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## THE VIRTUAL TAX LIBRARY: A COMPARISON OF FIVE ELECTRONIC TAX RESEARCH PLATFORMS

by

*Katherine Pratt*

*Jennifer Kowal*

*Daniel Martin*

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**THE VIRTUAL TAX LIBRARY:  
A COMPARISON OF FIVE ELECTRONIC TAX RESEARCH PLATFORMS<sup>1</sup>**

By

*Katherine Pratt*<sup>2</sup>

*Jennifer Kowal*<sup>3</sup>

*Daniel Martin*<sup>4</sup>

**ABSTRACT**

Improved LexisNexis and Westlaw tax research platforms and new electronic tax research platforms offered by BNA (BNA Tax Management Library), CCH (CCH Tax Research NetWork), and RIA (RIA Checkpoint) constitute a virtual tax library that offers tax researchers much of the content and functionality of a physical tax library, as well as some useful functionality features (*e.g.*, direct linking of primary and secondary sources) a physical tax library cannot provide. The new virtual tax library offers tax researchers numerous benefits, including the convenience of a portable library, more reliable and current research results, and increased research efficiency. Many tax researchers have not adapted their tax research techniques to effectively utilize the virtual tax library, however, because they are unfamiliar with the new and improved electronic tax research platforms.

To reduce tax researchers' costs of evaluating and comparing the five electronic platforms, this Article provides detailed comparisons of the content and functionality features offered by the platforms. This Article also explains how to access various types of primary and secondary tax sources on the platforms and provides detailed "search pathways" that will enable tax researchers to navigate around the electronic platforms.

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1. © 2007. The Authors thank David Burch (Head of Library Computing Services at Loyola Law School, Los Angeles) for his contributions to the comparative research project that led to this Article. The Authors also thank: Rosalie Sanderson and Russell Switzer for comments on an earlier draft of this Article; Loyola students Dorit Shaybani-Rad and Margaret Taslakhyan and Loyola librarians Laura Cadra, Joshua Phillips, Lisa Schultz, and Katie Thompson for research assistance; Marsha Battee, Bridget Klink, and Amy Nakano for administrative support; Dan Weiss for technical support; and John Baldwin, Sharon Fountain, Melissa Hagar, Valerie Henderson, Kristin Husmoe, Robert Horsting, Betsy Klampert, Adam Ryan, and David Schulbaum for product information about the electronic tax research platforms.

2. Professor of Law, Loyola Law School Los Angeles; Katherine.Pratt@lls.edu; JD, UCLA (1984), LL.M. (Taxation), NYU (1989); LL.M. (Corporate Law), NYU (1990).

3. Associate Clinical Professor and Director, Tax LL.M. Program, Loyola Law School Los Angeles; Jennifer.Kowal@lls.edu; JD, UCLA (1996).

4. Director, Law Library and Professor of Law, Loyola Law School Los Angeles; Daniel.Martin@lls.edu; JD, University of Texas (1989), M.L.S. Indiana University (1976).

Part I of this Article provides background information regarding the development of the new electronic tax research platforms and explains our project and methodology. Part II compares the primary and secondary source content offered on the five electronic platforms and compares various types of free tax information that are available on the internet. Part III compares the various functionality features offered on the five electronic platforms. Part IV illustrates the differences in search results obtained by using the various electronic platforms to research a topical tax research question. Part V discusses the factors that are relevant when designing an electronic tax research system and makes recommendations about combining the electronic tax research platforms to create a workable virtual tax library.

A chart in Appendix A provides a side-by-side comparison of the primary source content available on the five electronic tax research platforms. The chart includes search pathways and date restrictions for each type of content. A chart in Appendix B provides a side-by-side comparison of the functionality features offered by each platform. The chart includes quick reference guides for initiating various types of searches, as well as user support information for each platform.

*(Note to readers who are unfamiliar with SSRN:* You can download the full-text article free from SSRN. First, you must register on SSRN, which is quick, easy, and free. Go to <http://www.ssrn.com/>; the registration link is in the upper left part of the screen. After you register, return to this abstract. Scroll down to the very bottom of the page on which this abstract appears and click on the “download the document from” link to one of the SSRN sites. This will allow you to download the full-text document at no charge.)

## INTRODUCTION

Technological advances are rapidly transforming the world in which we live and work, including the world of tax research. The first generation of LexisNexis and Westlaw electronic tax research platforms has been supplanted by a much more sophisticated second generation of electronic tax research platforms, including improved LexisNexis and Westlaw tax research platforms and new electronic tax research platforms offered by the Bureau of National Affairs (BNA), Commerce Clearing House (CCH) and RIA (formerly Research Institute of America).<sup>5</sup>

The new electronic tax research platforms constitute a virtual tax library that offers tax researchers much of the content and functionality of a physical tax library, as well as some functionality a physical tax library cannot provide. The content available in the new virtual tax library (including primary sources, authoritative treatises, BNA portfolios, and periodicals) is more comprehensive and more current than the content in the physical tax libraries of many private firms.<sup>6</sup> Also, the improved functionality of the electronic tax research platforms allows a researcher to browse the electronic content in the virtual tax library in the same way one would browse a physical copy of a book, as an alternative to performing keyword searches. The electronic tax research platforms also offer a search functionality advantage that a physical tax library cannot provide, by directly linking various related primary and secondary sources, including authoritative treatises, on specific tax topics.

Using the new virtual tax library to do tax research can benefit tax researchers in several ways. First, effective use of the new electronic tax research tools can increase the efficiency of tax research and reduce the cost of performing tax research. Second, the new electronic tax research tools can help tax researchers ensure that their information is complete and current, which is critical given the daunting complexity of the tax law and speed with which the tax law changes. Third, the new electronic platforms offer tax researchers the convenience of performing tax research in any location with internet access.

Many tax professionals have not adapted their tax research techniques to effectively utilize the new virtual tax library. One impediment to adoption of the new electronic platforms is the dearth of objective

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5. Jasper L. Cummings, Jr., *Legal Research in Federal Taxation*, 109 *Tax Notes* 335, 338-340 (Oct. 17, 2005).

6. Jack Cummings observes that the new electronic tax research platforms currently are more like bookstores than public libraries, because the electronic tax research platforms offer the most popular tax research sources, but do not provide everything one might require to do tax research. *Id.* at 337. A comprehensive library collection includes many seemingly obscure tax sources that are sometimes essential for answering a tax research question. For a comprehensive list of print tax sources a law school library collection may include, see Katherine Pratt, *Federal Tax Sources Recommended for Law School Libraries*, 87 *L. Libr. J.* 387 (1995).

comparative information about each of the five major electronic tax research products: (1) LexisNexis; (2) Westlaw; (3) RIA Checkpoint; (4) CCH Tax Research NetWork (CCH); and (5) BNA Tax Management Library (BNA).

