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NOTE: ((**)) = Indicates confidential and/or proprietary information has been deleted. **Rev. 11/17**

**10.1
INTRODUCTION**

The objective of this section is to provide information that will help you conduct efficient and effective tax research, so that you will apply the correct law to your case. The focus of this section is the discussion of California and federal tax source and references. This section also includes discussion of citable and noncitable sources.

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**10.2 TAX
RESEARCH
SOURCES**

The Department provides access to Internet research services. In addition, various printed resources are available in your office. For efficiency, use online research as the first research source. Use the printed tax resources to complement the online research services.

Click on the link below for a listing of available online tax research sources.

Research Sites

NOTE: You may need authorization to access some of the online tax research sites. Contact your supervisor to request access.

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10.2.1 ***
Search Tools**

The ***** has an extensive amount of information that could be useful in researching your technical issues. As with any research tool, to ensure proper application of the technical law analysis, you should be fully aware of the facts and circumstances of your case. ***** Search Engine will automatically allow you to search the entire ***** including appeal briefs, court briefs, TAMs, FTB Notices, etc.

If you are reviewing appeal briefs, you may cite to the authority cited in the briefs, but you cannot cite the brief itself. If BOE or OTA issued a published opinion in the Appeal, you can cite the published opinion. Generally, appeal briefs are public documents and taxpayers can obtain them by contacting the Office of Tax Appeals.

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**10.3 STEPS IN
CONDUCTING
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Your research steps may vary depending on your audit issue. It is important that you understand the issue and the facts relevant to the issue. Understanding the facts will help you refine your research so that you can identify the relevant sources and references.

Once you have identified the tax issue, following are the general steps in conducting tax research:

1. Read the codes and regulations relating to your issue.

2. Review available Audit technical manuals. Although you cannot cite these as authority, you can use these as guides in your research, or use the reasoning or explanation to support your position, or use these as tools in identifying other sources.

3. Determine if the issue is a California-only issue. If so, concentrate on researching these sources:
 - California Revenue and Taxation Code (See MAP 10.4.1 California Revenue and Taxation Code)
 - California Regulations (See MAP 10.4.2 The California Regulations)
 - FTB Legal Rulings (See MAP 10.4.3 FTB Legal Rulings)
 - California Court Cases (See MAP 10.7 California Court System and the Office of Tax Appeals)
 - Board of Equalization or Office of Tax Appeals Decisions (See MAP 10.7.4 The Office of Tax Appeals)
 - Technical Manuals
 - Audit Program Reports (APR) - these are Audit Division's interpretation of certain tax issues.

5. Determine whether the California law conforms to the federal law. See MAP 10.5 California Conformity to Federal Law.

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	<p>6. If the California law conforms to the federal law and there are no California modifications or exceptions, concentrate on researching these sources:</p> <ul style="list-style-type: none">• Internal Revenue Code (See MAP 10.6.2 The Internal Revenue Code)• Treasury Regulations (See MAP 10.6.3 Treasury Regulations)• Revenue Rulings and Procedures (See MAP 10.6.4 Revenue Rulings and Revenue Procedures)• Letter Rulings (See MAP 10.6.6 Letter Rulings)• Federal Court Cases (See MAP 10.8 Federal Judicial Authority) <p style="text-align: right;">Rev. 11/17</p>
<p>10.4 CALIFORNIA STATUSES AND ADMINISTRATI ON</p>	<p>MAP 10.4.1 California Revenue and Taxation Code MAP 10.4.2 The California Regulations MAP 10.4.3 FTB Legal Rulings MAP 10.4.4 FTB Notices MAP 10.4.5 Chief Counsel Rulings MAP 10.4.6 Opinion Letters MAP 10.4.7 Information Letters MAP 10.4.8 Technical Advice Memorandum (TAM) MAP 10.4.9 Legal Division Guidance</p> <p style="text-align: right;">Rev. 7/17</p>
<p>10.4.1 California Revenue and Taxation Code</p>	<p>The California Revenue and Taxation Code is one of the 29 codes that are part of the California law. The relevant income tax laws we often deal with are in three different parts of the California Revenue and Taxation Code: Personal Income Tax Law (PITL), Administrative Law (AFITL), and Corporation Tax Law (CTL).</p>

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Organization

The California code is organized as follows:

Title

Division

Part

Chapter

Article

Section

Subdivision

Paragraph

Subparagraph

Clause

Subclause

Example: R&TC Section 23622.8(b)(5)(A)(i)

Title		Revenue and Taxation Code
Division	2	Other Taxes
Part	11	Corporation Tax Law
Chapter	3.5	Tax Credits
Article	--	
Section	23622.8	Credit for hiring qualified disadvantaged in manufacturing enhancement area
Subdivision	b	Qualified Wages
Paragraph	5	Qualified Disadvantaged Individual
Subparagraph	A	
Clause	i	Specific requirements
Subclause	--	

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It is important to understand the organization of the code so that when the statute says, ...**for purposes of this part [or chapter, or section, etc.]**..., you will know what area of the code applies.

When citing a particular area of the code you do not need to include the terms that are listed above **Section**.

