

Reading Part 3

COMMUNICATING TAX RESEARCH: WRITING THE FILE MEMO

Regardless of how well you have done your research, your efforts may be all in vain if you are unable to successfully communicate your findings. [The accounting professional must be able to communicate intelligently and effectively!](#)

Effective communication is not easy. It takes practice. Even the most skillful of writers must learn the appropriate way to communicate their research findings. [Face it—you must write, rewrite and rewrite again in order to produce a good memo.](#) But you don't have time to do that on the job! So the best approach is to practice here and pay attention to feedback that you receive.

A tax research assignment typically ends with some form of communication by the tax professional about the results of the research. For example, the communication may be as informal as a phone call or an e-mail to either the client or supervisor. But it also may be more formal, such as a memorandum that serves as the basis (and documentation) for a formal letter or other communication to the client. The research might also be the basis of an article for publication in a newspaper, magazine or a professional journal. The communication could also be a speech or an appearance on television or radio.

In all of your communications, [remember who the audience is and write appropriately.](#) If the audience is a supervisor who is familiar with the issue, the communication will be much different than that prepared for someone who is untrained in the area. If the communication is for the client, it will be much different than a detailed memorandum that is the basis for the client's letter. If a presentation is for a general audience, it will be much different than for a group of tax professionals. [Remember your audience.](#)

The File Memo

The heart and soul of tax research communication is the [memo to the file](#) or [file memorandum](#). Most of a tax practitioner's time is concerned with determining the client's tax problem, identifying the tax issues, finding the applicable law, interpreting the law, and evaluating the tax law to arrive at a solution. When all of the research is complete, the practitioner typically writes a [memorandum to the client's file](#) as the basis for the formal communication to the client.

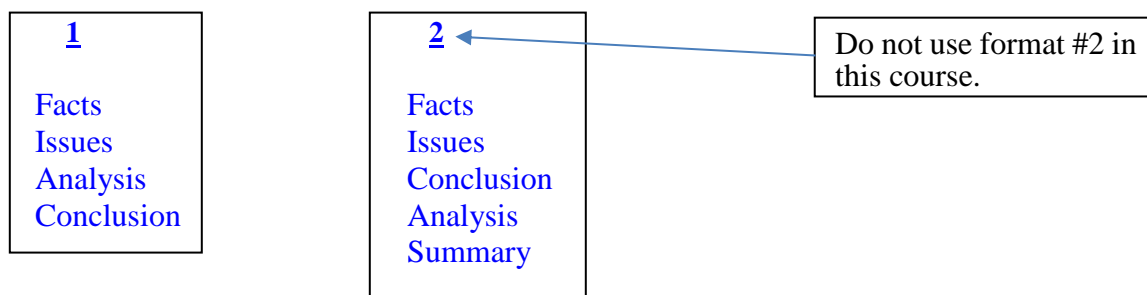
Assume that you have done all of the research and must now write a memorandum to communicate your findings. How would you organize it? How should it be structured? Obviously, your product should not look like one of Danielle Steele's romantic novels, a Tom Clancy thriller, or a classic comic book. Do you write it like a term paper complete with footnote references? Is the memo just a series of findings and a conclusion? Do you just cut and paste what you have found in the tax service? How should the memo start? How should it end? How should your findings be summarized?

Many accounting and law firms require a standardized format for file memos. On the other hand, there is no one format that is used by all firms. A possible format is shown below. But before examining the sample memo, [consider what the memo is trying to accomplish.](#)

The purpose of the memo to the file or file memorandum is to:

- Present the facts, issues, and conclusions of the tax research project
- Enable supervisors or colleagues (and, in your case, the instructor) to easily review what has been done

The file memo should be constructed in a format that lends itself to a quick perusal of the pertinent tax facts and issues. A typical file memo uses one of the following formats:



Facts

The memo should begin with a brief **introductory summary of the facts and issues** that face the client. Remember that the memo tells a story and the reader will not be able to understand the punch line unless he can understand the story. Consequently, start with the facts.

The importance of a correct statement of the facts cannot be overemphasized. The conclusion is based on the facts and **if a single fact is incorrect, the entire conclusion could be wrong**. More importantly, the reviewer (whether the review occurs shortly after the research is completed or three years later when the return is audited and the author of the memo has long left the firm) must know and understand the basis for the conclusion (the advice to the client). Similarly, and perhaps more importantly, the client must understand that the answer that he or she receives is dependent on the facts that the client provides.

Often, the gathering of the pertinent facts is the most challenging of the tax professional's tasks. (This not only true in tax, but in all of accounting.) Tax engagements typically begin with client contact in the form of a phone call or meeting, followed by an exchange of copies of pertinent documents such as letters, spreadsheets, trusts or wills, contracts, life insurance or annuity agreements, employer handbooks, and diaries or logbooks of the client. In reality, though, the initial determination of the facts is likely to be incomplete for the following reasons.

