US Tax and the IRS: Equality of Taxation

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To my sons Andrew and Jacob and my wife Julie who was patient as I toiled over many a page and many an hour.

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Forward:

This book was written as an exploration of equality and whether this is even a consideration in the development and practice of our tax system. We live in a free society with growing roots of equality and even in the tax system we see attempts at alignment with this potential ideal.

This book is not for everyone, as it is very technical so may be best as a read for attorneys and accounts though it has not been updated over the years since the time of writing.

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Table of Contents

Introduction

Equality is a goal in the administration of many taxing jurisdictions, be it U.S. federal taxation, state and local taxation or other nation's tax schemes. While equality may be a goal of many tax systems, it may be better described as a stretch goal. In practice equality is generally qualified and instead the focus is on minimizing tax (by taxpayers) and maximizing revenue (by collections.)

In a 2005 GAO report, the criteria typically used for evaluating tax systems is described as

> *"(1) equity; (2) economic efficiency; and (3) simplicity, transparency, and administrability. A tax system is generally considered better than alternatives that raise the same amount of revenue if it is more equitable, more*

economically efficient, simpler for taxpayers to comply with, and easier and less costly to administer. Designing a tax system that is superior on each of these criteria is difficult because the criteria frequently conflict with one another and trade-offs often must be made. For example, a tax system that provides credits to low-income individuals may be judged by some to be more equitable than a system without this feature.[i]*"*

In this book, the focus is on the U.S. federal tax law and administrative procedures to take a brief look at the foundation and current state of equality in tax procedure. Also discussed are examples in taxation faced with conflicting priorities. While the ideal of equality may be tempting to embrace, we must pragmatically accept pockets of inequality in a complex taxing system.

While acknowledging the impossibilities of a perfectly patched system at any given point in time, there is significant value in limiting inequalities. This book will discuss at least a few of the opportunities or levers to improve equality of tax procedure. Many taxpayer advocates have helped to bridge gaps of unequal treatment by calling for more transparency and less complexity and hope to further this endeavor through discussion and analysis.

Chapter 1: U.S. Tax Law

History and Purpose

The United States Constitution lays the foundation for the tax authority of the federal government. Specifically, Article 1 §8 gives Congress the ability

> "*to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States"*

Equality seems to be built into this constitutional authority in the essence of uniformity. However a uniform application of taxation provides for equality of application rather than a more broad sense of equality, to collect taxes equally amongst the populous.

The Constitution further defines equality of taxation in Article 1 §2 of the Constitution

> *"Direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons"*

And the limitation of direct taxes is expanded upon in Article 1 §9

> *"No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."*

The definition of equality for "direct" taxes clearly was defined as an apportionment based on populous. This viewpoint was confirmed by the courts in Pollock v. Farmer's Loan & Trust, 157 US 429 (1895.) Pollock effectively made the income tax laws of

the time illegitimate due to their being in conflict with direct taxes under the Constitution.

In 1913, the Sixteenth Amendment to the Constitution was ratified, which significantly broadened Congress' authority to impose income taxes without regard to equality based on headcount as is required for direct taxes.

> *"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."*

This broad power given by the amendment to impose taxes on income further narrows tax equality to uniform application and for type of tax to be at the will of Congress. Confirming this continued application of the uniformity of taxes is Brushaber v Union P. R. Co, 240 US 1 (1916) where the Supreme Court ruled

that geographic uniformity would continue to be a requirement of taxes imposed. Tax laws generated by Congress may apply to income of any source and the inference would be to exclude income of some sources. Decision of the source income to be taxed is in the discretion of the legislature and subject to influence by special interest.

Given the dependence of tax laws on the political process, over time the tax laws have evolved as a collection of rules on inclusion, exclusion, deductions and credits based on type of activity. The legislators work to both create and close loopholes of the code to generate enough revenues to pay the bills of the government but also to satisfy its constituents. Special interest desires are balanced with political pressures of the populous but again, this balance is not one created with the requirement of absolute equality but only uniformity of application. Equality of

taxation, then, is limited by the balance of interest at the legislative stage of the process and varies over time based on the current position on the pendulum of interests.