Income Tax Laws

The relevant income tax laws we often deal with are in three different parts of the California Revenue and Taxation Code, under Division 2 (Other Taxes):

Part	Name	Sections Included in This Part
Part 10	Personal Income Tax Law (PITL)	17001-18181
Part 10.2	Administrative Law (AFITL)	18401-21028
Part 10.3		
Part 10.5		
Part 10.6		
Part 10.7		
Part 11	Corporation Tax Law (CTL)	23001-25141

Each part 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. You may encounter references to these old section numbers in older cases. CCH - California Income Tax Laws and Regulations Annotated contains a cross-reference table for former and current administrative law sections.

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Individuals, trusts, estates, and partnerships are subject to the PITL while banks and corporations are subject to the CTL. Limited Liability Companies may be treated as partnerships or as corporations, and will file accordingly.

Citations

The various ways to cite any section in Part 10 (PIT), Part 10.2 (Administrative), or Part 11 (Corporation) are:

- R&TC Section (recommended FTB standard)
- Revenue and Taxation Code Section
- Rev. & Tax. Code Section
- CR&TC Section

You may replace the word **section** by the symbol **§**.

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**10.4.2 The
California
Regulations**

State agencies adopt regulations to implement, interpret, or make specific the law that the agency enforces or administers. Regulations also help to explain the code in greater detail.

The California Code of Regulations (CCR) is organized as follows:

Title

Division

Chapter

Subchapter

Article

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Section

There may not always be a subchapter or an article for the regulation. The regulation section numbers generally parallel the related code section numbers.

Example: CCR Section 23649-5

Title	18	Public Revenues
Division	3	Franchise Tax Board
Chapter	3.5	Bank and Corporation Tax
Subchapter	3	Corporation Income Tax
Article	3	Tax Credits
Section	23649-5	Qualified Property

You can access the California regulations in any online research service to which the department subscribes (see MAP 10.2 Tax Research Sources) or the [California Office of Administrative Law](#) website. The California Code of Regulations was formerly called California Administrative Code and you may encounter references under this name.

Franchise Tax Board Regulations

The Franchise Tax Board (FTB) adopts regulations for the R&TC. FTB Regulations are in [Title 18](#) (Public Revenues) Division 3 (Franchise Tax Board) of the California Code of Regulations. You can also find the regulation text following the code text in CCH - California Income Tax Laws and Regulations Annotated.

Treasury regulations (see MAP 10.6.3 Treasury Regulations) are deemed to be applicable for state purposes to the extent that they do not conflict with state law, except where the FTB has adopted its own regulations.

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Citations

- Cite the regulations by section number. Example: CCR §23649-2
- Some official citations also include the title number. Example: 18 CCR §19032

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10.4.3 FTB Legal Rulings

Legal Rulings are issued to publish FTB's official conclusion on how the law is applied to a specific set of facts. Legal Rulings are state equivalents to the IRS Revenue Rulings (see MAP 10.6.4 Revenue Rulings). They are interpretation of existing tax law and therefore have retroactive effect, unless otherwise stated in the ruling. The Legal Rulings are available in the FTB public website.

If a Legal Ruling is published, you can cite the ruling 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 Office of Tax Appeals, 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.

Cite Legal Rulings as:

- Legal Ruling 0x-03
- FTB Legal Ruling 200x-03

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10.4.4 FTB Notices	<p>FTB Notices 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. FTB Notices are state equivalents to the IRS Revenue Procedures and Notices (See MAP 10.6.5 Revenue Procedures). The FTB Notices refer to the law and tell taxpayers what we are requiring them to do under the law and other authorities. During your audit you can state what the law is and refer to the FTB Notice to tell the taxpayer what our interpretation is and what they need to do to comply. The <u>FTB Notices</u> are available in the FTB public website.</p> <p>Refer to FTB Notices as:</p> <ul style="list-style-type: none">• FTB Notice 200x-6 (for years 2000 and later)• FTB Notice xx-1 (for years before 2000) <p style="text-align: right;">Rev. 7/17</p>
10.4.5 Chief Counsel Rulings	<p>A Chief Counsel Ruling, a type of FTB private advance ruling, is a written statement that interprets and applies California tax law to the taxpayer's specific set of facts. Chief Counsel Rulings are the FTB counterparts to the IRS Letter Rulings (See MAP 10.6.6 Letter Rulings).</p> <p>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. For additional information, refer to <u>FTB Notice 2009-08</u> and <u>FTB Notice 2009-09</u></p> <p>The <u>FTB Chief Counsel Rulings</u> are available in the FTB public website.</p> <p style="text-align: right;">Rev. 7/17</p>
10.4.6 Opinion Letters	<p>An Opinion Letter is a written statement that applies the principles and precedents previously announced by the FTB to a specific set of facts. Opinion Letters are the FTB counterparts to the IRS Determination Letters (See MAP 10.6.6 Letter Rulings). It is issued when a determination can be made based on clearly established rules in a statute, regulation, or based on a conclusion in a Legal Ruling,</p>

