SAMPLE MEMORANDUM ASSIGNMENT AND SOLUTION

Assignment

During the taxable year, Dawn Keely, a widow, lives in Kansas City where she maintains her home and legal residence. She also owns and maintains a residence in Tucson, Arizona, in which her unmarried sister, who has no income of her own, resides. Dawn spent the months of January, February, March, and December in Arizona with her sister and the remainder of the year in Missouri. Dawn has charge accounts at various Tucson stores through which her sister obtains groceries, clothing, and other necessities, and occasionally Dawn sends her sister money. You have determined that Dawn can claim her sister as a dependent. The question now is whether Dawn can claim head of household filing status. Dawn's taxes will be reduced by $2,300 if she can claim head of household filing status.

<You do not need to include the above, a restatement of the problem, in the memo you will turn in. A summary statement of the client facts would be included in actual practice.>

Solution

ISSUE: Whether a taxpayer who owns two homes can claim head of household when the taxpayer's principal place of abode is one home and her dependent's principal place of abode is the other home.

APPLICABLE LAW: **Section 2(b)** states that "an individual shall be considered a head of household if, and only if, such individual...(A) maintains as his home a household which constitutes for more than one-half of such taxable year the principal place of abode, as a member of such household, of...(ii) any other person who is a dependent of the taxpayer...." **<Note: starts with highest authority first and proceeds to interpretative authority.>**

Regulation 1.2-2(c)(1) explicitly provides that "in order for a taxpayer to be considered as maintaining a household..., the household must actually constitute the home of the taxpayer for his taxable year." The Regulation further provides that "it is not sufficient that the taxpayer maintain the household without being its occupant."

The head of household provisions were enacted in 1951. The legislative history contains the following language: "A taxpayer will not be considered as the head of a household unless such household actually constitutes his home for the taxable year and also constitutes the principal place of abode for such taxable year of the household who meets the requirements...;" "[The section] is intended to apply only where the taxpayer and such other members live together in such household during the entire taxable year (except for temporary absences due to special circumstances);" and "it is also intended that the household constitute the actual place of abode of the taxpayer and it is not sufficient that the taxpayer maintain the household without being an occupant thereof." House Report No. 586, 82nd Congress, 1st Session, p. 106 (1951). In 1954, in its deliberations over the Internal Revenue Code of 1954, the House passed a resolution which would have eliminated this occupancy requirement, but the Senate rejected the proposed change and the change was not included in the compromise bill.**<Note: your memo does not need to include a legislative history which is sometimes helpful in understanding Congressional intent in regards to a Code section.>**

Numerous judicial decisions, including two at the appellate level, have addressed this issue. In ***Smith v. Commissioner*, 64-2 USTC ¶9534 (CA-9, 1964)**, the taxpayer maintained a principal place of abode in Nevada and a home in California which was the principal place of abode of her adopted son. The taxpayer spent forty percent of her non-traveling time in the California home. **<Note: exploration of the facts; not simply a statement of the rule of law.>** The Court stated that there is "no reason a person cannot have two homes" and "the language of the statute does <u>not</u> require that the <u>taxpayer</u> maintain the household for which he claims a deduction as <u>his</u> principal place of abode." The Court also stated that the regulations adopted by the Treasury had gone beyond the statute by requiring a physical personal occupancy, rather than a token or implied occupancy. The Court held that the taxpayer was entitled to claim head of household filing status.

In ***Muse v. U.S.*, 70-2 USTC ¶9697 (CA-4, 1970)**, the Fourth Circuit Court of Appeals reviewed a case in which the district judge relied on *Smith* in determining that the taxpayer was entitled to claim head of household filing status. The facts are somewhat similar, except in *Muse* the taxpayer had not spent the night in the second home which he owned and which was occupied by his dependent sisters for over two years. Muse's principal place of abode was twelve miles from his sister's principal place of abode. Muse's relationship to his sister's household was limited to Sunday dinners and visits. The court stated that in order to claim head of household filing status, "the taxpayer must actually live in the qualifying household a substantial part of the time." The Court held that "the household in question need not be the taxpayer's principal place of abode, but it must be his home...." The taxpayer in *Muse* was not entitled to claim head of household filing status.

