. It provides the court(s) in which the case was heard, whether the IRS acquiesced, and subsequent cases that cited and followed such case. The citator is a useful tool in determining the strength of a holding in a particular case. In general, the case being analyzed is identified as the "cited case"; the case being referred to is identified as the "citing case".

There are three citators: (1) CCH, (2) Prentice Hall (which has been purchased by RIA), and (3) Shepherd's.

CCH's citator is part of their Standard Federal Tax Reports. The Main Citator is contained in 2 volumes - Volume A-L and Volume M-Z. The Main Citator is supplemented by the Current Citator Table, which is issued quarterly. For the court decisions that are no longer applicable, they are indicated by a dagger symbol and no citing cases are listed. Cited cases are noted in bold followed by paragraph references. The bold dots that are placed along the citator's left margin facilitate a reconstruction of the judicial history of the cited case, with the highest-level court to address the case listed first, and the trial-level case listed last.

Note that you will want to check the Latest Additions to the Citator table (placed in front of the Current Citator Table) to see whether there are recent citing cases that might assist your audit determination.

One of the main differences that CCH has in comparison to PH's and Shepherd's is that PH and Shepherd list all the cases that have mentioned the cited case. Although this provides thoroughness, one should be careful of being overwhelmed and not focusing on the true landmark cases cited. It can also be mentioned that with CCH you would be relying on the editorial evaluation of CCH in regards to case precedence.

The Citator is also helpful in your finding court cases that have precedence. The precedent setting case is listed first. All cases that cite and/or follow the precedent setting case are listed next.

18.8 REFERENCE SOURCES

- 18.8.1 Annotated Tax Services
- 18.8.2 Other Sources

18.8.1 Annotated Tax Services

IRC section numbers organizes annotated tax services. In this chapter, we will assume that you are familiar with the annotated tax service CCH-Standard Federal Tax Reports.

Topical tax services divide the tax law into its function components. RIA and BNA are distinguishable in regards to the structure of their material, not the structure of their indexes. The 6 most popular topical tax services are:

- Research Institute of American's Federal Tax Coordinator 2d (RIA)
- Bureau of National Affairs' Tax Management Portfolios (BNA)

Single Topic Treatises (devoted to detailed analysis of a selected narrow range of federal or other tax issues)

- Warren, Gorham, and Lamont's Federal Income Taxation of Corporations and Shareholders,
- Estates and Gifts (Bittker)
- Clark Boardman Callaghan's S Corporations: Federal Taxation
- Callaghan's Mertens' Law of Federal Income Taxation (Mertens)

18.8.2 Other Sources

- Journal of S Corporation Taxation (published quarterly)
- Treatises by Warren, Gorham, Lamont or Clark, Boardman, Callahan
- Taxes
- Tax Notes (weekly)
- State Tax Notes (weekly)
- PPC Binders, etc.

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In regards to the Lexis/Nexis database and State Tax Notes (by Tax Analysts, Inc.), use the Library called "STTAX", select the File called "STN", and enter the issue to research. State Tax Notes provides current details on developments in all areas of state-level tax - legislative activity (proposed and pending), state tax agency releases, court decisions, etc.

You can track what the public officials and the private enterprises are "saying" concerning California's regulations governing certain issues by using the Library called "REGNWS", selecting the File called "CANWS", and entering the issue you want to track.

If you have the citation for a case (federal or state), a private letter ruling, revenue ruling, public law, I.R.B., Congressional bill, RIA Federal Tax Coordinator, C.B., Tax management portfolios, etc. - use the Lexsee feature of the Lexis/Nexis database as follows.

Case (federal or state) – lexsee 410 us 113 or lexsee 132 ariz 337

Private Letter Ruling – lexsee plr 7711003

Revenue Ruling – lexsee rev rul 74-56 or lexsee revrul 74-56

Public Law – lexsee 100 pl 297

Internal Revenue Bulletin – lexsee 103 hr 3600

Congressional Bill – lexsee 103 hr 3600

RIA Federal Tax Coordinator - lexsee riaftc b 3500

Cumulative Bulletin – lexsee 1985-1 cb 550

Tax Management Portfolios – lexsee 731 tm 1

There is also the Lexstat feature of the Lexis/Nexis database. The Lexstat feature can be used if you have the full citation for a state code or statute section, the U.S. Code, the U.S. Code of Federal Regulations, state administrative codes, etc. The following lists examples of Lexstat searches:

