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navigate the US Tax Code. All of the items discussed in this article are just things I ...

Craig Smalley • Dec. 13, 2017

I probably got into accounting the same way most people did – I was good at math and thought, *why not?* When majoring in accounting in college, the math classes included Calculus, Trigonometry, and Statistics, all of which I did very well in. While math is logical, however, I would not recommend Logic as a college class. Years later, I can't even help my son with his college Algebra class without looking at the book.

Specializing in tax, you realize quickly that most of your math knowledge won't help you here. Instead, you'd be better off taking some law classes so that you can navigate the US Tax Code. All of the items discussed in this article are just things I picked up during my 24-year career and I wrote this piece with the intention of helping accountants maneuver within the legal system. I don't give legal advice per se, although I do know when I need a lawyer. Most states make the unauthorized practice of law criminal, so certainly don't give any of this advice out. Instead, use it as a reference for your own research.

First of all, have you ever seen a lawyer design an asset protection plan? What they are basically doing is creating various layers of protection for the client. Those layers often contain limited liability companies (LLCs), revocable (meaning that it can change) trusts, irrevocable (meaning that it cannot change) trusts, corporations, and whatever else there is. They are designing these plans with no regard to taxation. A good asset protection attorney will get the client's accountant involved. This is where our world collides with an attorney. The lawyer only cares about protection, we only care about taxation. The client needs to hear both sides of the argument, or it could get expensive for them come tax time.

In most states accountants, or anyone else, are allowed to form a corporation or

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commented on the post

To explain the legal system, we have to first expound on the Constitution. You have state laws and you have federal laws. Who supersedes whom? It depends. For instance, some states recognize a couple living together (some states specifically say a man and woman), as being in a *common law* marriage. Not every state recognizes common law. However, if I am in a state where I am recognized as being in a common law marriage, when I go to another state, I may not be recognized as being in a common law marriage. However, if I am in the state that recognized me as being in a common law marriage, I am allowed to file a federal tax return with my common law spouse as married filing jointly. Did state law overturn federal law? To put it simply, federal law *yielded* to state law. In this case, because it was simpler.

For the most part, each state will recognize someone from another state's rights. For example, my right to drive has been granted by the State of Florida. I can drive in all 50 states, because each state recognizes my privilege to drive. What Florida requires in insurance and what another state require is different. If I get into an accident in Texas, I am liable for Texas insurance requirements.

Our legal system in the US is rooted in common law. The legislative and executive branches pass laws, and the judicial branch interprets those laws. At the federal level the legislative branch is Congress, the executive branch is the President, and the judicial branch is made up of the Federal Courts, including criminal and civil courts.

There is an outlier in the federal system, and that is the US Tax Court, which interprets tax law. At the state level there is the State Legislature that is usually comprised of a House and Senate. Collectively, they are the legislative branch of most states. The state governor is the executive branch of most states while the state court is usually the judicial branch of the state. If I break a law in a state, then the state enforces the law. If I break a federal law, then the US government enforces it.

Here is where it gets tricky. Say I am in a state and I enter into an agreement with

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overlaying nexus law, the legal definition of a nexus being:

Generally, a nexus refers to a connection. In case law, the term may appear when discussing the legality of a governmental restriction, and whether the means of restriction is justifiable in light of the right being restricted[\[1\]](#)

For instance, I incorporate in Nevada and run my business from Florida. I have a physical presence in Nevada and in Florida. In both states I have created a nexus. To operate in Florida, I have to file as a foreign corporation in that state.

Using that example, I have sales people in Alabama, Indiana, and Maryland. I pay these sales people like employees. Now I have just created a nexus in those states because my employees have given me a physical presence.

In dealing with the IRS, I have audit, collections, and appeals. If my matter isn't settled within each of those levels of the IRS, I can petition Tax Court. If my matter isn't settled in Tax Court, I can appeal to the Federal Appellate Courts. While I work my way through those courts, if the matter isn't settled, then I can petition the Supreme Court.

The state courts are separated into Circuit and Appellate Courts, then the State Supreme Court. If my matter isn't settled by the state Supreme Court, then I can petition the US Supreme Court.

The primary means to petition the Supreme Court for review is to ask it to grant

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The Supreme Court has its own set of rules. According to these rules, four of the nine Justices must vote to accept a case. Five of the nine Justices must vote in order to grant a stay, e.g., a stay of execution in a death penalty case. Under certain instances, one Justice may grant a stay pending review by the entire Court.

The courts, both federal and state, are segregated into criminal court and civil court. The plaintiff^[2] in criminal court is usually the State, or in the case of the federal court, is the US. In criminal court, the defendant^[3] is innocent until proven guilty and to be proven guilty the plaintiff must prove its case “beyond a reasonable doubt” to get a conviction.

In civil court, either federal or state, the plaintiff and the defendant can be anyone or an entity. Civil court usually deals with monetary concerns and to win a civil case, the plaintiff must prove their case by the principle of “more reasonable than not.” Which is a much lower standard than in criminal court.

We stated before that our law is based on common law. I like to say it is a *modified* common law based on precedent. For instance, there is a law and then there are various court cases that either prove your point or are contrary to your point. For the accountant, this comes into play when we are researching tax positions. We search Tax Court Cases and then Appellate Cases to prove our point.

Let's say that your client's LLC is being sued. The first inclination of the tax professional is to dissolve the LLC that is under fire and form a new one. No harm, no foul. However, it would be best to contact a lawyer to make sure that the new LLC isn't in danger as well.

What I did many years ago was find an attorney that I could send my clients to when they needed a lawyer. That same attorney sends their clients to me when they need tax help.

The point that I am trying to make is that there are two things that I don't do. The

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[1] Legal Dictionary

[2] The person or entity bringing the case

[3] The person or entity defending the charges brought by the plaintiff

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