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	<p>Board of Equalization/Office of Tax Appeals opinion or court decision that specifically answers the question presented.</p> <p>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. For additional information, refer to FTB Notice 2009-08 and FTB Notice 2009-09.</p> <p style="text-align: right;">Rev. 11/17</p>
10.4.7 Information Letters	<p>Information Letters are taxpayer-specific rulings furnished by the Franchise Tax Board in response to requests made by taxpayers and their authorized representatives. Information Letters are only advisory and have no binding effect on the FTB; therefore, taxpayers cannot rely on these to obtain relief of tax, penalty, and interest, under R&TC Section 21012.</p> <p style="text-align: right;">Rev. 7/19</p>
10.4.8 Technical Advice Memorandum (TAM)	<p>FTB Legal Department issues a TAM when department staff requests legal assistance on issues involving the Personal Income Tax Law, the Administration of Franchise and Income Tax Laws, and the Corporation Tax Law, to be referenced as authority for a position.</p> <p>Although we can use the TAM's analysis, logic, and conclusions to support an audit determination, we do not cite the TAM to the taxpayer.</p> <p>You can access the FTB TAM's at the Legal Department's webpage. Redacted TAMs are also available in the FTB public website.</p> <p style="text-align: right;">Rev. 7/17</p>
10.4.9 Legal Division Guidance	<p>The Legal Division of the Franchise Tax Board routinely provides informal advice to external specialty publishers and non-legal staff in a form that is not generally reduced to formal written guidance such as technical advice memoranda or similar types of written guidance that are now made available on the department's website. This guidance generally relates to recently-enacted legislation, and may include frequently asked questions and responses drafted by staff of the Legal Division. Refer to FTB Notice 2010-3.</p>

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Although we can use Legal Division Guidance's analysis, logic, and conclusions to support an audit determination, they are not citable.

You can access the FTB Legal Division Guidance at the Legal Department's webpage.

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**10.5
CALIFORNIA
CONFORMITY
TO FEDERAL
LAW**

In general, the California Corporation Tax Law and Personal Income Tax Law, conform to the Internal Revenue Code either by **stand-alone** language that parallels the federal provision or by incorporating the Internal Revenue Code (IRC) by reference.

You can use the Federal-California Cross-Reference table in CCH - California Income Tax Laws and Regulations Annotated (after topical index) to find sections of IRC that are comparable to sections of the R&TC. Be sure to read the comparable R&TC Sections to verify whether California conforms with, or if there are any modifications or exceptions to, the IRC.

Stand-Alone Language

Stand-alone language provisions are sections that do not rely upon the IRC to determine California law. Examples are R&TC Section 17041 and R&TC Section 24357. If the code uses this type of language, your issue would be California only issues. Focus on researching the California sources discussed in MAP 10.4 California Statute and Administration.

Incorporation of Federal Law by Reference

Incorporating the IRC by reference is not automatic. The incorporation process requires specific language in state law. In some instances, large portions of federal law are incorporated, such as an entire subchapter. In other cases, an individual section or subsection may be incorporated by reference. Examples are R&TC Section 18031 and R&TC Section 23609, respectively.

When California law incorporates federal law, California uses a **relating to** clause that describes the subject area. This clause is for description and not meant to limit the code sections specified in the

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clause. Generally, the relating to clause is the title of the section (or subsection) of federal law being incorporated. An example is R&TC Section 17071, which states, **Section 61 of the Internal Revenue Code, relating to gross income defined, shall apply, except as otherwise provided.**

Follow the steps below to research R&TC Sections that conform to the IRC.

1. Determine what IRC Section California law conforms with.

You can find the general rules for incorporation of IRC in R&TC Section 17024.5 and R&TC Section 23051.5. You can also use the Federal-California Cross-Reference table in the CCH - California Income Tax Laws and Regulations Annotated (after topical index) to find sections of IRC that are comparable to sections of the R&TC. Be sure to read the comparable R&TC Sections to verify whether California conforms to the IRC. The specific IRC that California conforms to is generally stated within the language of the conforming R&TC.

2. Determine what version of the IRC California law conforms with.

When researching a California code that includes references to the IRC, it is important that you know the **specified date** to determine which version of the IRC is applicable to which taxable year.

Specified date freezes state laws to what is already known, and prevents unintended conformity to subsequent changes in federal law.

Changes in federal law do not automatically change state law. The State legislature must first review the federal changes and modify the **specified date** before any federal changes can become effective. For example, Assembly Bill 115 (Stats. 2005, Ch. 691) as enacted, changed the date California law conforms to the IRC from January 1, 2001 to January 1, 2005 (specified date), for taxable years beginning on or after January 1, 2005. By changing this date, California automatically conforms state law to all changes from January 1, 2001, through December 31, 2004 to IRC sections that have been previously incorporated by reference.

You can find the **specified dates** in R&TC Section 17024.5(a)(1) and R&TC Section 23051.5(a)(1).

3. Identify any California modifications.

When California law refers to a provision of the IRC which has been incorporated by reference, but has been modified for state purposes, such a reference includes the state modification (R&TC Section 17024.5(i) and R&TC Section 23051.5(i)). You can find the state modifications within the language of the California code. Generally, you will find these phrases: **...shall be modified as follows... or except**

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as otherwise provided or is modified as follows.... For example, subdivision (a) of R&TC Section 23609 modifies the percentages listed in IRC Section 41(a) for California purposes.