California Code - (CA has annotated statutes offered in the database) –
lexstat ca gov 20022

New York Code – lexstat ny gen mun 370

Washington, D.C. Code – lexstat dc code 6-3401

U.S. Code – lexstat 5 uscs 5901

Under the Lexstat feature, the following Code topics are available for the California statutes:

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Bus. & Prof.	Finance	Labor	Rev. & Tax.	Uncod. Water
Civil	Fish & Game	Military & Veteran	Sts. & High.	Uncod. Init.
Civil Procedure	Food & Agriculture	Penal	Unemp. Ins.	
Corporations	Government	Probate	U.C.C.	
Education	Harbor & Navy	Pub. Cont.	Vehicle	
Election	Health & Safety	Pub. Res.	Water	
Evidence	Insurance	Public Util.	Welf. & Inst.	

The information provided in the Franchise Tax Board's internal procedure manuals does not reflect changes in law, regulations, notices, decisions, or administrative procedures that may have been adopted since the manual was last updated.

18.9 EXHIBITS

Exhibit 18.1	PL 99-514
Exhibit 18.2	Summary of the Legislative Process to the California Tax Law
Exhibit 18.3	How a Bill Becomes a Law

Exhibit 18.1

Public Law 99-514

IRC § 633. Effective Date

(a) GENERAL RULE.--Except as otherwise provided in this section, the amendments made by this subtitle shall apply to--

- (1) any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before January 1, 1987,
- (2) any transaction described in section 338 of the Internal Revenue Code of 1986 for which the acquisition date occurs after December 31, 1986, and
- (3) any distribution (not in complete liquidation) made after December 31, 1986.

(b) BUILT-IN GAINS OF S CORPORATIONS.--The amendments made by section 632 (other than subsection (b) thereof) shall apply to taxable years beginning after December 31, 1986, but only in cases where the 1st taxable year for which the corporation is an S corporation is pursuant to an election made after December 31, 1986.

(c) EXCEPTION FOR CERTAIN PLANS OF LIQUIDATION AND BINDING CONTRACTS.--

(1) IN GENERAL.--The amendments made by this subtitle shall not apply to--

- (A) any distribution or sale or exchange made pursuant to a plan of liquidation adopted before August 1, 1986, if the liquidating corporation is completely liquidated before January 1, 1988,
- (B) any distribution or sale or exchange made by any corporation if 50 percent or more of the voting stock (by value) of such corporation is

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acquired on or after August 1, 1986, pursuant to a written binding contract in effect before such date and if such corporation is completely liquidated before January 1, 1988,

(C) any distribution or sale or exchange made by any corporation if substantially all of the assets of such corporation are sold on or after August 1, 1986, pursuant to 1 or more written binding contracts in effect before such date and if such corporation is completely liquidated before January 1, 1988, or

(D) any transaction described in section 338 of the Internal Revenue Code of 1986 with respect to any target corporation if a qualified stock purchase of such target corporation is made on or after August 1, 1986, pursuant to a written binding contract in effect before such date and the acquisition date (within the meaning of such section 338) is before January 1, 1988.

(2) SPECIAL RULE FOR CERTAIN ACTIONS TAKEN BEFORE NOVEMBER 20, 1985.--For purposes of paragraph (1), transactions shall be treated as pursuant to a plan of liquidation adopted before August 1, 1986, if--

(A) before November 20, 1985--

(i) the board of directors of the liquidating corporation adopted a resolution to solicit shareholder approval for a transaction of a kind described in section 336 or 337, or

(ii) the shareholders or board of directors have approved such a transaction, (B) before November 20, 1985--

(i) there has been an offer to purchase a majority of the voting stock of the liquidating corporation, or

(ii) the board of directors of the liquidating corporation has adopted a resolution approving an acquisition or recommending the approval of an acquisition to the shareholders, or

(C) before November 20, 1985, a ruling request was submitted to the Secretary of the Treasury or his delegate with respect to a transaction of a kind described in section 336 or 337 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this subtitle).

For purposes of the preceding sentence, any action taken by the board of directors or shareholders of a corporation with respect to any subsidiary of such corporation shall be treated as taken by the board of directors or shareholders of such subsidiary.