Statutory and Common Law

The law of the United States can be further defined as statutory law developed through legislative action as well as common law, the development of which is through judicial review and interpretation of legislative actions. The codified tax laws of the United States have developed over time, mostly following the ratification of the Sixteenth Amendment. Given the limitations of time and resources in Congress, tax laws cannot be constructed to be comprehensive to specifically address all applications.

The courts' interpretations of the law act to clarify the statutory law but are not formally codified into the official United States tax code. This creates a very complex, disaggregated set of law. To complicate matters, tax law interpretations may vary, depending on the court opinions in different parts of the nation. While all courts are bound by the decisions of the United States Supreme Court, the Supreme Court does not have the time or resources to review all court decisions that differ in varying jurisdictions.

Courts of Appeal are arranged geographically and trial courts are required to follow the law as ruled upon by their jurisdiction. This acts to limit the differences in tax law interpretation and application. However, similar to the limitation of the U.S. Supreme Court, the various Court of Appeals do not have unlimited resources available to review all areas of the law.

Additionally, the Appeals Courts are not required to follow the rulings of other Courts of Appeal and often times interpret the tax laws differently.

The complexity of the statutory tax law, given the codification over time and under the influence of various political pressures, in addition to the added complexity of both the lack of codification interpretations made by the court interpretive rulings and the lack of uniformity in interpretation, all work together to give taxpayers and collection authorities alike the vehicles to find opportunity of specificity over uniformity in application of tax laws.

Treasury and the IRS

Congress gives Treasury the authority to administer tax laws and the Service does so by delegation by the Treasury in §7801 of the

Internal Revenue Code.[ii] To further this end, the Treasury issues regulations which are posted for public review and comment before becoming final, as required by the Administrative Procedures Act. These regulations further interpret the laws and are relied upon by taxpayers and by the IRS in administration of the tax laws. However, this additional source of law and interpretation adds to the complexity of our tax system.

The Treasury and IRS also issue procedural requirements as well as rulings which apply the tax law to taxpayer's based on particular sets of facts. The regulations, procedures and rules are helpful to gain uniformity in applying the law equally to taxpayers. However, regulations and rulings are often times not on point with all of a taxpayer's facts leaving openness for interpretation. Leaving interpretation to taxpayers leads to

varying results and erodes uniformity absent the issue coming to light upon examination.

To complicate matters, IRS rulings are only interpretations of the law and may be challenged by taxpayers with conflicting opinions and conflicting bias. When differences are settled in the courts, the IRS often times will not change its rulings but instead choose not to acquiesce, driving further inequities in tax administration.

Chapter 2: IRS – Administrative Agency

The Internal Revenue Service is an administrative agency in the sense that it is an authority of the Government of the United States and is not Congress, the courts, or a military authority.[iii] Under general principles of administrative law, standards of consistency and nondiscrimination limit the exercise of discretion of the IRS.[iv]

Judicial Review

Factual and Legal Issues

As an administrative agency, the decisions of the IRS are subject to review by the courts.[v] This judicial review process available to individual taxpayers results in a level of control of IRS action.[vi] However, the IRS is not required to follow all prior court cases, as shown in their non-acquiescence of some court decisions. However, in other cases, existence of acquiescence of rulings demonstrates this control the court has on IRS procedure.

Precedence and Equal Treatment

In addition to review of factual and legal administrative actions by the IRS, judicial review of administrative procedure has led to additional limitations on the IRS that promotes equality amongst taxpayers. Saltzman points out two significant principles that courts have found must exist in agency procedure. The first is the "Rule of Adherence to Precedent," that an agency must adhere to its own precedent (past actions) or provide a "reasoned explanation" for its failure to follow its past action.[vii] Saltzman goes on to note that constitutional protection under the equal protection clause does not require that all taxpayers be taxed and treated identically, pointing to Supreme Court case Walters v City of St Louis, 347 US 231 (1954).[viii] The Walters case requires only that differences rest on real and not feigned differences, the distinction has relevance t the purpose for which

classification was made, and that the differences not are as disparate relative to the difference in treatment as to not be wholly arbitrary.

Complimenting this principle to adherence to principle is the "Doctrine of Equality of Treatment."[ix] The widely cited case on this matter is IBM Corp v United States, 537 F2d 914 (Ct Cl 1965). In IBM, the IRS had treated them differently than competitor Remington-Rand on an excise tax ruling. Because the two competitors in this case had both submitted letter ruling requests on the same set of facts, the court ruled that IBM was entitled to the same treatment as Rand and the IRS was required to grant similar tax treatment.