When California law refers to a provision of the IRC which has not been incorporated by reference, the reference provision of the IRC is brought into state law, but only for the purpose of that particular reference. For example, when IRC Section 267(f)(1) refers to a definition in IRC Section 1563(a), which has not been incorporated into state law, the definition in IRC Section 1563(a) shall apply, but only for purposes of IRC Section 267(f)(1).

California Exceptions

R&TC Section 17024.5(b) and R&TC Section 23051.5(b) contain a partial list of federal provisions that are not applicable for state purposes. In addition, you can find California exceptions within the language of the R&TC. For example, R&TC Section 17143 specifically states that IRC Section 103 and IRC Section 141 to 150, inclusive, relating to interest on governmental obligations, shall not apply.

Elections and Applications

State law presumes that a valid federal election is also an election for state purposes. However, state law generally permits a taxpayer to make a separate election for state purposes (R&TC Section 17024.5(e)). Where separate, state elections are not allowed, specific language in state law is required.

The rules relating to elections also apply to applications and consents (R&TC Section 17024.5(f)).

Technical Corrections

When a Federal Act makes technical corrections to provisions of the IRC which have been incorporated into state law, those changes are incorporated into state law by changing the **specified date**, but only with respect to the taxable year covered by the change in the specified date.

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**10.6 FEDERAL
STATUTE AND
ADMINISTRATI
ON**

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.

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.

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10.6.1 Hierarchy of Federal Tax Authorities

This table lists federal tax authorities ranked in the order of strength of the authority.
If a higher authority contradicts the lower authority, the higher authority prevails.

STATUTORY/ ADMINISTRATIVE AUTHORITIES	ISSUED/MADE BY	RELIABILITY
IRC	Congress	Most reliable
Final Treasury Regulations	Treasury	Most reliable statements of position
Temporary Treasury Regulations	Treasury	Binding on all taxpayers
Proposed Regulations	Treasury	Not binding until final
Revenue Rulings	Assistant Commissioners of Internal Revenue	Intended to be relied on by IRS employees & taxpayers whose circumstances are substantially the same as described in the ruling
Revenue Procedures	Assistant Commissioners of Internal Revenue	Same reliability as revenue rulings
Letter Rulings	Assistant Commissioners of Internal Revenue	Binding on IRS only as to party to whom issued
Technical Advice	Assistant Commissioners of Internal Revenue	Same as letter rulings
Determination Letters	District Offices in most cases	Binding only as to requesting taxpayer
<u>Internal Revenue Manual</u>	National Office	Generally not binding on IRS
<u>Information Releases</u>	National Office	May be binding on IRS
<u>Information Letters</u>	National Office/ District Offices	Not binding
<u>IRS Publications</u>	National Office	Not binding
Oral Communications	Any IRS official	Generally not binding on IRS

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10.6.2 The Internal Revenue Code (IRC)

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

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Organization of the Internal Revenue Code

Title

Subtitles

Chapters

Subchapters

Parts

Subparts

Sections

Subsections

Paragraph

Subparagraph

Clause

Subclause

Example: IRC Section 1031(a)(3)(B)(i)

Title	26	Internal Revenue Code
Subtitles	A	Income Taxes
Chapters	1	Normal Taxes and Surtaxes
Subchapters	O	Gain or Loss on Disposition of Property
Parts	III	Common Nontaxable Exchanges
Subparts	-	
Sections	1031	Exchange of property held for productive use or investment
Subsections	A	Nonrecognition of gain or loss from exchanges solely in kind

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Paragraph 3

Subparagraph B

Clause I

Subclause -

It is important to understand the organization of the code so that when the statute says, ...**for purposes of this chapter [or title, or part, or section, etc]**..., you will know what area of the code applies.

When citing a particular area of the code you do not need to include the terms that are listed above **Section**.

Citation (use either one)

- IRC Section 1031
- IRC §1031

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10.6.3 Treasury Regulations

The Internal Revenue Service (IRS), a division of the Treasury Department, issues tax regulations, officially known as Treasury Regulations. Its regulations are the Treasury Department's official interpretations of the Internal Revenue Code. The source of authority for a regulation determines its precedential value and the formality with which it must be adopted. There are three types of treasury regulations:

- **Proposed Regulations** do not have the effect of law. They are not citable.
- **Temporary Regulations** have the same force and effect as final regulations until final regulations are issued. Taxpayers can rely on the temporary regulation while the proposed regulation is undergoing comment and possible revision. They are effective immediately upon publication, but expire three years after issuance (IRC Section 7805(e)). They are treated as though they are final until Final Regulations are issued and must be followed until they are superseded.

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- **Final Regulations** have the same force and effect of law and are binding upon the taxpayer to the same extent as the statute itself when authorized by statute.

Federal regulations are deemed to be applicable for California purposes to the extent that they do not conflict with state law, except where FTB has adopted its own regulations.

Citation

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:

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

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

Reg. §1.61-2(a)(1)

- 1. Type of Regulation
- 61 Related Code Section
- 2 Regulation Number
- (a) Regulation Paragraph
- (1) Regulation Subparagraph

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You can cite regulations as any of the following:

- Treas. Reg. §1.61-2(a)(1)
- T.R. §1.61-2(a)(1)
- Reg. §1.61-2(a)(1)

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10.6.4 Revenue Rulings

Revenue Rulings 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. Revenue Rulings do not carry the force and effect of a Regulation. A ruling is an informal statement of the Service's position.