(d) TRANSITIONAL RULE FOR CERTAIN SMALL CORPORATIONS.--

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(1) IN GENERAL.--In the case of the complete liquidation before January 1, 1989, of a qualified corporation, the amendments made by this section shall not apply to the applicable percentage of each gain or loss which (but for this paragraph) would be recognized by reason of the amendments made by this subtitle.

(2) PARAGRAPH (1) NOT TO APPLY TO CERTAIN ITEMS.--Paragraph (1) shall not apply to--

(A) any gain or loss which is an ordinary gain or loss (determined without regard to section 1239 of the Internal Revenue Code of 1986),

(B) any gain or loss on a capital asset held for not more than 6 months, and

(C) any gain to the extent section 453B of such Code applies.

(3) APPLICABLE PERCENTAGE.--For purposes of this subsection, the term 'applicable percentage' means--

(A) 100 percent if the applicable value of the qualified corporation is less than \$5,000,000, or

(B) 100 percent reduced by an amount which bears the same ratio to 100 percent as--

(i) the excess of the applicable value of the corporation over \$5,000,000, bears to

(ii) \$5,000,000.

(4) APPLICABLE VALUE.--For purposes of this subsection, the applicable value is the fair market value of all of the stock of the corporation on the date of the adoption of the plan of complete liquidation (or if greater, on August 1, 1986).

(5) QUALIFIED CORPORATION.--For purposes of this subsection, the term "qualified corporation" means any corporation if--

(A) on August 1, 1986, and at all times thereafter before the corporation is completely liquidated, more than 50 percent (by value) of the stock in such corporation is held by 10 or fewer qualified persons, and

(B) the applicable value of such corporation does not exceed \$10,000,000.

(6) DEFINITIONS AND SPECIAL RULES.--For purposes of this subsection--

(A) QUALIFIED PERSON.--The term "qualified person" means--

(i) an individual,

(ii) an estate, or

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(iii) any trust described in clause (ii) or (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

(B) CONTRIBUTION RULES.--

(i) ENTITIES.--Any stock held by a corporation, trust, or partnership shall be treated as owned proportionally by its shareholders, beneficiaries, or partners. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(ii) FAMILY MEMBERS.--Stock owned (or treated as owned under clause (i)) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person.

(C) CONTROLLED GROUP OF CORPORATIONS.--All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of this subsection.

(7) SECTION 338 TRANSACTIONS.--The provisions of this subsection shall also apply in the case of a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before January 1, 1989.

(8) APPLICATION OF SECTION 1374.--Rules similar to the rules of this subsection shall apply for purposes of applying section 1374 of the Internal Revenue Code of 1986 (as amended by section 632) in the case of a qualified corporation which becomes an S corporation for a taxable year beginning before January 1, 1989.

(d) COMPLETE LIQUIDATION DEFINED.--For purposes of this section, a corporation shall be treated as completely liquidated if all of the assets of such corporation are distributed in complete liquidation, less assets retained to meet claims.

(e) OTHER TRANSITIONAL RULES.--

(1) The amendments made by this subtitle shall not apply to any liquidation of a corporation incorporated under the laws of Pennsylvania on August 3, 1970, if--

(A) the board of directors of such corporation approved a plan of liquidation before January 1, 1986,

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(B) an agreement for the sale of a material portion of the assets of such corporation was signed on May 9, 1986 (whether or not the assets are sold in accordance with such agreement), and
(C) the corporation is completely liquidated on or before December 31, 1988.

(2) The amendments made by this subtitle shall not apply to any liquidation (or deemed liquidation under section 338 of the Internal Revenue Code of 1986) of a diversified financial services corporation incorporated under the laws of Delaware on May 9, 1929, pursuant to a binding written contract entered into on or before December 31, 1986; but only if the liquidation is completed (or in the case of a section 338 election, the acquisition date occurs) before January 1, 1988.

(3) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange-

(A) of the assets owned (directly or indirectly) by a testamentary trust established under the will of a decedent dying on June 15, 1956, or its beneficiaries,
(B) made pursuant to a court order in an action filed on January 18, 1984, if such order--

(i) is issued after July 31, 1986, and
(ii) directs the disposition of the assets of such trust and the division of the trust corpus into 3 separate sub-trusts.