Chapter 3: The Taxpayer – a Self Assessment Process

Return Disclosure

While equality of taxation is limited by the political process, at the heart of equality in application of the tax code is the fact that system is one based on self-assessment. In spite of IRS's efforts to improve taxpayer compliance, the rate at which taxpayers pay their taxes voluntarily and on time has tended to range from around 81 percent to around 84 percent over the past three decades. Any significant reduction of the tax gap would likely depend on an improvement in the level of taxpayer compliance.[x]

However, Chris Edwards, Director of Tax Policy Studies at the Cato Institute testified before the House Budget Committee in 2007. In his testimony, he references international tax research on shadow economies performed by Friedrich Schneider, a professor of economics at Johannes Kepler University in Austria. Schneider's studies show that the shadow economies in the

developed nations are much smaller than those in developing countries. He also references the average shadow economy among the developed nations in the OECD to be 16% of GDP. The U.S. had the smallest shadow economy at only 8% of GDP. [xi]

With the U.S. shadow economy being as small as it is in relation to GDP, Edwards argues that emphasis should be placed instead on closing loopholes in the tax code rather than closing the tax gap. Self-assessment seems to be working quite well in the United States when compared to successes internationally. However, with the tax gap placed at $300 billion annually, it would be prudent to continue to attempt to close this gap and prevent it from growing.

Chapter 4: Key Issues

Complexity of the Law

The law has grown enormously complex over the years due to legislative carve-outs of income to be taxed, the continuous additions of statutory and interpretive laws, regulations, rulings and court opinions, patching of loopholes, differences of jurisdictional interpretations and changing focus over time. Interestingly though, it was in 1926 the congressional Joint Committee on Taxation was created to study income tax simplification and the complex tax administration problems that had already arisen[xii]. More recently, in 2006 the Government Accountability Office (GAO) has again recommended simplification of the tax code to capture an estimated tax gap of $32 billion annually. The GAO report gives three reasons in support of simplification:[xiii]

- *"To help taxpayers comply voluntarily with more certainty, reducing inadvertent errors by those who want to comply but are confused because of complexity.*
- *To limit opportunities for tax evasion, reducing intentional noncompliance by taxpayers who can misuse the complex code provisions to hide their noncompliance or to achieve ends through tax shelters and*
- *Tax code complexity may erode taxpayers' willingness to comply voluntarily if they cannot understand its provisions or they see others taking advantage of complexity to intentionally underreport their taxes."*

While simplification of the tax laws doesn't necessarily result in alignment with fundamental issues of equality, it does help to gain uniformity across similarly situated taxpayers. Reducing the complexity could lessen the number of issues that arise so that

the examination function could more easily focus on potential compliance gap areas.

However, because the administration costs of tax laws are dwarfed in relation to the potential cost of non-compliance, any efforts to significantly simplify the tax law must do so in a way to reduce the chance of increasing the tax gap. Given the very strong rate of compliance in the U.S. and the efficiency of tax administration, it seems that the risk involved in a major tax law overhaul would not be worth the undertaking at the current time.

Limited Resources

No matter what the pursuit, resources are typically limited. Effectiveness in tax administration, as is the case in most pursuits, is affected not only by the taxes collected but also by

the resources required to administer tax collection. In 2008, there were over 250 million tax returns filed in the United States and the IRS spend was 41cents for every $100 collected.[xiv] This equates to about $45 spent on tax administration per return filed.

Table 1: Comparison of Staff-related Measures

Country	Aggregate staff usage (FTEs) of national tax body	Citizens/ one full-time staff	Labor force/one full-time staff	UNUSUAL/ ABNORMAL FACTORS LIKELY/KNOWN TO INFLUENCE REPORTED RATIO
Austria	8 750	929	450	Does not administer collection of social contributions.
Belgium	21 489	476	207	Includes real property, motor vehicle taxes/fees
Canada	38 381	810	425	
Czech Rep.	14 720	700	351	Includes real property, motor vehicle taxes/fees
Denmark[1]	8 226	651	348	Includes real property, motor vehicle taxes/fees
Finland	6 323	820	415	Includes real property, motor vehicle taxes/fees
France[1]	75 046	788	358	Includes real property, motor vehicle taxes/fees
Germany	122 278	665	324	Includes real property, motor vehicle taxes/fees
Greece	14 000	752	311	
Hungary	13 258	768	309	
Iceland	486	586	335	Includes motor vehicle taxes/fees