This Article provides a comparison of the content and functionality of these five electronic tax research products, to reduce the search costs of evaluating and comparing the various platforms. In addition, this Article makes recommendations about combining the electronic tax research platforms to create a workable virtual tax library.

Part I of this Article provides background information regarding the development of the new electronic tax research platforms and explains our project and methodology. Part II compares the primary and secondary source content offered on the five electronic platforms and describes various types of free tax information that are available on the internet. Part III compares the various functionality features offered on the five electronic platforms. Part IV illustrates the differences in search results obtained by using the different electronic platforms to research a topical tax research question. Part V discusses the factors that are relevant when designing an electronic tax research system and offers advice about how to combine the various platforms.

## I. BACKGROUND AND METHODOLOGY

### A. *The development of new and improved electronic tax research databases*

The development of new and improved electronic tax research databases has transformed the processes for conducting tax research.<sup>7</sup> In the “old days” of tax research, a tax researcher physically visited the law library to search in the large numbers of books on the shelves. Generally, the tax researcher initiated searches by consulting code section indexes or topical indexes, or by consulting secondary sources and working backwards to primary sources. A tax researcher conducting a thorough search had to read many different primary and secondary sources in many different books.<sup>8</sup>

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7. For an introduction to federal tax research, see Gail Richmond, *Federal Tax Research* (7th ed. 2007), Gail Richmond, *Federal Tax Research*, in *Fundamentals of Legal Research* (Roy M. Mersky & Donald Dunn eds., 8th ed. 2002), Cummings, *supra* note 5, and two Georgetown University Law Library tax research guides: (1) Georgetown Law Library, *Federal Tax Research Guide*, at [http://www.ll.georgetown.edu/guides/federal\\_tax.cfm](http://www.ll.georgetown.edu/guides/federal_tax.cfm); and (2) Georgetown Law Library, *Federal Tax Research Reference Chart*, at [http://www.ll.georgetown.edu/guides/fedtax\\_chart.cfm](http://www.ll.georgetown.edu/guides/fedtax_chart.cfm).

8. The types of tax sources in which a tax researcher typically would search have not changed. The key primary and secondary sources include: the unabridged Internal Revenue Code and Treasury Regulations; looseleaf services such as CCH Standard Federal Income Tax Reporter and RIA (formerly Prentice Hall) U.S. Tax Reporter; case reporters; Internal Revenue Bulletins; Cumulative Bulletins; Private Letter Rulings; legislative histories; treatises and other authoritative secondary

The keyword search functionality of the LexisNexis and Westlaw databases limited the effectiveness of those databases as an initial search tool, because the researcher had to know specific relevant keywords to effectively research a tax topic using the databases.<sup>9</sup> In addition, many of the most commonly used authoritative secondary sources were not included in the databases, which also limited the effectiveness of the databases as an initial search tool. In this environment, LexisNexis and Westlaw were used primarily to double check and update “book” research. It was generally considered a mistake to begin a tax research project by searching on LexisNexis or Westlaw, unless the tax researcher already knew a great deal about the specific research issue and could frame a precise keyword search inquiry.

The new generation of electronic tax research platforms, by contrast, can be used to initiate tax research in a manner that is remarkably similar to the traditional “book” research techniques. Tax researchers can now perform the traditional “book” research processes electronically, because the electronic tax research platform publishers have designed their products to provide tax researchers much of what books can offer, and more. The new electronic tax research functionality features include table of contents browsing, index browsing, and citation searches, often using templates. These features make it much easier to use electronic tax research platforms to gain an overview of an unfamiliar topic than was possible with more limited keyword searches.

In some respects (*e.g.*, cost, convenience, and currency of information), the virtual tax library can sometimes be superior to a physical library. As Jack Cummings has noted, however, the electronic tax research platforms currently include only the most popular types of tax research materials.<sup>10</sup> Thorough tax researchers still will need to do some of their research in physical books in physical libraries, but more and more tax research can be done electronically in an efficient, cost effective manner.

### *B. Our project and methodology*

Our project began when we read Jack Cummings’ October 2005 Tax Notes article, in which he described some of the features of the new and improved electronic tax research platforms.<sup>11</sup> We resolved to learn more

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sources, including BNA portfolios, Practicing Law Institute (PLI) publications, and journal articles; and tax citators.

9. In some cases, even knowing the relevant keywords was not sufficient, because various tax terms of art (*e.g.*, “property” and “control”) can have different meanings in different parts of the Code. Novice tax researchers often are unaware of this basic fact of tax research.

10. Cummings *supra*, note 5, at 337.

11. *Id.*

about the new electronic tax research platforms,<sup>12</sup> in part to update the tax research training we offer our Tax LLM students at Loyola Law School Los Angeles. In addition, the Tax Executives Institute requested that Loyola law professors prepare a half day program for TEI on new electronic tax research techniques.<sup>13</sup>

We began our project by setting up training sessions with representatives of the five major electronic tax research platforms: LexisNexis; Westlaw; RIA Checkpoint; CCH; and BNA.<sup>14</sup> We asked the representatives to explain and demonstrate the content and functionality of their electronic tax research platforms in detail. We also asked the representatives to identify the key relative strengths of their products.

After we completed our training sessions, we experimented with the various tax research platforms and compiled comparative information about the content and functionality of the various platforms. In addition, we “reverse engineered” a tricky tax research problem to discover how each of the tax research platforms performed in a more natural research setting. We also wanted to explore the extent to which the functional linkage available on the electronic tax research platforms could alert a tax researcher to an important current development that would change the answer to the research question posed. The research problem we designed was framed as a section 83 stock option issue,<sup>15</sup> although the answer to the research question depended critically on section 409A,<sup>16</sup> a relatively new Code section with which many income tax practitioners may be unfamiliar.

Following individual experimentation with the products, we met as a group to discuss our experiences and conclusions about the comparative strengths and weaknesses of the various platforms. Finally, we developed recommendations for combining the electronic tax research tools to achieve effective tax research results.<sup>17</sup>

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12. Our project focused on electronic tax research techniques for performing U.S. federal income tax research. We did not compare the electronic platforms with respect to other specialized types of tax research, such as state tax research or international tax research.

13. We presented this TEI program on the Loyola Law School Los Angeles campus in 2006. David Burch joined us for all of the training sessions and assisted with additional research for the comparative project.

14. Although we all are experienced LexisNexis and Westlaw tax researchers, we wanted to offer all five publishers an equal opportunity to demonstrate their electronic tax research products.

15. See IRC § 83. In this Article, references to sections are to the Internal Revenue Code and references to Regulation sections are to Treasury Regulation sections.