The Internal Revenue Service, in **Revenue Ruling 72-43, 1972-1 CB 4**, has said it will not follow the Ninth Circuit Court of Appeals' decision in *Smith*. The Service's position is that the statute and legislative history require the taxpayer and qualified dependent to maintain their principal place of abode together in the same household for the entire taxable year (more than six months under current law).

<Your analysis and conclusion are an outgrowth of the authorities you find. If you miss something, perhaps a current development, you may reach a costly conclusion. Finding the relevant authorities efficiently and knowing when you have performed enough research is a complex blend of experience, technique, and judgement.>

ANALYSIS: Dawn owns and maintains the Arizona home which is her sister's principal place of abode. Dawn occupies the Arizona home with her sister for four months a year, but her principal place of abode is in Missouri. If Dawn and her sister must have the same principal place of abode, which is the apparent intent of **Section 2(b)** and **Regulation Section 1.2-2(b)(1)**, then Dawn cannot claim head of household filing status. However, similar to the taxpayer in ***Smith***, Dawn resided in the second home for part of, but not over half, the year. By living in the home for one-third of the year (as opposed to Smith's 40%), Dawn apparently satisfies the "token occupancy" requirement adopted by the Ninth Circuit Court of Appeals. However, **Revenue Ruling 72-43** states that the IRS will not follow the Smith case. **<Before assuming the *Smith* case applies, we have explored the significant facts of our case and compared them to the significant facts of *Smith*. That is why it is important to explore the facts of the judicial decisions and other interpretative authorities above in APPLICABLE LAW.>** Although the Fourth Circuit Court of Appeals in ***Muse*** held that the taxpayer could not claim head of household status, the facts of that case are not similar to Dawn's. In *Muse*, the taxpayer had not stayed in the home occupied by his sisters for over two years. He visited. The Court required that the taxpayer must actually live in the household a substantial part of the time. Arguably, four months is a substantial part of the time, and Dawn meets the requirements of the *Muse* decision. **<To take the position that Muse is distinguishable, we again have to compare and contrast facts.>**

<The following is an aggressive, but not necessarily wrong, conclusion.>

CONCLUSION I: We should recommend that Dawn claim head of household status. *Smith* constitutes substantial authority for the position, although the intent of the law, based on the Regulations and legislative history, appears to be against its holding. Dawn should be advised of the risks of this position, particularly the IRS nonacquiescence. The time Dawn spend in the Arizona home needs to be well documented. We should recommend from a planning perspective that she spend more than six months in Arizona if the arrangement with her sister is to continue. **<Note: administrative focus.>**

<The following is an unaggressive, safe conclusion.>

CONCLUSION II: We should recommend that Dawn not claim head of household filing status. Although *Smith* constitutes substantial authority for claiming head of household filing status, the position is risky because the weight of the authority, particularly the Regulations and legislative history, are against her. If Dawn wishes to claim head of household filing status in future years, we should recommend that she keep good records of the time spent in Arizona and that she spend more than six months in Arizona.

<It is not the conclusion you reach that is important, but how you reach that conclusion. Did you ignore the hierarchy of authority? Did you restrict or overextend interpretative authority? Did you compare and contrast the facts of your case to those of the authorities on which you are relying? Have you stepped back and considered whose decision this is, the risk involved, the benefit to be gained, and what is needed in the way of authority and documentation to make this decision?>

Accounting 5576
Memo Evaluation Sheet

___ points received
75 points possible

Name ______________________________

A. Analysis of the facts (5 points)
1. Limited the facts to those necessary for answering the question(s)
2. Did not confuse conclusions with facts
3. Perceived tax problems through the exploration of the facts
4. Recognized when assumptions were being made