Ireland	6 364	625	282	Includes customs component
Italy	47 575	1 202	510	
Japan	56 315	2 260	1 199	Most employees are not required to file tax returns; high VAT threshold and low frequency of tax payments; NTA does not administer collection of social contributions.
Korea	16 845	2 804	1 359	Most employees are not required to file tax returns; tax body does not administer collection of social contributions
Luxembourg	628	706	450	
Mexico	28 292	3 536	1 384	Substantial final withholding
Netherlands[1]	25 400	629	320	Includes motor vehicle taxes/fees
New Zealand	4 547	853	425	Includes social welfare-related work
Norway	6 305	716	374	
Poland	51 435	751	339	Includes real property, motor vehicle taxes/fees
Portugal	13 238	778	402	Includes real property, motor vehicle taxes/fees
Slovak Rep.	5 791	929	458	Includes motor vehicle taxes/fees
Spain	23 961	1 680	745	
Sweden	9 030	985	494	Includes real property, motor vehicle taxes/fees
Turkey	41 880	1 797	541	Includes real property, motor vehicle taxes/fees
United Kingdom	81 859	730	360	Includes all staff of national contributions agency
United States	100 229	2 261	1 445	No national VAT

Source: OECD Survey Results: [xv]

As there are two primary costs to tax administration, tax administration costs and compliance costs[xvi] and we have discussed previously the high levels of compliance in the United States compared to international communities, we should also discuss the efficiency of U.S. tax administration in the same relation. Above in Table 1, from a 2005 OECD presentation on tax reform, is a table that lists the comparative international administration costs of tax systems. The United States has appears to have an outstanding cost structure in terms of productivity. However, the U.S. does not administer property taxes or VAT taxes at the federal level.

Given the different taxes collected, these productivity statistics alone may not be sufficient to prove the United States operates efficiently since the federal tax system is lacking VAT or property taxes.

Table 2: Comparison of Administrative Costs to Net Revenue Collections in Selected OECD Countries

COUNTRY	Administrative Costs/ net revenue collections (%)	Factors likely/ known to influence reported ratio
Australia	1.19	
Austria	0.72	High tax burden
Belgium	1.00	
Canada	1.20	
Czech Rep.	2.08	Revenue base excludes social contributions
Denmark	0.73	High tax burden.
Finland	0.67	High tax burden; revenue base includes social contributions.
France	1.44	Revenue base excludes social contributions.
Hungary	1.35	
Iceland	1.12	
Ireland	0.95	Includes customs costs & revenues (e.g. VAT on imports); includes social contributions.
Japan /1	1.62	Relatively low burden (i.e. less than 30 percent); revenue base excludes separately collected social contributions; substantially reduced administrative workloads due to design features of tax systems.
Korea	0.85	Substantially reduced administrative workloads due to design features of tax systems
Netherlands	1.76	Costs include customs administration; revenue base includes social contributions.
N. Zealand	1.17	
Norway	0.59	High tax burden; revenue base includes social contributions.
Poland	1.32	(Ratio may be understated due to exclusion of some costs)
Portugal	1.68	Revenue base does not include social contributions
Slovak Rep.	1.46	Revenue base includes VAT on imports but not social contributions or some income tax refunds
Spain	0.78	
Sweden	0.42	High tax burden; revenue base includes social contributions
Turkey	0.86	Macro-economic factors (e.g. high inflation)
UK—IRD	1.15	Includes all staff of national contributions agency
USA /1	0.52	Revenue base includes social contributions.

1. **Japan**—data as reported in 2002 annual report; **USA**—ratios indicated vary from IRS-published ratios of 0.39 (2000), 0.41 (2001), and 0.45 (2002) owing to use of 'net' and not 'gross' collections

Source: OECD Survey Results and revenue agency reports collected by OECD[xvii]

It is prudent to also look at the cost to administer as a percentage of revenues collected. In a similar study measuring cost of administration across countries, shown in Table 2, the United States again looks very efficient compared to international nations. The results can be skewed by countries with high overall tax structures which would show a lower rate of administrative costs per revenue dollar collected. However, the United States has a low tax structure at the federal level compared with other nations.