16. See IRC § 409A.

17. We conducted most of the research for this project in the spring of 2006. Recently, BNA launched a new platform called the Tax and Accounting Center and LexisNexis launched a new tax specific product called Tax Center. We corresponded with both BNA and LexisNexis to learn more about these revised platforms. There is



## II. COMPARISON OF CONTENT

The primary source content offered by the five electronic tax research platforms varies slightly from platform to platform, but the secondary source content varies quite significantly from platform to platform.

### A. Primary sources available on the five electronic tax research platforms

The five electronic tax research platforms generally offer the key primary sources essential for performing tax research, although the date limitations for each type of primary source vary by platform. (The Content Chart in Appendix A shows the date limitations for various types of primary sources in the databases of the five platforms.) Each platform offers the complete Internal Revenue Code and Treasury Regulations, revenue rulings and revenue procedures, notices and announcements, private letter rulings, and opinions in tax cases. They also offer other miscellaneous administrative pronouncements.

There are material differences among the platforms with respect to legislative histories, however. LexisNexis and Westlaw are the only platforms to offer comprehensive tax legislative histories.<sup>18</sup> The legislative histories available on the RIA Checkpoint, CCH, and BNA platforms are much more limited. BNA offers legislative history only for the most recent tax legislation and scattered references to legislative histories in its Tax Management Portfolios. RIA and CCH have selective legislative histories, but these legislative histories usually “are not citable”<sup>19</sup> because they lack some of the information that would be required for a citation.

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a great deal of overlap between the new and old platforms, but we think that certain features offered on these platforms would be useful to tax researchers. In our view, the most useful new features on the revised BNA platform are: (1) new direct links to News and Commentary from the BNA Portfolios; and (2) enhanced display options, including both split screen and full screen views. The new LexisNexis Tax Center platform offers certain advantages as compared to the more comprehensive LexisNexis platform. Tax Center isolates primary and secondary tax sources in a smaller tax focused database and allows researchers to search all Tax Center sources (including CCH, Tax Analysts, Matthew Bender, and Kleinrock sources) at the same time.

18. Westlaw’s legislative histories go back as far as 1948, and LexisNexis’ legislative histories go back as far as 1954.

19. Cummings, *supra* note 5, at 341 (RIA and CCH legislative histories “are not citable” because “they do not state the number of the report, much less its official citation and page number”). As we researched the hypothetical discussed in Part IV of this Article, we discovered that journal articles in the RIA Checkpoint database similarly are not “citable” because the database does not provide all of the information required for a proper citation. See *infra* note 67.

All but one of the platforms provide an easy, streamlined “citor” for checking the subsequent history of many primary tax sources. Westlaw and LexisNexis provide the KeyCite and Shepard’s citation systems, respectively. Both are comprehensive citators with useful features, such as KeyCite’s “depth of treatment” stars. RIA Checkpoint and CCH each provide their own tax citators, but these citators do not cite to as many sources as the KeyCite and Shepard’s citation systems. BNA has no citator and requires a new search of the database (using the source to be cite checked as a search term) to check subsequent history. For example, if one wanted to determine whether Rev. Rul. 60-31<sup>20</sup> had been superceded or rendered obsolete, it would be necessary to run a search using “Rev. Rul. 60-31” as the search term.

It is often helpful to supplement the citators with additional database searches, to catch subtle changes in the law. For example, although a citator search of Rev. Rul. 60-31 indicates that the revenue ruling has not been superceded or rendered obsolete, the enactment of section 409A could potentially change the outcome of some of the compensation deferral mechanisms discussed in Rev. Rul. 60-31.

#### *B. Secondary sources available on the five electronic tax research platforms*

There are significant differences in the secondary sources available on the various electronic tax research platforms. Secondary sources include treatises, portfolios, and journal articles written by tax experts from academia and the practicing tax bar. The most commonly used authoritative secondary sources are tax treatises and tax practice journals published by Warren, Gorham & Lamont<sup>21</sup> and other publishers,<sup>22</sup> BNA Tax Management Portfolios, BNA Daily Tax Report, Tax Analysts’ Tax Notes Weekly Magazine, Tax Analysts’ Tax Notes Today, Practising Law Institute (PLI) publications, proceedings of the major tax institutes (*e.g.*, NYU and USC), and law review articles. Secondary sources also include much less authoritative content prepared by the editorial staff of various legal publishers, such as CCH and RIA.

In recent years, there has been a consolidation of legal publishers, with numerous tax publishers being acquired by larger publishers. Currently:

- (1) Reed Elsevier owns (a) LexisNexis and (b) Matthew Bender;
- (2) Thomson owns (a) Westlaw, (b) RIA Checkpoint, (c) Warren, Gorham & Lamont, and (d) PPC (Practitioners Publishing Company); and

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20. Rev. Rul. 60-31, 1960-1 C.B. 174.

21. See, *e.g.*, Boris I. Bittker & James S. Eustice, *Federal Income Taxation of Corporations & Shareholders* (7th ed. 2000 & Supp. 2007).

22. See, *e.g.*, Martin D. Ginsburg & Jack S. Levin, *Mergers, Acquisitions & Buyouts: A Transactional Analysis of the Governing Tax, Legal, and Accounting Considerations* (2007).

(3) Wolters Kluwer owns (a) CCH, (b) Aspen, (c) Panel, (d) Kleinrock, and (e) LoisLaw.

The consolidation of the publishers has had an impact on the content available on the various electronic tax research platforms. For example, the highly authoritative Warren, Gorham & Lamont treatises and journals are available exclusively on the RIA Checkpoint and Westlaw platforms, due to the Thomson publishing affiliation. Despite the recent consolidation of tax publishers, some tax publishers, such as BNA and Tax Analysts, have remained independent. Some of these independent publishers have contracted to make their print content available on specific electronic research platforms. For example, Tax Analysts content is available exclusively on the LexisNexis platform. BNA, on the other hand, allows electronic subscribers to add its Tax Management Portfolios to any of the other electronic tax research platforms.

All five platforms offer specific sources (as well as functional features) that researchers can use to update their research results.<sup>23</sup> The current developments sources often include both editorial content and convenient links to underlying primary sources.

The electronic platforms can be divided into two groupings: (1) the tax specific electronic platforms, including BNA, CCH, and RIA Checkpoint; and (2) the comprehensive legal research electronic platforms, including LexisNexis and Westlaw. A comparison of the secondary source content on each of the five platforms follows.

### *1. The tax specific electronic platforms*

#### *a. BNA*

The BNA electronic platform offers two types of extremely helpful secondary sources. First, the BNA database includes the detailed and comprehensive BNA Tax Management Portfolios.<sup>24</sup> The BNA database does not include other commonly used types of authoritative treatises or journals. Second, the BNA database includes the Daily Tax Report, BNA's daily tax newsletter.