For purposes of the preceding sentence, an election under section 338(g) of the Internal Revenue Code of 1986 (or an election under section 338(h)(10) of such Code) qualifying as a section 337 liquidation pursuant to regulations prescribed by the Secretary under section 1.338(h)(10)-1T(j)) made in connection with a sale or exchange pursuant to a court order described in subparagraph (B) shall be treated as a sale of exchange.

(4)

(A) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange--

(i) if--

(I) an option agreement binding on the selling corporation to sell substantially all its assets is executed before August 1, 1986, the corporation adopts (by approval of its shareholders) a conditional plan of liquidation

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before August 1, 1986 to become effective upon the exercise of such option agreement (or modification thereto), and the assets are sold pursuant to the exercise of the option (as originally executed or subsequently modified provided that the purchase price is not thereby increased), or

(II) in the event that the optionee does not acquire substantially all the assets of the corporation, the optionor corporation sells substantially all its assets to another purchaser at a purchase price not greater than that contemplated by such option agreement pursuant to an effective plan of liquidation, and

(ii) the complete liquidation of the corporation occurs within 12 months of the time the plan of liquidation becomes effective, but in no event later than December 31, 1989.

(B) For purposes of subparagraph (A), a distribution, or sale, or exchange, of a distributee corporation (within the meaning of section 337(c)(3) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of subparagraph (A) if its subsidiary satisfies the requirements of subparagraph (A).

(C) For purposes of section 56 of the Internal Revenue Code of 1986 (as amended by this Act), any gain or loss not recognized by reason of this paragraph shall not be taken into account in determining the adjusted net book income of the corporation.

(5) In the case of a corporation incorporated under the laws of Wisconsin on April 3, 1948--

(A) a voting trust established not later than December 31, 1987, for purposes of holding employees' shares of stock in such corporation, shall qualify as a trust permitted as a shareholder of an S corporation, and

(B) the amendment made by section 632 (other than subsection (b) thereof) shall not apply to such corporation if it elects to be an S corporation before January 1, 1989.

(6) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated on January 26, 1982, under the laws of the State of Alabama with a principal place of business in Colbert County,

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Alabama, but only if such corporation is completely liquidated on or before December 31, 1987.

(7) The amendments made by this subtitle shall not apply to the acquisition by a Delaware bank holding company of all of the assets of an Iowa bank holding company pursuant to a written contract dated December 9, 1981.

(8) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated under the laws of Delaware on January 20, 1984, if more than 40 percent of the stock of such corporation was acquired by purchase of June 11, 1986, and there was a tender offer with respect to all additional outstanding shares of such corporation on July 29, 1986, but only if the corporation is completely liquidated on or before December 31, 1987.

(f) TREATMENT OF CERTAIN DISTRIBUTIONS IN RESPONSE TO HOSTILE TENDER OFFER.--

(1) IN GENERAL.--No gain or loss shall be recognized under the Internal Revenue Code of 1986 to a corporation (hereinafter in this subsection referred to as "parent") on a qualified distribution.

(2) QUALIFIED DISTRIBUTION DEFINED.--For purposes of paragraph (1)--

(A) IN GENERAL.--The term "qualified distribution" means a distribution--

(i) by parent of all of the stock of a qualified subsidiary in exchange for stock of parent which was acquired for purposes of such exchange pursuant to a tender offer dated February 16, 1982, and

(ii) pursuant to a contract dated February 13, 1982, and

(iii) which was made not more than 60 days after the board of directors of parent recommended rejection of an unsolicited tender offer to obtain control of parent.

(B) QUALIFIED SUBSIDIARY.--The term "qualified subsidiary" means a corporation created or organized under the laws of Delaware on September 7, 1976, all of the stock of which was owned by parent immediately before the qualified distribution.

Exhibit 18.2

Summary of the Legislative Process to the California Tax Law

Suggestion Made to Legislation

⇓⇓

Legislative Counsel Writes the Bill

⇓⇓

Bill Introduced in Original House (Assembly or Senate) and Read

⇓⇓

Original House Action by:
Committee Hearings (Policy and Fiscal)
Floor Debate and Vote

⇓⇓

Second House Action
Bill Delivered, Introduced, and Read
Committee Hearings (Policy and Fiscal)
Floor Debate and Vote.