While the U.S. tax system appears to be very efficient by these numbers, there is also the issue of collection and a fairly large amount of tax debt that is uncollected. The GAO estimated uncollected tax debt inventory to be $300 billion by the end of 2007[xviii]. The report also states that for debt amounts resolved during fiscal years 2002 through 2007, IRS removed from 20

percent to 28 percent by abating the debt and 31 percent to 46 percent of the inventory was written off due to statutory limits on how long IRS could pursue the debt.

In 2002, IRS estimated that a $2.2 billion funding increase would allow it to take enforcement actions against potentially noncompliant taxpayers it identifies but cannot contact and would yield an estimated $30 billion in revenue.[xix] However, the GAO has questioned the accuracy of these numbers stating various factors including the law of diminishing returns, enforcement returns of the IRS in other statements of 4:1, and the time it would take to get full benefit after training of new resources as well as strain on the current system and resources.[xx]

Organizational Design

Given the large undertaking of federal tax collection in the United States, the size of the IRS alone causes substantial

challenge. Perhaps this is one reason why the IRS has undergone significant transformation over the years to get to its current organizational design. The fact that the national office makes major decisions regarding the tax laws for the guidance of Service personnel[xxi] helps mitigate this risk of uniform application.

However, the current organization of the IRS is by type of taxpayer and each type of taxpayer organization runs independently. This type of structure helps the IRS and taxpayers in that they can focus on efficiency of audits since the audits of large and midsize companies can be much different than the audit of small businesses or of wage earners or tax-exempt entities. This focus can, however, lead to different audit results for a group of taxpayers.

For example, in the large taxpayer audits more flexibility is given to case managers to resolve and settle issues including (1) Delegation Order 236 (2) Accelerated Issues Resolution (3) the pre-filing determination procedure and (4) Fast Track mediation and Settlement[xxii]. These resolution options for large size businesses give larger companies more opportunity to settle matters quicker before going to appeals but with the price of increased risk of uniformity gaps since the decisions are placed in the hands of multiple case managers.

Transparency

Transparency of issue resolution significantly reduces risk that major gaps of uniformity will occur in practice. Without transparency of conduct internally within the IRS, gaps in uniformity can go unnoticed. Transparent decisions and

procedural conduct to the public improves the uniformity of application further by putting pressures on the IRS to act in a consistent matter as called for in the application of the law, by Article 1 §8 of the Constitution.

Over the past several decades, much progress has been made to increase transparency. The Freedom of Information Act was enacted in 1966 with the intention of implementing a general philosophy of full agency disclosure.[xxiii] Before FOIA's enactment "disclosure of information was left to the discretion of administrative agencies themselves and, as a result, […] were limited, generally based on the requester's need to know the information.[xxiv]" FOIA litigation led to making available to the public most parts of the Internal Revenue Manual, private letter rulings and technical advice.[xxv] Additionally, under §6110(i) the

service is required to make available all legal interpretations by the Chief Counsel's office.

However, even with the improved transparency, gaps still exist. Informal agreements can be made at the examination level and agreements are made in appeals as a result of hazard of litigation considerations. In the Large and Medium Size Business operations, some of the special procedures used in dispute resolution are classified as confidential. Additional improvements in transparency while keeping taxpayer's private information protected should be pursued to continue gaining uniformity in tax administration.

Chapter 5: Discussion on Examples of Conflicting Priorities

Hazards of Litigation

The appeals function acts as a due process review function within the IRS. Tax matters may not make it to the courts for public observation and instead get settled through negotiations. The process and the resulting negotiations serve significant purposes. The efficiency and resource allocations of the IRS and counsel are minimized and effective tax administration is furthered through avoidance of litigation hazards. However, the appeals process also enlarges the gap in uniformity among taxpayers.

In 2008, over 115,000 cases went to appeals[xxvi] while less than 2000 cases were resolved in either tax court or district court[xxvii]. With a large number of cases each year settled in appeals, litigation support resource needs are reduced in the Chief

Counsel's office which is likely a much higher cost avenue for the IRS on a per case basis.