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23. BNA offers the BNA Daily Tax Report and a Weekly Report; CCH offers Federal Tax Day; RIA Checkpoint offers a "Newsstand" with daily updates, Federal Taxes Weekly Alert, and RIA Tax Watch; LexisNexis offers Tax Analysts Tax Notes Today and Tax Notes Weekly Magazine; and Westlaw offers the BNA Daily Tax Report (by separate subscription) and RIA's Federal Taxes Weekly Alert.

24. The BNA Tax Management Portfolios are divided into three series: (1) the U.S. Income series; (2) the Foreign Income series; and (3) the Estates, Gifts, and Trusts series. All references in this Article to the BNA portfolios are to the U.S. Income series.

In our opinion, the lack of additional authoritative secondary sources makes it difficult to use BNA as a stand-alone tax research platform. However, we do regard the BNA portfolios as an essential secondary tax research source. We would like to have access to the BNA portfolios electronically, but can live without electronic access to the portfolios, as long as we have access to the hard copies of the BNA portfolios in our school's law library collection. We also think that access to either the BNA Daily Tax Report or Tax Analysts' Tax Notes Today is an essential tax research tool. (We have a slight preference for Tax Notes Today, but either of the two daily newsletters is fine.<sup>25</sup>) BNA content can be added to any of the other electronic research platforms.

*b. CCH*

The CCH electronic tax research platform offers the combined primary and secondary source content found in its popular print looseleaf service, the Standard Federal Income Tax Reporter. This series is a compilation of IRC sections and Treasury Regulations, some legislative history, and explanations and annotations prepared by CCH editorial staff.

CCH's offerings of authoritative secondary sources are somewhat limited. Although CCH is affiliated with Aspen Publishers, not all Aspen treatises are available in the CCH database. For example, the CCH database does not include the Henderson & Goldring treatise, *Tax Planning for Troubled Corporations*.<sup>26</sup> The most useful secondary sources currently available on the CCH electronic platform are *Taxes* magazine and the following Aspen and Panel treatises: (1) Ginsburg & Levin, *Mergers, Acquisitions & Buyouts*;<sup>27</sup> (2) Garlock, *Federal Income Taxation of Debt Instruments*;<sup>28</sup> (3) Ferguson, Freeland & Ascher, *Federal Income Taxation of Estates, Trusts & Beneficiaries*;<sup>29</sup> and (4) Isenbergh, *International Taxation: U.S. Taxation of Foreign Persons and Foreign Income*.<sup>30</sup> In our opinion, CCH's federal tax research database does not include a large enough

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25. As Paul Weiss librarian Russell Switzer noted, in comments he submitted to us, tax researchers often search in Tax Notes Today to access primary sources that are otherwise difficult to access.

26. Gordon D. Henderson & Stuart J. Goldring, *Tax Planning for Troubled Corporations: Bankruptcy and Non-Bankruptcy Restructurings* (2006).

27. *Supra*, note 22. Access to this treatise is only available by separate subscription to a special "Mergers & Acquisitions" database.

28. David C. Garlock, *Federal Income Taxation of Debt Instruments* (5th ed. 2005 & Supp. 2007).

29. M. Carr Ferguson, James J. Freeland, & Mark L. Ascher, *Federal Income Taxation of Estates, Trusts, & Beneficiaries* (3rd ed. 1998 & Supp. 2007).

30. Joseph Isenbergh, *International Taxation: U.S. Taxation of Foreign Persons and Foreign Income* (3rd ed. 2002).

collection of authoritative secondary sources to use CCH as a stand-alone electronic platform for performing federal income tax research.<sup>31</sup>

*c. RIA Checkpoint*

RIA Checkpoint offers a looseleaf series that is similar to CCH's. The RIA looseleaf series, the U.S. Tax Reporter, is a compilation of the Code and Regulations, some legislative history, and brief explanations and annotations prepared by RIA editorial staff. RIA Checkpoint also offers a second looseleaf set, the Federal Tax Coordinator, with detailed explanations prepared by RIA editorial staff. This series does not include primary source material, but includes citations to primary sources. RIA Checkpoint also offers the BNA Daily Tax Report as its daily tax newsletter.<sup>32</sup> The authoritative secondary sources offered by RIA include the entire Warren, Gorham & Lamont library (which includes over 60 tax treatises and over a dozen tax journals).

Compared to BNA, both CCH and RIA Checkpoint offer more comprehensive tax research platforms with extensive looseleaf sets and various secondary sources. Why then, does there seem to be greater "buzz" in the practicing tax community about RIA Checkpoint than about CCH?<sup>33</sup> We think the buzz is attributable to the fact that RIA Checkpoint offers superior content in the area of *authoritative* secondary sources. As Jack Cummings has noted, secondary materials prepared by a publishing company's editorial staff are not comparable to secondary materials prepared by expert authors, such as Jim Eustice, "whose words you can take to the bank."<sup>34</sup> Cummings observes that authoritative expert authors: (1) can be counted on to analyze a particular rule correctly; and (2) are unlikely to omit important caveats or related material.<sup>35</sup> The authoritative secondary sources in the CCH database (including Taxes magazine and the treatises listed above) are much more limited in number and scope than the authoritative secondary sources in the RIA Checkpoint database, which includes the

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31. This Article does not compare the electronic research platforms as tools for performing tax research in other specialized areas, such as state and local tax. Practitioners have told us that CCH is their preferred platform for state and local tax research, in part due to the comprehensive state and local tax source content (including annotations) offered by CCH.

32. Access to the Daily Tax Report is not included as part of the standard RIA Checkpoint package, but is available to RIA Checkpoint subscribers for an additional fee.

33. In an informal survey of tax practitioners affiliated with Loyola's Tax LLM program, many told us that their firms had recently subscribed to RIA Checkpoint, to supplement the firms' LexisNexis and Westlaw subscriptions.

34. Cummings, *supra* note 5, at 340.

35. *Id.*

complete Warren, Gorham & Lamont library of treatises and journals.<sup>36</sup> In our opinion, RIA has a distinct competitive advantage over CCH with respect to authoritative secondary source content.

## *2. The comprehensive legal research electronic platforms*

Westlaw and LexisNexis offer much more comprehensive content. In addition to tax specific content, both platforms offer general law reviews (subject to varying date limitations) and extensive primary and secondary source coverage of subject areas related to tax.

