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# INTRODUCTION TO TAX SCHOOL

## TOP 40 TAX DOCTRINES

(ALPHABETICAL ORDER)

1. [Acceleration of Income Doctrine](#): A taxpayer that carves out the income component of “property” – such as mineral royalty rights – and sells it separate from the “property” has ordinary income in the year of sale with no basis recovery. He has thus accelerated the income from a future year to the present. [Commissioner v. P.G. Lake Inc., 356 U.S. 260 \(1958\)](#). This doctrine applies to income and not to deductions; hence, the sale of the non-income component and retention of the income component will not result in a deductible loss. Also, taxpayers who seek to take advantage of the [Acceleration of Income Doctrine](#) may be restricted by the [Substance Over Form Doctrine](#): the transaction may be characterized as a loan secured by a future income stream.
2. [Accounting Method Definition](#): If a taxpayer treats an item or a type of item erroneously in multiple tax years, this behavior amounts to an accounting method, albeit an erroneous one. As a result, the taxpayer may not change to a proper method of accounting without satisfying the appropriate procedures for doing so, which include the application of §481. [Rev. Proc. 97-27](#). In [Rev. Proc. 2006-12](#) stated: “if a taxpayer uses an erroneous method of accounting for two or more consecutive taxable years, the taxpayer has adopted a method of accounting. . . . [A] taxpayer may not, without the Commissioner's consent, retroactively change from an erroneous to a permissible method of accounting by filing an amended return.” [Diebold v. U.S., 891 F. 2d 1597 \(Fed. Cir. 1989\)](#). The application of this Accounting Method Definition remains controversial. When applied, it is a powerful tool for the government.

3. **Arrowsmith Doctrine**: The *character* of a transaction is a function of the transaction as a whole, even if it transcends multiple years. [Arrowsmith v. Commissioner, 344 U.S. 6 \(1952\)](#). Thus an event in one year may receive capital loss treatment, even without a sale or exchange, if the item, when viewed as part of a continuing transaction, would have had such treatment had it occurred in the year of the primary transactions. The doctrine clearly applies to losses (which is disadvantageous to taxpayers); whether it also applies to gains is uncertain.
  
4. **Assignment of Income Doctrine**: Income from services is taxed to the one who performs the services. [Lucas v. Earl, 281 U.S. 111 \(1930\)](#). Income from property is taxed to the owner of the property. [Helvering v. Horst, 311 U.S. 112 \(1940\)](#).
  
5. **Burgess/Battlestein Scenario**: A taxpayer may not “pay” an amount with funds borrowed from the creditor immediately prior to the attempted “payment.” [Battlestein v. Commissioner, 631 F.2d 1182 \(5th Cir. 1980\) \(en banc\)](#). A taxpayer, however, may borrow funds from a third party and then effectuate a “payment” using those funds. Economically, the two transactions are identical. Legally, however, they are different. Under the Burgess decision, a taxpayer may borrow from a creditor, commingle the funds with other funds, wait some period of time (see the [Old and Cold Doctrine](#)) and then successfully “pay” the creditor/lender.
  
6. **Business Purpose Doctrine**: If a transaction has no Substantial Business Purpose other than tax avoidance or reduction of income tax, the law will not respect the transaction. This doctrine arose from [Gregory v. Helvering, 293 U.S. 465 \(1935\)](#), which also addressed the [Substance Over Form Doctrine](#).
  
7. **Cash Equivalence Doctrine**: An unsecured promise to pay of a solvent obligor, readily transferable, not subject to set-off, and not subject to a discount substantially greater than the prevailing market rate is the equivalent of cash. [Cowden v. Commissioner, 289 F.2d 20 \(5th Cir. 1961\)](#). As such, the fair market value of the promise is includible in income upon receipt by a cash method taxpayer. Under the [Schlude Doctrine](#), it is also likely includible in the income of an accrual method taxpayer.