Cost savings also revolve not only around the available resources and court time but also the impact to future tax revenues if the IRS loses in court. Since each court case has the ability to create precedence for the taxpayer and other taxpayers in the court's jurisdiction, a loss in court increases the authority for similarly situated taxpayers. Therefore, the IRS chooses its cases carefully to avoid the negative impact on future revenue streams by having the losing case go on the record.

Instead, those taxpayers with persuasive facts or in favorable jurisdictions can take a preferential approach on the hope of favorable results upon challenge. However, a taxpayer that is more adverse to this risk or less aware of the possibility of success in court or appeals may take a less risky return position.

Thus, the hazards of litigation not only widens the gap in equality or uniformity of administration when it comes to appeals, it also widens the "tax gap" by the return positions taken for those with different risk appetites.

In a recent study, the GAO found in their sampling that 73% of appeals cases from examination were not sustained.[xxviii] Of those, a significant number were due to differences in legal interpretations between the appeals office and field examination. The study suggested the need for increased communication between groups to reduce the workload. This is a very good solution that will also reduce issues of uniform application. Another consideration may be for creation of additional quality control measures and a careful review to be sure appeals is not pushing cases through in the name of efficiency. A final agreement between the field and appeals is

currently not attained[xxix] so appeals may not be appropriately challenged. There is a fine line between efficiency and uniformity and if taxpayers do not see credibility in the tax administration, additional compliance issues could arise.

Recently, there has been some debate over appeals giving away too much in the way of penalties in settlement of cases. As with the changes in the Offer in Compromise program, where minimum guidelines were established to reduce distortions in acceptance and improve transparency of the decision process, the IRS seems to be moving away from giving appeals and agents broad discretion. Christopher Sterner, division counsel for the IRS Large and Midsize Business Division, said it doesn't make sense for the IRS to develop offers that are too susceptible to individual results.[xxx] Clarissa Potter, Chief Counsel for the IRS, told the audience that "so much has evolved in our thinking" on

settlements since earlier in the decade and that the Service's position continues to evolve in "balancing discretion" for the frontline agents with the need for uniformity.[xxxi] Given the recent evolution it appears that the IRS is reducing the discretionary powers to promote credibility and uniformity.

Private Letter Rulings – Taxpayer Reliance

Private Letter Rulings are issued to taxpayers requesting preferential tax status for a transaction. These letters give the taxpayer the comfort of requested tax treatment in applying the law to a set of facts.[xxxii] Before the Tax Reform Act of 1976, letter rulings were not made public by the Service and instead were "private" to the taxpayer requesting the ruling. The Tax Reform Act required letter rulings to be public information, shared under the authority of §6110(a.)[xxxiii] However, §6110(k)(3) states that

no taxpayer may use these rulings for precedential status, other than the taxpayer requesting the ruling. The same code section and treatment is applied to other IRS determinations including Field Service Advice and Technical Advice Memoranda.

This favorable treatment for the taxpayer that requests and is granted the letter ruling seems to be unequal treatment of taxpayers. However, the taxpayers requesting a private letter ruling is considered to be in a different position than a taxpayer that has not requested a ruling. The 5th circuit, In WESTERN CO. OF NORTH AMERICA v. U.S., 699 F.2d 264 (CA5 1983), points to the bright line of one taxpayer having requested a ruling while the other had not. The courts are consistent with their approach on this approach with similar cases in the 8th circuit and court of federal claims. The reasoning here is that the IRS does make mistakes in its letter rulings and just because a mistake was

made, can not commit the government to that error for all taxpayers. The taxpayer that relied on the advice and followed the procedure, incurred the cost and risk of full disclosure with the IRS, is given additional assurance. The IRS wants to encourage taxpayers to be open with issues and gain rulings to help them make decisions. While the non-letter seeking taxpayer does not get the precedence, they can use it as arguments for their positions.

However, the Supreme Court in Rowan Cos, Inc v U.S., 452 US 247 (1981) ruled in favor of the taxpayer that a treasury regulation was unclear and not consistently followed. Cited in the case as partial reasoning for the viewpoint is that a series of private letter rulings were issued both before and after the regulation which conflicted with the IRS' stated interpretation of the regulation.