### *a. LexisNexis*

The LexisNexis database typically includes the tax specific content offered on the CCH electronic platform.<sup>37</sup> LexisNexis also provides the Tax Analysts library,<sup>38</sup> which includes Tax Notes Today, Tax Notes Weekly Magazine, and other useful content, such as petitions filed in the U.S. Tax Court. In addition, LexisNexis offers various other useful tax specific secondary source content, including: (1) selected PLI publications; (2) some Wiley publications; and (3) most Matthew Bender publications, including materials from major tax institutes such as the USC and NYU tax institutes. LexisNexis also offers a compilation feature, called “Listen to the Experts,” which includes articles from tax institute proceedings, ABA Tax Section meeting presentations and papers, and various Tax Analysts publications.

### *b. Westlaw*

The Westlaw database includes the tax specific content offered on the RIA Checkpoint platform.<sup>39</sup> Westlaw also offers various other useful tax specific secondary source content including: (1) an extensive library of PLI publications, including materials from PLI programs; (2) a comprehensive collection of trial documents and briefs; (3) selected Congressional Research

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36. We note, however, that RIA Checkpoint does not currently provide enough information to properly cite the helpful journal articles in its database. See *infra* note 67.

37. The sources available on the LexisNexis platform vary, depending on the subscriber’s subscription package. LexisNexis subscribers can tailor their subscriptions to suit their research needs, by subscribing to specific sources from menus of available sources. This menu of available sources includes CCH materials, for which the subscriber would be charged. In the analysis of LexisNexis content in this Article, we assumed that a researcher would have access to the content in a typical law school library LexisNexis subscription package, including CCH sources.

38. The Tax Analysts library is included in all LexisNexis subscription packages.

39. As with LexisNexis content, the specific content available to Westlaw subscribers varies depending on subscription packages.

Service (CRS) documents; and (4) Government Accounting Office (GAO) documents.

### *C. Free tax information available on the internet*

Various tax sources are available at no charge on the internet, but the limited free content available on the internet is no substitute for the comprehensive primary and secondary source content on the five electronic platforms. In addition, the content that is available on free tax oriented websites often is out of date and generally is difficult to search, due to the limited functionality features of most of the free websites.<sup>40</sup>

Although a tax researcher cannot use internet searches exclusively to perform tax research, a researcher often can find useful supplemental information with internet searches. Tax researchers can access relevant tax content on: (1) federal government websites; (2) tax scholarship websites; (3) websites maintained by think tanks and tax policy organizations; and (4) tax oriented blogs. Searching these websites can be particularly helpful if the research topic is a tax policy topic or current developments topic. This section provides some links to specific websites.

#### *1. Federal government sites<sup>41</sup>*

<http://www.irs.gov/> (IRS forms and publications and miscellaneous other sources)<sup>42</sup>

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40. Some university websites have seemingly helpful links to tax content, but the linked tax content often is out of date. See, e.g., [http://www.law.cornell.edu/wex/index.php/Income\\_tax](http://www.law.cornell.edu/wex/index.php/Income_tax) (Legal Information Institute of Cornell University Law School, last visited Jan. 22, 2008) and <http://www.lib.umich.edu/govdocs/fedtax.html> (University of Michigan Library, Federal Government Resources, Taxation, last visited Jan. 22, 2008). More general internet tax searches typically yield mostly irrelevant and out of date information, although a “Google” “advanced search” using a specific search phrase occasionally yields useful content. Some commercial tax related websites include compilations of links to various other tax websites, but the linked tax information is spotty and often out of date. See, e.g., <http://www.taxsites.com> (last visited Jan. 22, 2008) and [http://www.virtualchase.com/topics/tax\\_law.shtml](http://www.virtualchase.com/topics/tax_law.shtml) (last visited Jan. 22, 2008). Some sites provide no search functions at all and those that do permit a keyword search do not permit sophisticated terms and connectors searches or natural language searches.

41. The government site list does not include a public site for the Congressional Research Service (CRS), which is part of the Library of Congress, because CRS reports are provided directly to Congress, not to the public. Members of Congress who have access to CRS reports can make the reports public, however. A nonprofit civil liberties group called the Center for Democracy and Technology collects CRS reports that have been made public by members of Congress and posts the CRS reports on a public site, <http://www.opencrs.com/about.php> (last visited Jan. 22, 2008). Selected CRS reports also are available on the Westlaw and CCH platforms.

<http://www.gpoaccess.gov/cfr/retrieve.html> (CFRs)

<http://www.whitehouse.gov/omb/> (Office of Management and Budget)

<http://www.ustreas.gov/> (Department of the Treasury)

<http://www.ustreas.gov/offices/tax-policy/> (Department of the Treasury Office of Tax Policy)

<http://www.ustreas.gov/offices/tax-policy/miscdocs.shtml> (miscellaneous tax policy documents, including Blue Books)

<http://www.ustreas.gov/offices/tax-policy/testimony/>(Congressional Testimony)

<http://www.house.gov/jct/> (Joint Committee on Taxation)

<http://waysandmeans.house.gov/> (House Ways and Means Committee)

<http://finance.senate.gov/> (Senate Finance Committee)

<http://www.gao.gov> (Government Accountability Office)

<http://www.gao.gov/special.pubs/longterm/> (Government Accountability Office site for Our Nation's Fiscal Outlook: The Federal Government's Long-Term Budget Imbalance, with links to various publications and projects)

<http://www.ustaxcourt.gov/> (Tax Court)

<http://www.ustaxcourt.gov/UstcInOp/asp/HistoricOptions.asp> (Tax Court opinions<sup>43</sup>)

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42. The I.R.S. website also provides links to the text of the Internal Revenue Code, but the links are, surprisingly, to out of date versions of the Code. Starting at the main page of the I.R.S. website, <http://www.irs.gov/>, a tax researcher can access the IRC with the following search pathways: > click on top line "Tax Professionals" link > click on left side "Code, Regs & Guidance" link > click on "Internal Revenue Code" link. This takes the researcher to <http://www.irs.gov/taxpros/article/0,,id=98137,00.html>. Caveats on the main IRC page indicate: (1) the linked IRC materials are current through 2003; and (2) "[t]he IRC materials retrieved via the above functions are provided as a public service by the Legal Information Institute of Cornell University Law School], not the IRS."

43. The Tax Court internet database includes regular and memorandum opinions published from 09/25/95 and summary opinions published from 01/01/01. The database is searchable by case name, but not by keyword, which limits the usefulness of the database as a primary tax research tool.



[http://www.ustaxcourt.gov/court\\_schedules/](http://www.ustaxcourt.gov/court_schedules/) (Tax Court docket)

## 2. Tax scholarship sites<sup>44</sup>

Many experienced tax researchers are unaware of the new tax scholarship websites, which can be used to access current tax scholarship. Both websites listed below require the user to register at no charge. After registering, the user can search the databases, using keyword or author searches, to find works in progress and published papers.