Following are general guidelines in citing Revenue Rulings as authority:

- You may rely on and cite a Revenue Ruling if the facts and circumstances in your case are **substantially the same** as those described in the revenue ruling.
- A regulation has priority over a revenue ruling in the event of conflicting positions.
- Court cases may be cited which support a reporting position that opposes the government's position as reflected in the revenue ruling.
- Verify the ruling has not been superseded or revoked.

Citation

- In bound form, cite as: REV.RUL. 82-11 1982-1 CB 51.

This cite tells us that the eleventh ruling of 1982 can be found in the 1982 Cumulative Bulletin, volume one, at page 51.

- In unbound form, cite as: REV.RUL. 82011 1982 2 IRB 7.

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This cite tells us that the eleventh ruling of 1982 can be found in the second Internal Revenue Bulletin issued in 1982, at page 7.

Terminology Used in Revenue Rulings

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 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.

Supplemented - is used in situations in which a list, such as a list of names 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 ruling 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.

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10.6.5 Revenue Procedures

Revenue Procedures 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 cited the same way as Revenue Rulings, except that REV. PROC. is substituted for REV. RUL.

Example

- In bound form, cite as: REV.PROC. 82-11 1982-1 CB 51
- In unbound form, cite as: REV.PROC. 82011 1982 2 IRB 7

Terminology Used in Revenue 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 procedure held that a principle applied to **A**, and the new procedure holds that the same principle also applied to **B**, the earlier procedure is amplified (compare to modified, which is described below).

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

Distinguished - describes a situation where a procedure mentions a previously published procedure 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 procedure held that a principle applied to **A** but not to **B**, and the new procedure holds that it applies to both **A** and **B**, the prior procedure is modified because it corrects a published position.

Obsolete - describes a previously published procedure that is not considered determinative with respect to future transactions.

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Revoked - describes situations where the position in the previously published procedure is not correct and the correct position is being stated in the new procedure.

Superseded - describes a situation where the new procedure does nothing more than restate the substance and situation of a previously published procedure.

Supplemented - is used in situations in which a list, such as a list of names of countries, is published in a procedure and that list is expanded to include additional names in subsequent procedures. After the original procedure has been supplemented several times, a new procedure may be published that includes an aggregate list as contained in the original and all subsequent procedures. The new procedure supersedes all prior procedures in the series.

Suspended - is used in rare situations to show that the previous published procedures 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.

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10.6.6 Letter Rulings

Letter Rulings are issued in several forms:

- Private Letter Rulings (PLR)
- Determination Letters
- Technical Advice Memoranda (TAM)
- Chief Counsel Advice

IRC Section 6110(k)(3) specifically limits the precedential status 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 precedent in defending a tax position, you can present the analysis and conclusion on these rulings.

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 2009-08 , FTB Notice 2009-09 , R&TC Section 17024.5(d) and R&TC Section 23051.5(d)) However, federal rulings and procedures are not binding on FTB for California tax purposes if an authorized FTB officer or

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employee publicly indicated in writing that the FTB would not follow a particular ruling or procedure (FTB Notice 2009-08 and FTB Notice 2009-09.)

While there is no official publication that maintains Letter Rulings, Redacted Private Letter Rulings and Chief Counsel Advice are available on most on-line tax research services and on the [IRS website](#).

Private Letter Rulings (PLR)

The IRS National Office issues Private Rulings or Letter Rulings (PLR) 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, you **cannot** cite them as authority. However, you can use the reasoning and analysis in the PLR's to arrive at your audit recommendation.

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

- Example of citation: P.L.R. 199209115

This means that this is the 5th ruling issued the week of September 11, 1992.

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 inquiries regarding employee plans and exempt organizations.

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

Technical Advice Memoranda (TAM)

The IRS National Office issues a Technical Advice Memoranda (TAM), 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, TAM's can be used as **substantial authority** upon which the taxpayer (any taxpayer, not just the taxpayer requesting the TAM) may rely to avoid certain statutory penalties. TAM's can lead to the creation of a Revenue Ruling.

Although we can use the TAM's analysis and conclusions to support an audit determination, you cannot cite it as authority.

Chief Counsel Advice (CCA)

The National Office of Chief Counsel issues a CCA to Counsel field offices or field agents to provide interpretations of law or position or policy with respect to a law. As with other written IRS determinations, Chief Counsel Advice (CCA) can't be used or cited as precedent, except CCA's can be used as **substantial authority** upon which a taxpayer may rely to avoid certain statutory penalties.

As with TAM's, we can use the CCA's analysis and conclusions to support an audit determination, but cannot cite it as authority.

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**10.7
CALIFORNIA
COURT SYSTEM
AND THE
OFFICE OF TAX
APPEALS**

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

- Superior Court (See MAP 10.7.1 Superior Court)
- Court of Appeals (See MAP 10.7.2 Court of Appeals)
- Supreme Court (See MAP 10.7.3 California Supreme Court)

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Any case issued for publication within the California court system is citable. However, the higher the court, the more precedence the case will have.

As an alternative to the California court system, taxpayers in a tax case can appeal the findings of the FTB to the Office of Tax Appeals (OTA), as long as taxpayers exhaust all administrative remedies. See MAP 10.7.4 The Office of Tax Appeals for more information.