The Eleventh Circuit discusses the Rowan decision in AMER. ASSN. OF CHRISTIAN SCHOOLS VOLUNTARY EMPLOYEES BENEFICIARY ASSN. WELFARE PLAN TR. v. U.S., 850 F.2d 1510 (CA11 1988). However, in this case the court is troubled with reliance on taxpayer reliance on letter rulings issued to other taxpayers though they do acknowledge their evidentiary value for IRS administrative practice. The court also expressed concern for the taxpayer's reliance because the ruling specifically stated that it is dependent on the facts of the situation and the taxpayer did not show in significant terms that the facts were the same from a specific viewpoint, but only a general taxpayer class. Thus, it appears that the 11th Circuit in this case, though not in agreement with the taxpayer reliance is open to a more favorable taxpayer result given evidence of inconsistent administrative procedure.

However, as a matter of practice, the Internal Revenue Manual does allow agents to look to private letter rulings and similar sources of specific case application of law as a guide to forming an opinion though it cautions them not to use the letter rulings as precedents for other taxpayers.[xxxiv]

> *"Existing private letter rulings and memorandums (including Confidential Unpublished Rulings (C.U.R.), Advisory Memorandums (A.M.), and General Counsel Memorandums (G.C.M.)) may not be used as precedents in the disposition of other cases but may be used as a guide with other research material in formulating an area office position on an issue.*[xxxv]

So, while taxpayers cannot rely on precedence of letter rulings and other IRS interpretations of the law, the transparency that exists due to public viewing improves overall uniformity in tax administration and gives taxpayers the positions of the Service and potential justification for taking uncertain positions. While not perfect, the system seems to

promote effective tax administration. Regardless of the simplicity of a tax scheme, there will always be a need for both relied upon regulations and also rulings to address the application of law to unique facts.

Summary

In summary, equality is a lofty goal for taxation as it is not the primary driver in the creation of the tax laws or administration nor is it defined similarly by different taxpayers. What we have in the United States is a system where income taxes, being viewed as an indirect tax, can be constructed based on determined parts of the whole. Significant gaps in equality exist at that stage of codification and lead to large differences in effective tax rates between taxpayers.

In the administration of the tax law under the constraints of limited resources and the need for an efficient system, the United States seems to have a uniform, if not equal, approach. The laws of administrative procedure and judicial review help strengthen this uniformity. The narrowing of rulings to specific

facts may help in keeping tax collection aligned with legislative intent but can cause some inequalities amongst taxpayers until gaps are uncovered and addressed. In administration, inequality is most likely to reside in areas where agents and officers are given flexibility without accountability, there is a lack of transparency, resource allocations miss the mark, or taxpayers either make mistakes or take advantage of the complexity of the code.

Arguably, we do not seem to have a significant issue with inequality in the administration of the tax law given the status against comparisons of effectiveness across and complete equality/uniformity will never exist. There will always be some opportunity for some to evade and others to legally minimize their tax liability. Resources, transparency, structural complexity

and ingenuity seem to be the levers to pull to gain improvements in uniform application of the law.

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[i] GAO-08-566 Value-Added Taxes - Lessons Learned from Other Countries on Compliance Risks, Administrative Costs, Compliance Burden, and Transition (April 2008)

[ii] Saltzman, Michael, IRS Practice and Procedure p1-4

[iii] Saltzman, Michael, IRS Practice and Procedure p 1-4.

[iv] Saltzman, Michael, IRS Practice and Procedure p 1-6

[v] Saltzman, Michael, IRS Practice and Procedure p1-39

[vi] Saltzman, M, IRS P&P p1-68

[vii] Saltzman p1-68

[viii] Saltzman p1-68

[ix] Saltzman p1-69

[x] GAO-06-1000T, TAX COMPLIANCE - Opportunities Exist to Reduce the Tax Gap Using a Variety of Approaches

[xi] Cato Institute, The Federal Tax Gap, http://www.cato.org/testimony/ct-ce02162007.html

[xii] Edwards, Chris, Cato Policy Analysis Addresses Corporate Tax 'Distortions; Policy Analysis No. 484, Aug. 14, 2003

[xiii] GAO-06-1000T, TAX COMPLIANCE - Opportunities Exist to Reduce the Tax Gap Using a Variety of Approaches

[xiv] IRS Fact Sheet 2008

[xv] Owens, Jeffrey – Organisation for Economic Cooperation and Development (OECD); Tax Reform: An International Perspective, The President's Advisory Panel on Federal Tax Reform; March 31, 2005

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