<http://www.ssrn.com/> (Social Science Research Network)<sup>45</sup>

[www.bepress.com](http://www.bepress.com) (Berkeley Electronic Press, also known as BEPress)<sup>46</sup>

## 3. Think tank and tax policy organization sites<sup>47</sup>

<http://www.cbpp.org/> (Center on Budget and Policy Priorities)

<http://www.urbaninstitute.org/> (Urban Institute)

<http://www.brookings.edu/> (Brookings Institution)

<http://www.brookings.edu/es/taxpolicycenter.htm> (Tax Policy Center)

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44. In addition to these two free websites, other websites that require paid subscriptions offer tax scholarship content. These websites include: (1) <http://www.nber.org/> (National Bureau of Economic Research); and (2) <http://heinonline.org/front/front-index> (“Law Journal Library” database in Hein Online includes pdfs of law review articles published in 1,200 journals).

45. A tax researcher can locate SSRN abstracts by clicking on the “e-library” link, filling in the search template, and clicking on “Search.” To access the full-text article, the researcher scrolls down to the bottom of the page on which the abstract appears and clicks on one of the SSRN download links. The full-text of most SSRN documents is available at no charge. SSRN charges a fee for certain types of documents, such as NBER articles. If the tax researcher is affiliated with an institution that has a subscription to NBER, the researcher can go to the NBER website and download the full-text article at no additional charge.

46. From the BEPress webpage, a researcher can locate abstracts by clicking on the “Go to Journals” button, clicking on the “Research Now” link, choosing “Advanced Search,” filling in the search template, and clicking on “Search.” The full-text document may be downloaded from the article abstract.

47. Numerous other tax policy organizations are listed on the left side of the TAXPROF blog’s main page. The tax experts at tax policy organizations do a very good job of compiling information on tax policy issues. Tax researchers should be aware, however, that the documents produced by these organizations typically are a mix of objective and persuasive writing and are frequently intended to advance the ideological agenda of the organization.

<http://www.aei.org/> (American Enterprise Institute)

<http://www.cato.org/> (Cato Institute)

<http://www.ctj.org/blog/> (Citizens for Tax Justice)

<http://www.taxfoundation.org/blog/> (Tax Foundation)

<http://www.taxhistory.org/thp/thpwebsite.nsf/Web/THPHome?OpenDocument>  
(Tax History Project, sponsored by Tax Analysts)

#### 4. Tax oriented blogs<sup>48</sup>

<http://taxprof.typepad.com/> (TAXPROF blog<sup>49</sup> maintained by Professor Paul Caron, University of Cincinnati College of Law)

<http://mauledagain.blogspot.com/> (MauledAgain blog maintained by Professor Jim Maule of Villanova University School of Law)

<http://ataxingmatter.blogs.com/tax/> (TaxingMatter blog maintained by Professor Linda Beale of Wayne State University Law School)

<http://danshaviro.blogspot.com/> (Start Making Sense blog maintained by Professor Dan Shaviro of New York University School of Law)

<http://www.rothcpa.com/taxupdates.php> (Roth CPA blog maintained by Roth & Company, P.C.)

In addition to these specific sites, tax researchers should be aware of the helpful online tax research guides maintained by the Georgetown University Law Library.<sup>50</sup>

### III. COMPARISON OF FUNCTIONALITY

The amount of content available on an electronic platform is related to the functionality of the platform. The enormous amount of content in the Westlaw and LexisNexis databases, most of which is not tax specific, can

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48. We have listed just a few of the many tax oriented blogs. The listed blogs are those with which we are most familiar from our own tax research. Tax researchers who would like to look at other tax blogs can follow numerous blog links provided on the blogs listed in the text.

49. The TAXPROF blog is widely recognized in the academic tax community as the leading tax oriented blog. The main page of the TAXPROF blog includes many useful links to other tax blogs, tax policy organization websites, and government websites.

50. See *supra*, note 7.

make it more difficult to navigate around the databases and find all of the relevant tax sources. Effective research in these large databases sometimes requires knowing exactly where to look for relevant sources. For example, a tax researcher would not find a relevant Tax Court petition on the LexisNexis database unless the researcher knew to go to the Tax Analysts library, click on the Tax Court petitions link, and run the search there.

RIA Checkpoint and CCH offer many of the tax specific primary and secondary sources that are useful for tax research, but do not offer the same breadth of content as Westlaw and LexisNexis, particularly with respect to general legal sources. The more limited content in these databases makes it easier to navigate around the databases and find relevant sources, however. The most extreme example of the inverse relationship between breadth of content and functionality is the BNA platform; the fact that the variety of BNA's authoritative secondary source content is so limited makes it easy to know where to search, since it most often will be in the Tax Management Portfolios.

#### *A. Similarities among functional features offered by the five electronic tax research platforms*

There are similarities among some of the functionality features of the electronic tax research platforms. The publishers have designed the electronic platforms to mimic hard copy "book" research as much as possible. All five platforms offer some version of a "tab" format, for quickly locating various types of content in the databases.<sup>51</sup> All five also display table of contents for primary and secondary sources, generally showing content by chapter, subchapters and pages. In addition, all five allow a researcher to browse pages as in a hard copy book.

All five electronic platforms offer multiple modes to search for specific information in the databases:

- (1) *Keyword searches.* As one would expect, all five platforms offer traditional keyword searching using Boolean terms and connectors. LexisNexis and Westlaw also offer natural language searching capability.
- (2) *Citation searches.* All five platforms also offer searching by citation, often using templates.
- (3) *Table of contents searches.* In keeping with the goal of mimicking print research as much as possible, all of the platforms offer table of contents searching for treatises, the IRC and Treasury Regulations. All five platforms display tables of contents and allow a

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51. CCH and LexisNexis offer the most tabs and Westlaw and RIA the fewest.

researcher to “drill down” to the next level of contents (and eventually to text) by clicking on specific subheadings in the displayed table of contents.

(4) *Index searches.* RIA, CCH, and BNA all permit searching of topical indices. LexisNexis and Westlaw do not offer tax specific topical indices to search, due to the large amount of content in their databases. LexisNexis offers no index searching and Westlaw offers index searching only of statutes and regulations.

In addition, all five electronic platforms: (1) offer easy steps to review, print, export and save data; (2) permit a researcher to print text with references attached and save data and searches on the publisher’s server; and (3) provide e-mail updates from saved searches to allow a researcher to automatically update search results.

All five electronic platforms also offer user support. Most offer technical support by phone, e-mail, and live chat. All generally offer “Help” and “FAQ” online, as well as training, online tutorials, and user guides. As might be expected, while all sales and technical support staff are generally helpful and knowledgeable, some are better than others.<sup>52</sup>

#### *B. Specific functionality features offered by each of the five electronic tax research platforms*

Each of the five electronic tax research platforms offers specific functionality features, described below.