8. **Chevron Deference**: The judiciary must defer to an executive agency's interpretation of a statute that the agency administers, provided that the agency's interpretation is reasonable. [Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837 \(1984\)](#).
9. **Commerciality Doctrine**: Organizations which are overly commercial are not entitled to exempt status under § 501(c)(3) and its predecessors. [Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 \(1945\)](#).
10. **Claim of Right Doctrine**: When a taxpayer receives funds (which represent *earnings*) with a contingent obligation to repay, either because the sum is disputed or mistakenly paid, and no limitation on the use of the funds exists, those funds are included in the taxpayer's income in the year they are received. [North American Oil Consolidated v. Burnet, 286 U.S. 417 \(1932\)](#). This rule applies to cash method taxpayers. Whether it also applies to accrual method taxpayers is an issue of the Schlude Doctrine.
11. **Cohan Rule**: If a taxpayer cannot prove the amount of an expense, the trier of fact may nevertheless estimate a reasonable amount. If an amount has clearly been expended, to allow nothing because of inadequate documentation is unreasonable. [Cohan v. Commissioner, 39 F.2d 540 \(2d Cir. 1930\)](#). **Caution**: Congress superseded this Rule in many areas. *E.g.*, § 274(d) disallows travel and entertainment expenses (the type involved in [Cohan](#)) without adequate corroborating records. Similarly, § 170(f)(11) requires documentation for most charitable contributions.
12. **Constructive Receipt Doctrine**: A cash method taxpayer has income when the proceeds are available to him, without substantial limitations, and he refuses or neglects to accept them. Doctrine arises from Treas. Reg. § 1.451-2(a). The [Cowden v. Commissioner, 289 F.2d 20 \(5th Cir. 1961\)](#) gloss holds that a taxpayer may decline to enter into a contract which would offer current receipt; hence, a taxpayer may delay receipt without invoking the Constructive Receipt Doctrine if he does so at the inception of the contract. Also, under [Martin v. Commissioner, 96 T.C. 814 \(1991\)](#), a cash method taxpayer may sometimes modify a contract, after partial performance, to defer receipt of payments without triggering the Constructive Receipt Doctrine.

13. [Corn Products Doctrine](#): The § 1221 list of non-capital assets is illustrative rather than exclusive. [Corn Products Refining Co. v. Commissioner, 350 U.S. 46 \(1955\)](#). This doctrine was effectively eliminated by the [Arkansas Best](#) exception pursuant to which the [Corn Products Doctrine](#) applies only to hedging transactions. [Arkansas Best Corp. v. Commissioner, 485 U.S. 212 \(1988\)](#).
14. [Court Holding Company Doctrine](#): Under the assignment of income doctrine, transferee completion of a transaction negotiated and fully arranged by a transferor may be attributed to the transferor along with an imputed transfer of the proceeds. [Commissioner v. Court Holding Co., 324 U.S. 331 \(1945\)](#). This doctrine is related to the [Substance over Form Doctrine](#).
15. [Crane Rule](#): The “amount realized” from a taxable event includes the amount of the transferor’s debt assumed by the purchaser. It also includes the amount of debt to which the property is subject, even if the debt is not “assumed.” This rule applies both to recourse and non-recourse liabilities. It applies to secured and unsecured debt. It also applies even if the amount of the debt exceeds the fair market value of the property. [Crane v. Commissioner, 331 U.S. 1 \(1947\)](#), as modified by [Commissioner v. Tufts, 461 U.S. 300 \(1983\)](#). Many people mistakenly cite the [Crane Rule](#) as: The basis of property acquired with borrowed money includes an amount equal to the borrowed money used. This corollary resulted from: [Parker v. Delaney, 186 F.2d 455 \(1st Cir. 1950\)](#).
16. [Crummey Trust Doctrine](#): A grantor is allowed a § 2503(b) annual exclusion amount for a gift of a future interest in trust to the beneficiary if the beneficiary is granted a Crummey power. The Crummey power entitles the beneficiary the right to demand ownership of the deposited property for a limited period of time, which this 9<sup>th</sup> Circuit court found to be equivalent to a present or completed interest for gift tax purposes. [Crummey v. Commissioner, 397 F.2d 82 \(9<sup>th</sup> Cir. 1968\)](#).
17. [Davis/Kenan Gain](#): The use of appreciated property to satisfy an obligation or to acquire something of value is a taxable event. [United States v. Davis, 370 U.S. 65 \(1962\)](#). [Kenan v. Commissioner, 114 F.2d 217 \(2d Cir. 1940\)](#). Hence the taxpayer has gain or loss on the transaction.