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10.7.1 Superior Court

Superior Courts have exclusive original jurisdiction over tax cases (Cal. Civ. Proc. Code Section 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 Office of Tax Appeals (See Cal. Civ. Proc. Code Section 6-6(d) for Office of Tax Appeals proceedings). If a taxpayer chooses to take its case to the Superior Court, they must first pay all amounts due for the tax year, including the tax assessment, any other final amounts, penalties, fees and interest, and file a claim for refund (California Constitution, Article 29 III, Section 32). In *Dan J. Agnew v. State Board of Equalization*, (1999) 21 Cal.4th 310, the court held under prior law 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 California income tax statutes were subsequently amended to require the payment of all amounts due for the year. See [FTB Notice 2003-5](#).

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.

Superior court cases are not citable, as the decisions are generally not published.

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10.7.2 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 section 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 its decision, either party can petition for review to the Supreme Court.

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Citations

The following abbreviations relate to the publication sources for California Court of Appeals cases:

- Cal. App. = California Appellate Reports
- Cal. Rptr. = California Reporter
- P. = Pacific Reporter

Cite as follows:

	Cases Published by CCH	Cases Published by RIA
Citation	Name, Volume, Publication Source, Series, Page, Year	Name, Year, Volume, Publication Source, Series, Page
Example	<i>Tenneco West, Inc. v. Franchise Tax Board</i> , 234 Cal.App.3d 1510, (1991)	<i>Tenneco West, Inc. v. Franchise Tax Bd.</i> (1991) 234 Cal.App.3d 1510

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10.7.3 California Supreme Court

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

Citations

The following abbreviations relate to the publication sources for California Supreme Court cases:

- Cal. = California Reports
- Cal. Rptr.= California Reporter
- P. = Pacific Reporter

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Cite as follows:

	Cases Published by CCH	Cases Published by RIA
Citation	Name, Volume, Publication Source, Series, Page, Year	Name, Year, Volume, Publication Source, Series, Page
Example	<i>Barclays Bank International. Ltd. v. Franchise Tax Board</i> , 2 Cal 4th 708 (1992)	<i>Barclay's Bank International Ltd. v. Franchise Tax Bd.</i> (1992) 2 Cal. 4th 708

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10.7.4 The Office of Tax Appeals

As an alternative to the California court system, taxpayers in a tax case can appeal the findings of the FTB to the Office of Tax Appeals (OTA) as long as taxpayers exhaust all administrative remedies.

The OTA is comprised of administrative law judges (ALJs). Each appeal will be heard by a panel of three ALJs, who will issue written decisions for each appeal decided.

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

The OTA's published formal legal opinions are available at the [OTA website](#). Decisions issued by the SBE prior to 01/01/2018 can be requested on the [BOE website](#). Summary decisions or unpublished decisions are also available at Legal Division's Manuals and References (SBE/OTA Decisions by Date) for decisions from 1995 to current year. Although these are not citable, you can use the reasoning in these decisions if applicable in your situation.

Citations

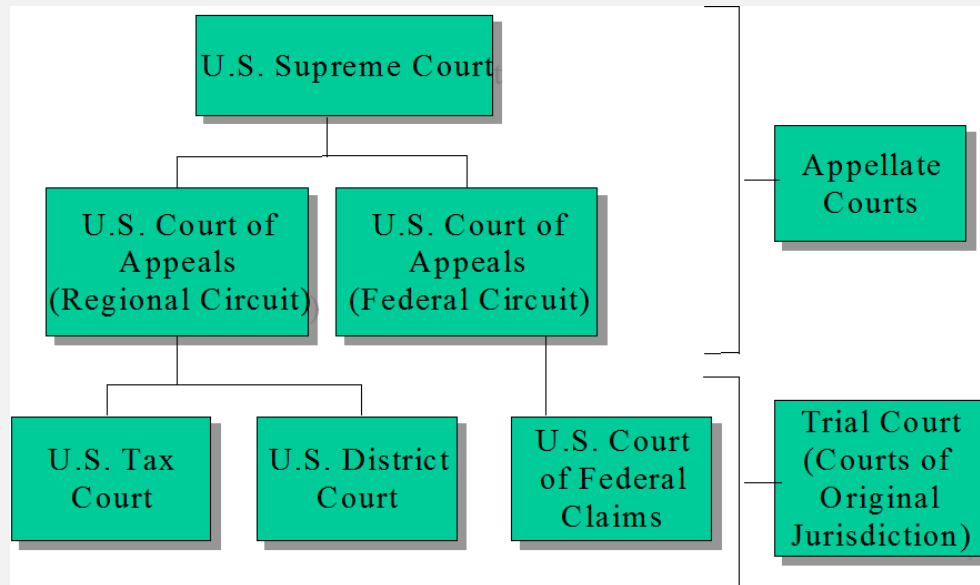
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	<p>All citations to OTA opinions should be in the following format:</p> <ul style="list-style-type: none">• <i>Appeal of Jane Doe, 2019-OTA-XXXX</i> <p>All citations to BOE opinions rendered in 2000 and after should be in the following format:</p> <ul style="list-style-type: none">• <i>Appeal of Jane Doe, 2001-SBE-001, May 1, 2001</i> <p>All citations to BOE opinions rendered in 1999 and prior should be in the following format:</p> <ul style="list-style-type: none">• <i>Appeal of Jane Doe, 99-SBE-001, June 10, 1999</i> <p style="text-align: right;">Rev. 11/17</p>
10.8 FEDERAL JUDICIAL AUTHORITY	<p>MAP 10.8.1 Introduction MAP 10.8.2 U.S. Tax Courts (TC) MAP 10.8.3 The District Courts MAP 10.8.4 The Court of Federal Claims MAP 10.8.5 U.S. Court of Appeals MAP 10.8.6 U.S. Supreme Court MAP 10.8.7 Using Federal Citators</p> <p style="text-align: right;">Rev. 7/17</p>
10.8.1 Introduction	<p>Federal judicial authority consists of the collective rulings of the various courts. 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.</p>