##### *1. BNA*

The BNA platform offers internal linking, as the other platforms offer. Although the BNA platform offers fewer unique functionality features than some of the other platforms, two particularly helpful functionality features are: (1) new direct linking of the News and Commentary content from the Tax Management Portfolio content; and (2) recently enhanced display options, including both split screen and full screen views.

Users who like to use the BNA platform generally like it because of its Portfolio content, not because of its unique functionality features. When

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52. As we conducted our research for this Article, over a period of about a year and a half, we found that the expertise of the electronic publishers’ sales representatives varied considerably. (We typically worked with the electronic publishers’ law school sales representatives, rather than their private practice sales representatives.) During that period, there was no turnover of Loyola’s LexisNexis and Westlaw representatives, both of whom have years of experience. There was turnover of the representatives of the other platforms, however, which meant that we sometimes found ourselves working with novice representatives who were not very knowledgeable about the platforms. We found that the expertise and effectiveness of technical support staff also varies significantly.

the BNA content is added to the other platforms, researchers can search the BNA content using the more varied functionality features of the host platform.

## *2. CCH*

The CCH Tax Research NetWork functionality features include “Smart Relate” links to other types of documents (including Regulations, CCH Annotations, CCH Explanations, and Committee Reports) on the same topic and “Related Topics” links to other documents on related topics. The “Topic Navigator” allows a researcher to search a browsable, expandable topic index and locate all sources addressing a specific topic. The “CCH@hand” feature also enables users to have one-click access to CCH online materials from any MS Office application (Word, Excel, or Outlook).

## *3. RIA Checkpoint*

The functionality features of the RIA Checkpoint platform make it a “user-friendly” platform that is relatively easy to navigate, even for novice researchers. RIA Checkpoint’s “top line” links provide immediate access from a document to relevant sections in RIA “Explanations,” the RIA Federal Tax Coordinator, the IRC, Committee Reports, and Warren, Gorham & Lamont treatises. “Deep cite links” or “side line links” enable the user to drill down deeper into the topic, for example, from discussion of a section to discussion of a subsection. These links display other sources within RIA Checkpoint that discuss the subsection specifically. RIA also has a split screen feature that permits users to see the current document in the right side of the frame and contents (system navigation), document links, or current document outlines on the left side of the frame. It also offers an “in-place supplementation” feature, which allows users to update a document without having to perform a separate search.

## *4. LexisNexis*

LexisNexis is not designed specifically for tax researchers, but offers some functionality features that tax researchers often find helpful. The “atleast” feature in terms-and-connectors searching permits the user to specify that the relevant word appear in the document at least a minimum number of times (to focus on sources with more in-depth discussion of a topic). For instance “atleast 15(casualty loss)” would result in hits with the phrase “casualty loss” occurring 15 times or more. The LexisNexis “Search Advisor” helps users construct searches using a topical, menu-driven sequence of questions. LexisNexis also offers searchable headnotes (with issue summaries) for all case databases.

### 5. Westlaw

Westlaw also is a general electronic legal research platform, not a tax specific platform, but offers some functionality features that tax researchers find helpful. One well known feature is the topic and key number system that Westlaw uses to classify all American law. The Westlaw topic number for tax is 371, and the Westlaw key numbers for tax range from 2000 to 3714.<sup>53</sup> Tax researchers can use the topic and key number system (and headnotes, along with West digest information) to search the Westlaw database for cases in particular subject areas of federal income tax.

Westlaw also offers several other useful functionality features that are designed to help users quickly identify the most relevant related authority. These features include flags and a “star” system that ranks the relevance of citing authorities. The KeyCite system, which is used to update research, is the Westlaw analogue of the Shepard’s citation system offered by LexisNexis. The Keycite system includes graphics to illustrate the history of a case. The following slide shows Westlaw’s visual case history of *Murphy v. IRS*<sup>54</sup>

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53. Information on this the Westlaw Topic and Key Number system is contained in the Westlaw digests and in various editions of West’s Analysis of American Law.

54. 493 F.3d 170 (D.C. Cir. 2007).

The screenshot displays a Westlaw search result for the case *Murphy v. I.R.S.*, 493 F.3d 170. The page is viewed in Microsoft Internet Explorer. The Westlaw interface includes navigation tabs for Tax, Law School, Business & News, Tax (Corp), and California. The search result shows a "KeyCite Case" section with a hierarchy of cases:

- Murphy v. I.R.S.**, 493 F.3d 170 (D.C.D.C. Jul 03, 2007) - Rehearing en banc denied (Dec 14, 2007). Petition for Certiorari filed, 76 USLW 3224 (Nov 13, 2007) (OT 07-403). [View Document](#)
- Murphy v. I.R.S.**, 2006 WL 4032170 (D.C.D.C. Nov 22, 2006) - Rehearing denied, [2006 WL 4032170](#); [View Document](#); [View Document](#)
- Murphy v. I.R.S.**, 493 F.3d 170 (D.C.D.C. Aug 22, 2006) - Rehearing en banc denied (Dec 22, 2006). Remaining Case: [2006 WL 4032170](#); [View Document](#)
- Murphy v. I.R.S.**, 342 F.Supp.2d 206 (D.C.D.C. Mar 30, 2004) - [View Document](#)

At the bottom of the page, there is a "KeyCite this citation:" field with a "Go" button. The browser's taskbar shows the time as 2:45 PM.

Westlaw also offers a specific functionality feature, Regulations Plus, which is particularly helpful to tax researchers. The Regulations Plus feature provides direct links from temporary and final treasury regulations (but not proposed regulations) to related primary and secondary sources.

Various functionality features are compared in a chart in Appendix B

#### IV. COMPARISON OF TAX HYPOTHETICAL RESEARCH RESULTS

We drafted a research hypothetical to explore the content and functionality differences between the various electronic tax research platforms. We found that important sources or issues that are easily found when using one platform may not surface as easily or clearly when using other platforms, even when performing similar searches. The facts of the research hypothetical are as follows:

Rmail, a private company founded five years ago by private and institutional investors, created and developed a system for sending registered e-mails that would provide proof of mailing and receipt. Rmail has gone through several stages of financing from both portfolio and strategic investors. During the last two years, Rmail has developed a

growing market for its product, including contracts with several well-known large business organizations around the world.

Alex Kanan is the founder and CEO of Rmail. He owns approximately 20% of the outstanding stock. After reading a December 2005 article about the Google founders and their \$1 salaries, Kanan decided to forgo his 2007 salary and instead work for additional stock options.