18. **Destination of Income Test**: The purpose for which funds are expended is irrelevant to whether the earning of the funds were related to an exempt purpose. This test resulted from Congressional unhappiness with the case of [C. F. Mueller Co. v. Commissioner, 190 F.2d 120 \(3rd Cir.1951\)](#). The test appears in §§ 502 and 513.
19. **Duty of Consistency**: Arising from [R.H. Stearns Co., 291 U.S. 54 \(1934\)](#), the Duty is related to estoppel, as well as the [Equitable Recoupment](#) (although it applies differently). The Court explained: “no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong.” A 1997 case listed the Duty’s factors as: “(a) The taxpayer made a representation of fact or reported an item for tax purposes in one tax year; (b) the Commissioner acquiesced in or relied on that fact for that year; and (c) the taxpayer desires to change the representation previously made in a later tax year after the earlier year has been closed by the statute of limitations.” [Estate of Letts v. Commissioner, 109 T.C. 290, 296 \(1997\)](#). Often ignored, the [Duty](#) exists as a potent, but ill-defined and underused government weapon.
20. **Economic Benefit Doctrine**: A cash method taxpayer has income when he receives the economic benefit of the proceeds. This occurs even if he lacks actual receipt, constructive receipt, or receipt of a cash equivalent. It results when the payor irrevocably places funds for the benefit of the taxpayer beyond the reach of the payor’s creditors. [Sproull v. Commissioner, 194 F.2d 541 \(6th Cir. 1952\)](#). According to most authorities, the Doctrine applies only to service income and contest winnings; it does not apply to transactions involving the sale of property. The government has consistently, but unsuccessfully, disagreed with this limitation on the Doctrine.
21. **Equitable Recoupment Doctrine**: Parties timely litigating a tax claim – income or deduction – may recoup a tax-barred related claim from the same transaction which resulted in inconsistent treatment. [Bull v. United States 295 U.S. 247 \(1935\)](#). [Stone v. White, 301 U.S. 532 \(1937\)](#). [United States v. Dalm, 494 U.S. 596 \(1990\)](#). Whether the Doctrine applies in the Tax Court is controversial. [Estate of Mueller v. Commissioner, 107 T.C. 189 \(1996\) \(en banc\) \(reversed by the Sixth Circuit\)](#). This equitable doctrine is superseded by the seven circumstances of adjustment found in § 1312 (even if the application of mitigation fails for some reason other than the lack of a listed circumstance). As a result, the doctrine typically applies when two different types of taxes are involved, such as an income tax and an estate, gift, excise, or alternative tax.

22. **Erroneous Deduction Exception**: Recovery of an item erroneously deducted does not result in Tax Benefit Rule income: the Tax Benefit Rule applies only to items previously properly deducted. The Tax Court applies this controversial exception in cases appealable to circuits other than the Fifth or Ninth. [Hughes & Luce L.L.P. v. Commissioner, 70 F.3d 16 \(5th Cir. 1995\)](#). [Unvert v. Commissioner, 656 F.2d 483 \(9th Cir. 1981\)](#). Arguably, the Fifth and Ninth circuits judicially repeal much of § 1312(7) by their rejection of the Exception.
23. **Form Over Substance Rule**: This is the corollary to the Substance Over Form Doctrine. Sometimes, courts respect form, finding that taxpayers are entitled to organize their transactions to reduce taxes. [Gregory v. Helvering, 293 U.S. 465 \(1935\)](#). Also important, is the use of this Rule to prevent a taxpayer from disavowing his own chosen but detrimental formalities: “You made your bed, so lie in it.” Note that the [Gregory](#) decision stands both for the Form Over Substance Rule and the Substance Over Form Doctrine.
24. **Family Hostility Rule**: Family hostility may militate against the application of statutory rules governing attribution of stock ownership. This rule has applied in relation to § 318; however, it has not traditionally applied in relation to §§ 267 and 4946.
25. **Golson Rule**: The Tax Court is bound to follow decisions of the Circuit Court to which a case is appealable. [Golson v. Commissioner 54 T.C. 742 \(1970\)](#). This controversial Rule sometimes results in a Tax Court Judge signing an opinion with which he disagrees and then issuing an opposite ruling, appealable to a different Circuit, during the same term. Because the Tax Court is a national court, opinions from which are appealable to twelve Circuits, this anomaly results.
26. **Idaho Power Rule**: Depreciation expense and other material costs must be capitalized to the extent the underlying assets contributed to the cost of a long-term asset. [Commissioner v. Idaho Power Co., 418 U.S. 1 \(1974\)](#).
27. **Integral Part Doctrine**: This un-codified doctrine applies mostly in the tax exempt arena. It holds that an entity may achieve exempt status if its activities are an integral part of another exempt organization and they further the exempt purpose of the other organization. The Doctrine applies even though the separate entity’s activities do not by themselves justify exempt status. See, Treas. Reg. § 1.502-1(b).