If the bill is passed, it is sent to the Governor.
If the bill is amended and passed in this House, the bill returns to the House of origin for consideration of the amendments. If not passed, the bill does not precede any further.

⇓⇓

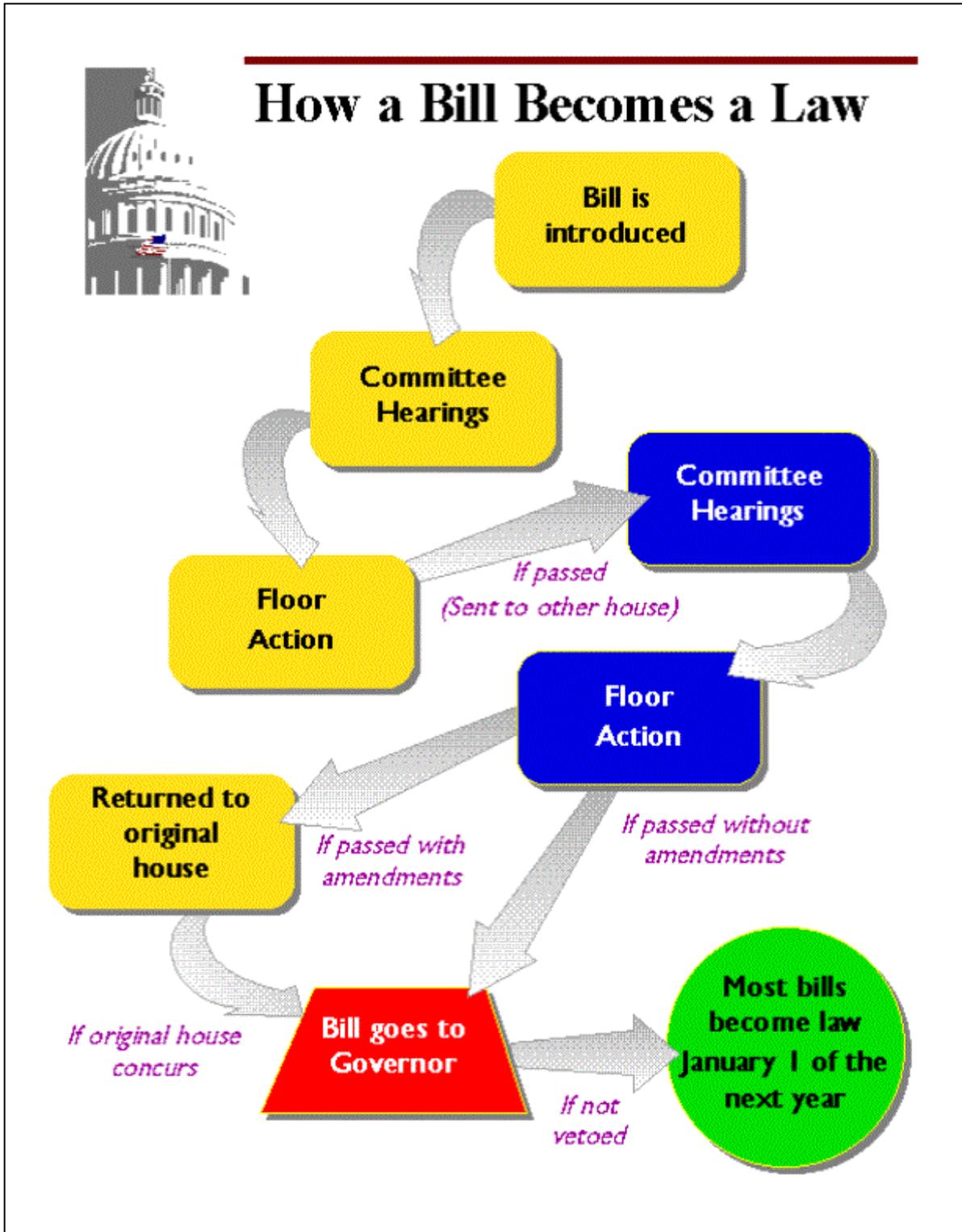
Resolving Differences
Concurrence
Conference Committee

⇓⇓

Final Action

Governor
Secretary of State

Exhibit 18.3



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