- ▶ Taxpayers tend to see the dispute only from their own side. In short, the taxpayer's view of the facts and circumstances may be biased.
- ▶ Taxpayers are not trained in the details of the technical tax law so they may be unable to determine which facts are important. If you don't ask the question, the taxpayer may omit something that is important and not even know it. (When you ask additional questions, include the answers in the statement of facts.)

In addition, fact gathering often turns on such intangible factors as the reliability of the memories of the taxpayers and key witnesses, the ability of witnesses to withstand scrutiny in the deposition and testimony phases of the case, unanticipated death or disappearance of key parties, destruction of records due to casualty or computer mismanagement, and the tendency of some taxpayers to "fix the truth" after the fact.

Consider this rather simple situation. In late 1998, the client, a high-income, high-ranking corporate officer, received a reimbursement of \$50,000 for moving expenses incurred from moving from Seattle to Baltimore in 1998. He subsequently took a new position in Indianapolis in early 1999. As a general rule, the reimbursement merely offsets deductible moving expenses so there is no effect on the tax return. However, moving expenses are deductible only if the taxpayer remains in the area to which he moved for 39 of the 52 weeks after the move. Thus, whether the client had zero income or \$50,000 of income (and \$20,000 of tax) depended on how long the client had lived in Baltimore, a seemingly straightforward question. The sticky part was asking the client when he moved in and out of Baltimore. When asked how long he had lived there, the client calmly asked what difference it made and then gave the “correct” answer.

Issues


After identifying the critical facts, the file memo normally lists questions that capture the tax issues that are in dispute (e.g., is the travel expense deductible?). Some memos may have only one issue. Each issue should be phrased as a question. Multiple issue should be numbered.

The questions are often followed by a short answer or conclusion (e.g., the travel expense is not deductible because it was not primarily for business). This format (shown as format 2 on the preceding page) allows the subsequent reader (your supervisor) to determine quickly whether each issue is "pro" or "con" for the taxpayer and limits the time that may be required to sort through a number of such memos. It can be omitted in a short memo (the first format on the preceding page).

Analysis

The analysis section presents a detailed review and evaluation of controlling laws, with full citations presented in the standard forms. The meat of the memo is presented here, and the strengths and weaknesses of both sides of the tax argument are developed and discussed.

In this part, you discuss the Code, how the regulations interpret the Code, how the court cases interpret the Code, etc. Discussion of the cases and rulings is the most difficult aspect of writing the memo. **Tell a story**. When you discuss a case, explain the facts of the case in sufficient detail that your audience can appreciate the point you are trying to make. Tie the facts of the case to the authority you cite to show the reader how you developed your conclusion.

 Hint: In writing a file memo, you are much like a judge who is writing his or her opinion. If you are at a complete loss as to how a memo should be written, read several court cases to get the feel.

Remember, the introductory file memo for Assignment P3 should consider **only** the Code.

Summary--optional (not to be used in this class)

In the summary, conclusions are given or repeated. Some memos may include recommendations for subsequent actions with the client and may lay out other strategies as to tax return or audit positions. The summary should be short: arguments belong in the analysis.

Conclusions

The conclusions should be simply stated—typically only one sentence. Avoid adding or restating your analysis in the conclusion. If you have multiple issues, the conclusions should be numbered to correspond with the issues.

Remember Your Audience

As suggested earlier, the tone and nature of the file memo should recognize that its readers will be restricted to fellow tax practitioners who are normally well versed in the federal tax law. You are not writing the memo to your client—he will not be reading it! References to primary sources of the tax law should be frequent and complete. One must presume that the ultimate reader of the memo's comments will need no introduction to the hierarchy of the federal tax system or to statutory citation practices.

In practice, it often is helpful to attach pertinent references to one or more of the commercial tax services to which the researcher's firm subscribes. These should be provided as attachments to the memo, perhaps on a sticky note, providing a clear paper trail to facilitate subsequent review and commentary concerning the tax issue. *(Do not cite these secondary sources for this class!)*

Seldom will the researcher's efforts result in merely the preparation of a research memorandum to the file. In general, the memo will be accompanied in the file by briefs of one or more pertinent court cases or administrative pronouncements. In addition, many practitioners append to the file memo photocopies of critical court case opinions, regulations or rulings, and journal articles, often featuring highlighting by a pastel marker.

Most recommend that practitioners restrict appended material to only those resources that are of utmost importance, to reduce both client costs and the volume of the typical memo. *An effective statement of facts and issues, followed by a concise synthesis of the controlling law, is far more valuable than a mass of duplicated, small-print tax reference materials.* (File memos submitted for this class should not have attachments or a references cited section.)