28. **Legislative Grace Doctrine:** An income tax deduction is a matter of legislative grace. The burden of clearly showing the right to the claimed deduction is on the taxpayer. *Interstate Transit Lines v. Commissioner*, 319 U.S. 590 (1943). In contrast, § 61 broadly taxes all income.
29. **Matching Principle:** For Generally Accepted Accounting Principles, the Matching Principle requires that income be matched in the same period with the costs required to produce it. Very generally, this rule applies for tax purposes as part of the Accrual Method of Accounting; however, violation of the rule is common. See, the Schlude Rule. No general Matching Principle of income and deduction timing or character between taxpayers exists. But see, *Albertson's Inc. v. Commissioner*, 42 F.3d 537 (9th Cir. 1994). In some instances, such as §§ 267 and 404, the code requires matching of income and deductions for timing. This, however, is a legislative rule, not a general principle of tax law. Indeed, its existence in some statutes supports the proposition that it does not exist generally: otherwise, it would be unnecessary to state in a statute.
30. **Old and Cold Doctrine:** This unstated rule is generally known to tax practitioners. At some points, events are so old and cold that they acquire reality by themselves and cease to be part of an overall plan or transaction; hence, the Substance Over Form Doctrine would not apply. How long this takes is unclear.
31. **Old Colony Rule:** The form of the income does not matter in terms of “whether” an item is income; hence, a taxpayer may have income upon the receipt of cash, property, services, or even when an obligation is satisfied on his behalf. *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716 (1929).
32. **Open Transaction Doctrine:** A taxpayer need not recognize gain in an “open transaction” until he has recovered his capital. *Burnet v. Logan*, 283 U.S. 404 (1931). Open transactions are rare, particularly since statutory changes to § 453 in 1980. Typically, they involve the receipt of rights so speculative that they lack a determinable value. An example might involve the transfer of property in exchange for a percentage of revenue from a future transaction under circumstances in which the future transaction cannot realistically be valued.

33. **Rabbi Trust Doctrine**: A transfer of funds for the benefit of a taxpayer which remain subject to the claims of the transferor's creditors does *not* trigger the Economic Benefit Doctrine. The doctrine arose from a fact pattern involving a synagogue and a rabbi. [Ltr. Rul. 8113107](#).
34. **Realization Event Doctrine**: Mere appreciation in value of an asset will not generally result in income; instead, some "realization event" such as a sale or exchange is typically necessary. See, [Commissioner, v. Glenshaw Glass, 348 U.S. 426 \(1955\)](#). See also, [Cottage Savings Association v. Commissioner, 499 U.S. 554 \(1991\)](#). After [Glenshaw Glass](#), most authorities presumed this requirement was of constitutional significance; however, after [Cottage Savings](#), the more common view is that is it more for administrative convenience.
35. **Res Judicata**: Every year constitutes a separate cause of action for tax law. Hence, a final decision that an item of income must be reported in a particular year is not res judicata regarding whether the same item must be reported in a different year: each year is a separate cause of action. The decision may, however, collaterally estop a party from acting inconsistently. The difference is important: while *res judicata* is an absolute bar, collateral estoppel is equitable and can be overcome by a change in law or jurisprudence. [Commissioner v. Sunnen, 333 U.S. 591 \(1948\)](#).
36. **Schlude Doctrine**: Accrual method taxpayers that receive prepaid amounts for services must include them in income upon receipt. [Schlude v. Commissioner, 372 U.S. 128 \(1963\)](#). This Doctrine is controversial, but well-settled. A few – but very few – judicial exceptions exist. Several statutory exceptions exist, such as §§ 455 (subscriptions), 456 (dues), 467 (rent), and 1272 (interest).
37. **Skelly Oil Doctrine**: A deduction for repayment of an amount not fully taxed in a prior year *may* be limited to the portion taxed. [United States v. Skelly Oil Co., 394 U.S. 678 \(1969\)](#).
38. **Sham Transaction Doctrine**: "Sham" transactions are ignored for tax purposes. [Knetsch v. U.S., 364 U.S. 361 \(1960\)](#). This is an extension of the Substance Over Form Doctrine. It tends to apply to egregious cases, including ones involving fraud.

39. **Substance Over Form Doctrine:** The substance of a transaction controls over its form. Effectively, only the government may make this argument. Taxpayers – because they choose the form of their transactions – rarely, if ever, successfully disavow their chosen form in favor of the economic substance. [Gregory v. Helvering, 293 U.S. 465 \(1935\)](#). Note that the [Gregory](#) decision stands both for the Form Over Substance Rule and the Substance Over Form Doctrine. The Integral Part Doctrine is a rare example of taxpayers being able to apply the Substance Over Form Doctrine.
40. **Tax Benefit Rule:** An event “fundamentally inconsistent” with a proper beneficial deduction in an earlier year *sometimes* results in income. [Hillsboro National Bank v. Commissioner, 460 U.S. 370 \(1983\)](#). A corollary exclusionary aspect of the rule appears in many early cases and is codified in § 111.