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In 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.



Lowest Level (carries the least weight)- All decisions can be appealed to the next level.

- Tax Court (national court)
- District Court
- U.S. Claims Court, formerly Court of Claims (national court)

Middle Level- All decisions can be appealed to the Supreme Court if there is a constitutional issue involved.

- Court of Appeals.
- Court of Appeals for Federal Circuit (hears appeals only from the U.S. Claims Court).

Highest Level (carries the most weight)- Final appeals may be granted when there is a conflict between two or more circuit court of appeals. That a higher court denies a hearing does not necessarily mean that it agrees with the lower court's decision.

- Supreme Court.

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10.8.2 U.S. Tax Courts (TC)

The Tax Court (TC), formerly referred to as the Board of Tax Appeals (BTA), hears only tax cases. There are 13 circuits in the U.S.; the state of California is in the **9th Circuit**. 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 based on 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. California follows 9th Circuit decisions, therefore, we are not obligated to follow decisions rendered in other Circuits. Distinguishing between the Circuits is one point of reference that can be used in arriving at a tax recommendation, but it should not be used as a stand-alone point of reference.

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 IRS prevails in a regular TC case, the IRS will not issue an acquiescence or nonacquiescence.

If the Commissioner **acquiesces**, this indicates that the TC decision, although it was adverse to the IRS, will be followed in similar situations. But, it does not necessarily mean that the IRS agrees with the adverse decision. Rather only that it will not pursue the matter. An **A** or **Acq** is contained in parentheses after the citation to indicate acquiescence.

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. 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. **NA** or **Nonacq** is contained in parentheses after the citation to indicate nonacquiescence.

Citations for Tax Court Cases

Only the U.S. Government Printing Office publishes Tax Court cases. Cite as:

- Citation: Name, Volume Number, TC, Page and Year
- Example: *Gator Oil Co.*, 66 TC 145 (1976)

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Citations for Tax Court Memorandum

The U.S. Government Printing Office does not officially publish Tax Court Memorandum Decisions. CCH publishes these. Cite as:

- Citation: Name, Volume Number, TCM, Page, TC MEMO, Year, and Decision Number
- Example: *Andrew Crispo Gallery, Inc.*, 63 TCM 2152, TC Memo. 1992-106

Under the California citation method, cite as:

- Citation: Name, Year, Volume Number, T.C.M., Publication Source, and Page
- Example: *Male v. Commissioner* (1971) 30 T.C.M. (CCH) 1282

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10.8.3 The District Courts

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.

Citations

Publisher	Publication	Example
West Publishing	Federal Supplement Series (Fsupp)	<i>Simons-Eastern v. U.S.</i> , 354 FSupp 1003 (D.Ct. Ga., 1972)
RIA	American Federal Tax Reports (AFTR). The second series of this reporter is in use where 2d will follow AFTR.	<i>Simons-Eastern v. U.S.</i> , 31 AFTR 2d 73-640 (D.Ct. Ga., 1972)
CCH	U.S. Tax Cases (USTC)	<i>Simons-Eastern v. U.S.</i> 73-1 USTC ¶ 9279 (D.Ct. Ga., 1972)

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10.8.4 The Court of Federal Claims

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 income tax refund cases, they generally are not specialists in income 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**

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rule). This may be important to a taxpayer whose Circuit has held adversely to his or her position on the disputed issue.

Citations

Publisher	Publication	Example
West Publishing	U.S. Claims Court Reporter	<i>Ambrose v. U.S.</i> , 4 ClCt 352 (1984)
RIA	American Federal Tax Reports (AFTR). The second series of this reporter is in use where 2d will follow AFTR.	<i>Ambrose v. U.S.</i> , 53 AFTR2d 84-650 (ClCt)
CCH	U.S. Tax Cases (USTC)	<i>Ambrose v. U.S.</i> , 84-1 USTC ¶ 9185 (ClCt)

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10.8.5 U.S. Court of Appeals

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.

Citations

Publisher	Publication	Example
West Publishing	Federal Supplement Series (Fsupp)	<i>D.C. Crummey v. U.S.</i> , 397 F2d 82 (CA-9, 1968)
RIA	American Federal Tax Reports (AFTR). The second series of this reporter is in use where 2d will follow AFTR .	<i>D.C. Crummey v. U.S.</i> , 22 AFTR2d 6023 (CA-9, 1968)
CCH	U.S. Tax Cases (USTC)	<i>D.C. Crummey v. U.S.</i> , 68-2 USTC ¶ 12,541 (CA-9)

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10.8.6 U.S. 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.