B. Identification of issues (5 points)
1. Narrowed the question(s) to be addressed
2. Prioritized the questions in the multi-question problem
3. Discerned which facts were relevant
4. - When a factual question was presented, determined which facts were major, minor, and insignificant
   - When a legal question was presented, determined whether a "simple application," "interpretive," or "conflicting authorities" question was presented

C. Location and assessment of authority (5 points)
1. Understood the "big picture" in the tax area analyzed
2. Located applicable law
3. Considered the hierarchy of authority
4. Rooted the research process in the Code
5. Updated the relevant research authorities

D. Formulation of an answer (5 points)
1. Recognized tax planning alternatives
2. Compared the facts of the authorities being relied upon to the facts of the problem
3. Formulated a reasonable, logical solution to the problem anchored in the research authorities
4. Evaluated the risk of an adverse finding by the Service by assessing the strength of the contrary authority

E. Communication of the answer (5 points)
1. Presented the research in an appropriate, easy-to-read format
2. Documented the facts, the questions considered, the results reached, and the rationales for the conclusions
3. Strived for a quality product with regard to neatness, spelling, grammar, and style

Comments:

COMMON ERRORS ON MEMORANDUM ASSIGNMENTS WHICH WILL RESULT IN POINT DEDUCTIONS

1. Failure to begin "Applicable Law" section with cite to a Code section. **ALWAYS** start with a code section, not the related Regulation.

2. Failure to give a full citation to a Revenue Ruling and/or a court case. Citation formats are shown in the "Primary Sources of Federal Tax Law" lecture outline. **Boldface** the citation the first time the citation appears in the "Applicable Law" section and the "Analysis" section of the memorandum.

3. Citing to the CCH, RIA, or other tax service. **DO NOT** cite to the paragraph or page number of these tax services. Cite to the primary source (i.e., Code, Regulations, Revenue Rulings, etc.). A tax service cannot be cited as an authority when representing your client before the IRS or in court.

4. A weak "Analysis" section. Most students do a reasonable job on the "Applicable Law" section, but then die off (probably because of the suggested minimum for number of pages) when comparing the facts of the particular situation to the "Applicable Law" cited just before it. The instructions are very explicit about how to write the "Analysis" section. **READ THE INSTRUCTIONS**.

   REMEMBER, there is a good chance that the reader of the memorandum will read **ONLY** the "Analysis" and "Conclusion." THEREFORE, be very SPECIFIC and THOROUGH. Don't be afraid to repeat issues addressed in the "Applicable Law" section again in the "Analysis" section.

5. Disregard of the instructions. I assume that I only have to tell you how to do something **ONCE**. I have given you complete instructions. Failure to follow these instructions shows a indifference towards doing the project correctly. Therefore, I assume you are indifferent to the grade you receive.

ACCESSING LEXIS-NEXIS ACADEMIC UNIVERSE

1. Log-on to UMKC Home Page: http://www.umkc.edu/lib
2. Click on "Find Books, Articles..."on left-side of page to get drop-down list
3. Click on "Articles & Databases"
4. Click on "L" under "Alphabetical List of Database Titles"
5. Find and click on "LexisNexis Academic (UMKC users only)" in list
6. Click on "LexisNexis Academic (UMKC users only)" towards top of page
7. On far left-hand side of page, click on "US Legal"
8. On drop-down list, click on "Tax Law"
9. A search screen will appear on the screen
10. Screen has three main boxes
    a. Box 1: "Search For:"
        1. Enter appropriate search terms
    b. Box 2: "Specify Date:"
        1. Highlight the appropriate date option
    c. Box 3:"Limit To:"
        1. Check appropriate database category to search
11. Click on red "Search" button

Printing a Document
1. Click on "Print" icon on upper right side of screen
2. Click on the red "Print" button
    a. Both red "Print" buttons seem to work the same