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

The following publishers make U.S. Supreme Court citations: West, RIA, 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)
- (Lawyer's Cooperative) *Helvering v. Clifford*, 84 L.Ed. 788(1940)
- (GPO) *Helvering v. Clifford*, 309 US 331 (1940)

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**10.8.7 Using
Federal Citators**

A federal citator lists all federal court cases involving matters of taxation under Title 26 of the U.S. Code. It provides the court in which the case was heard, whether the IRS acquiesced (See [MAP 10.8.2](#) U.S. Tax Courts), and subsequent cases that cited and followed such case. In general, the case being analyzed is identified as the **cited case**; the case being referred to is identified as the **citing case**. The Citator is helpful in finding court cases that have precedence and in determining the strength of a holding in a particular case. The Citator is available in Checkpoint (RIA).

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**10.9 Citable vs.
Not Citable
Sources**

This table lists citable and not citable sources of tax law and analysis. Citable sources can be used as authority to support an audit determination.

Uncitable sources cannot be used as authority to support an audit determination. Although sources may not be citable, they are worthwhile to review because they can be useful for starting or further developing your research and analysis. In addition, you can't ignore representatives' arguments when

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they use uncitable sources to support their positions. Citable sources must be found to address the representative's arguments and to resolve the case. Further, the rationale in uncitable sources can generally be useful and can be supported by a recognized/citable authority.

ITEM	CITABLE	NOT CITABLE
Audit Program Reports (APR)		X
Board of Equalization / Office of Tax Appeals Decisions Published formal opinions	X	
Board of Equalization / Office of Tax Appeals Decisions Unpublished summary decisions		X
California Regulations	X	
California Revenue & Taxation Code	X	
California Tax Handbook (RIA)		X
Committee Reports		X
Court Cases (See MAP 10.10.2 Judicial Authority)	X	
Determination Letter		X
Federal Tax Coordinator (RIA)		X
Federal Tax Handbook (RIA)		X
FTB Chief Counsel Rulings		X
FTB Legal Memos		X
FTB Legal Rulings	X	
FTB Newsletters		X
FTB Notices (See MAP 10.4.4 FTB Notices)	X	
FTB/IRS Audit Manuals		X
General Council Memorandum (IRS)		X
Generally Accepted Accounting Principles (GAAP)		X
Guidebook to California Taxes (Bock/CCH)		X
Internal Revenue Code	X	
IRS Announcements		X
Law of Federal Income Taxation (Mertens)		X
Oral Advice		X
Practitioners Guide		X
Private Letter Rulings		X
Professional Journals & Publications		X
Public Service Bulletins		X
Revenue Procedures (IRS)	X	
Revenue Rulings (IRS)	X	
Spidell's California Tax letter		X

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Standard Federal Tax Reporter (CCH)		X
Tax Forms and Instructions		X
Tax Management Portfolios (BNA)		X
Tax Planning Guide		X
Technical Advice Memorandum (TAM)		X
Training Manuals, Handouts or Packages		X
Treasury Regulations (Proposed)		X
Treasury Regulations (Temporary)	X	
Treasury Regulations (Final)	X	
U.S. Master Tax Guide (CCH)		X

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**10.10
STRENGTH OF
THE CITE
SUMMARY**

This section discusses the ranking of statutory, administrative, and judicial authorities in the order of strength or weight of authority.

- MAP 10.10.1 Statutory and Administrative Authority
- MAP 10.10.2 Judicial Authority

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**10.10.1
Statutory and
Administrative
Authority**

This is a list of statutory and administrative authorities ranked in the order of strength of the cite:

1. California Revenue and Taxation Code

2. CA Regulations

3. Internal Revenue Code

4. Final Regulations

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5. Temporary Regulations

6. Revenue Rulings

7. Revenue Procedures

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**10.10.2 Judicial
Authority**

This is a list of courts that primarily hear tax cases ranked in the order of weight of authority:

1. U.S. Supreme Court

2. U.S. Circuit Court of Appeals* and Federal Circuit Court of Appeals

3. CA Supreme Court

4. Other state Supreme Courts

5. CA Court of Appeals

6. Other state Courts of Appeal

7. U.S. Tax Court, U.S. District Court, U.S. Court of Claims, and Bankruptcy Court

8. Superior Court (Generally are not citable)

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9. Office of Tax Appeals (May or may not be citable)

*9th Circuit opinions generally carry more weight than opinions in other circuits

Additional Information about Court Cases and Board of Equalization or Office of Tax Appeals (OTA) Decisions

- In general, only opinions certified for publication or ordered published may be cited or relied on by courts and parties. Deviation from a published decision should not be arbitrary and should be done only with, and agreement from, a supervisor and our legal staff.
- Superior court cases are not citable as the decisions are generally not published.
- The Office of Tax Appeals and California courts are not bound by other state court decisions. Other state court decisions can be used as an interpretation of the law, but you do not have to follow the interpretation.
- Check the date of the authority cited and the tax year at issue. Be aware of subsequent law changes, interpretations, and court and Board or OTA decisions that may affect your authority.

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