ACCESSING FROM A HOME COMPUTER

1. Follow the same steps as above and enter your UMKC user name and password when prompted.

ACCESS TO RIA CHECKPOINT ACADEMIC ADVANTAGE EDITION

1. Log-on to UMKC Home Page: http://www.umkc.edu/lib
2. Click on "Find Books, Articles..."on left-side of page to get drop-down list
3. Click on "Articles & Databases"
4. Click on "C" under "Alphabetical List of Database Titles"
5. Find and click on "Checkpoint (UMKC users only)" in list
6. Click on "Checkpoint (UMKC users only)" towards top of page

ACCESSING FROM A HOME COMPUTER

1. Follow the same steps as above and enter your UMKC user name and password when prompted.

ADDITIONAL INSTRUCTIONS

If the keyword search method for accessing relevant documents results in an unmanageable number of documents, you might try using the Table of Contents or Indexes method of research. Using the Table of Contents or Indexes method is similar to using the topical index in the hard copy volume of the source material.

<u>Table of Contents</u>

1. Click on "Table of Contents" on upper right-side of opening screen
2. A list of resources will be shown. This list contains more resources than the "Indexes" search described below. The list of resources under "Federal Indexes" is the same as the list of resources using the "Indexes" search described below.
3. Click on the resource that you want to search
   a. Federal Tax Coordinator 2d Topic Index is good for an overview of a topic
4. Click on the appropriate letter of the alphabet to get a listing of topics

<u>Indexes</u>

1. Click on "Indexes" under "Go To' heading on left-side of opening screen
2. A list of resources will be shown
3. Click on the resource that you want to search
   a. Federal Tax Coordinator 2d Topic Index is good for an overview of a topic
4. Click on the appropriate letter of the alphabet to get a listing of topics

ACCESS TO CCH INTELLICONNECT TAX RESEARCH WEBSITE

1. Go to the Bloch School Computer Lab in Room 110
2. Log-on to: http://www.intelliconnect.cch.com
3. In the center of the screen, find "Getting Started" and then click on "Take a tour!"
   a. There is a short 2-minute tutorial that you should watch

ACCESSING FROM A HOME COMPUTER

At this time, the CCH database cannot be accessed from a computer other than a computer in the Bloch School Computer Lab.

ADDITIONAL INSTRUCTIONS

<u>Starting Your Research</u>

1. At top of page by the "Search" box, leave "all content" alone and type in the keywords you think are best for your research problem and click the "Go" button
2. Screen will show <u>all</u> results from <u>all</u> sources
3. To narrow results, go to left side of screen under "Narrow Your Results" and see listing by type
4. Expand the "Federal Tax" list by clicking on the "+" sign
   a. Find "Federal Tax Primary Sources"
   b. By clicking on "Current Internal Revenue Code", only those results identified by a section of the Internal Revenue Code will be listed
   c. By clicking on "Federal Tax Regulations", only those results identified by a section of the Regulations will be listed
   d. By clicking on "Cases", only those results identified as a court case will be listed
   e. By clicking on "IRS Rulings and Other Documents", only those results identified by an IRS publication such as a Revenue Ruling will be listed
   f. By clicking on "Letter Rulings and IRS Positions", only those results identified by an IRS publication such as a Private Letter Ruling will be listed
5. Sorting "By Library" will probably work best to narrow the results

<u>Ending Your Research</u>

1. Close window by clicking the "X" button at the top upper right-hand corner of screen
2. <u>Don't</u> click "Log Out"

WEB SITES FOR TAX FORMS

FEDERAL TAX FORMS
http://www.irs.gov

MISSOURI TAX FORMS
http://www.dor.mo.gov

KANSAS TAX FORMS
http://www.ksrevenue.org

KANSAS CITY EARNINGS TAX FORMS
http://www.kcmo.org/CKCMO/Depts/Finance/forms/index.htm