On January 1, 2007, Kanan received options to purchase 10,000 additional shares of common stock at \$20/share. The options will vest ratably over the next two years on January 1, 2008 and January 1, 2009, provided that Kanan remains CEO of Rmail. The \$20/share exercise price is based on the value of the company used in the last round of financing, which occurred in July 2006.

Rmail has had informal discussions with several potential acquirers over the last two years, but so far none have moved forward. Rmail would like to take the company public sometime in 2008, depending on market conditions.

Kanan and Rmail have requested advice on the income tax consequences of the issuance of Kanan's options.

The first IRC section that typically springs to mind with respect to nonqualified stock options is section 83. Most experienced tax researchers would probably begin their research process with section 83. Novice tax researchers, on the other hand, may not know to look at section 83 and might begin by researching the tax treatment of "stock options" generally. These differing starting points can be important, depending on the platform being used.

The rest of this Part summarizes the results of researching our hypothetical, using the five electronic tax research platforms. For each platform, we have indicated many of the search pathways we followed to do our research and have included screen shots of some of the research results.<sup>55</sup>

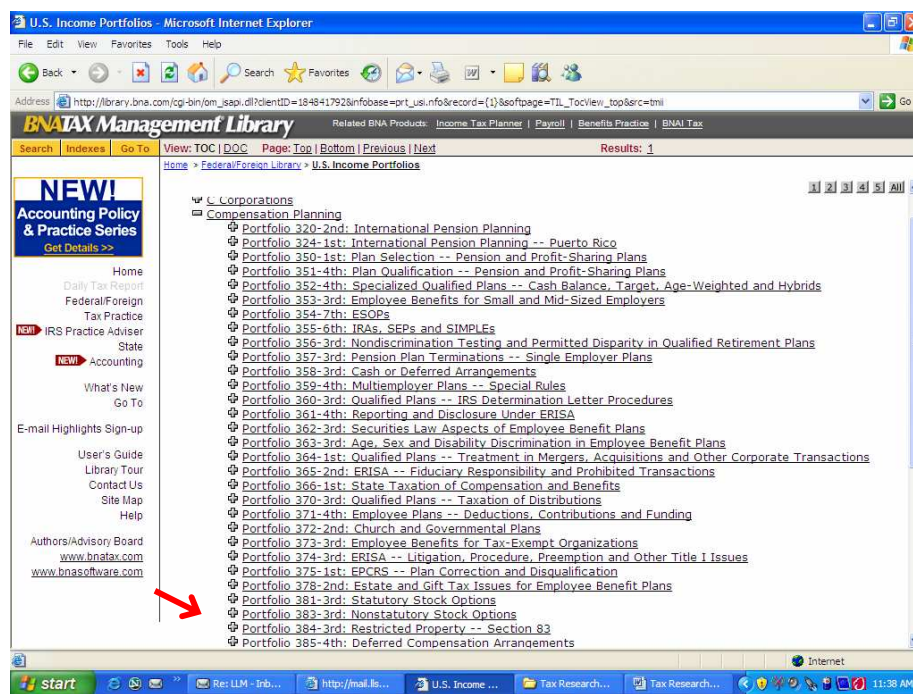
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55. We have created more than 70 screen shots of our research results using the various electronic platforms. In this Part, we have included only the most interesting screen shots. Readers who would like to see more of the screen shots can follow the pathways indicated in the text, or send us an e-mail request for our entire collection of screenshots.



### A. BNA research results

The topical organization of BNA's Tax Management Portfolios makes it easy to research even when little, perhaps not even the relevant code section, is known about a tax issue. We began our search by browsing in the table of contents for the BNA Tax Management Portfolios. Looking under the heading "Compensation Planning," we saw two portfolios that might be relevant: (1) Portfolio 383, Nonstatutory Stock Options;<sup>56</sup> and (2) Portfolio 384, Restricted Property – Section 83.<sup>57</sup>



We selected Portfolio 383 and clicked on its title to browse the table of contents of the portfolio. Section II of the portfolio addresses "Income Taxation of Nonstatutory Stock Options." Section III of the portfolio addresses "Option-Related Transactions." By scrolling down the table of contents, we found subsection C, "Section 409A and the American Jobs Creation Act of 2004," which includes a discussion of the application of section 409A to nonstatutory stock options. We clicked on the linked subheading in the table of contents to view the relevant sections of the portfolio. This part of the portfolio provides a detailed discussion of the

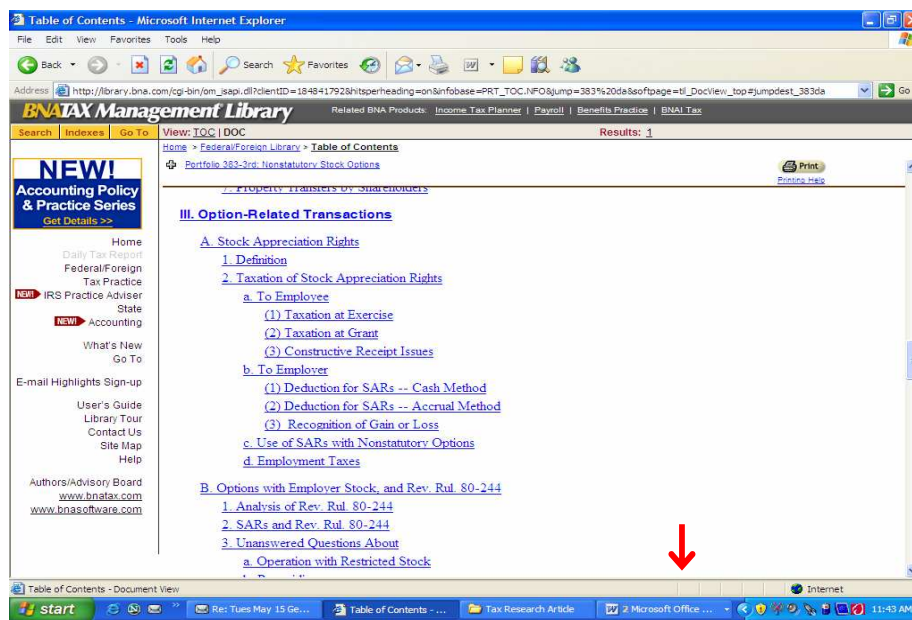
56. John L. Utz, Nonstatutory Stock Options, 383-3rd Tax Mgmt. (BNA).

57. John L. Utz, Restricted Property: Section 83, 384-3rd Tax Mgmt. (BNA).

section 409A rules and their applicability to nonqualified stock options. We clicked on links in the text of the portfolio to view section 409A and the final section 409A regulations (including the preamble to the regulations).<sup>58</sup>

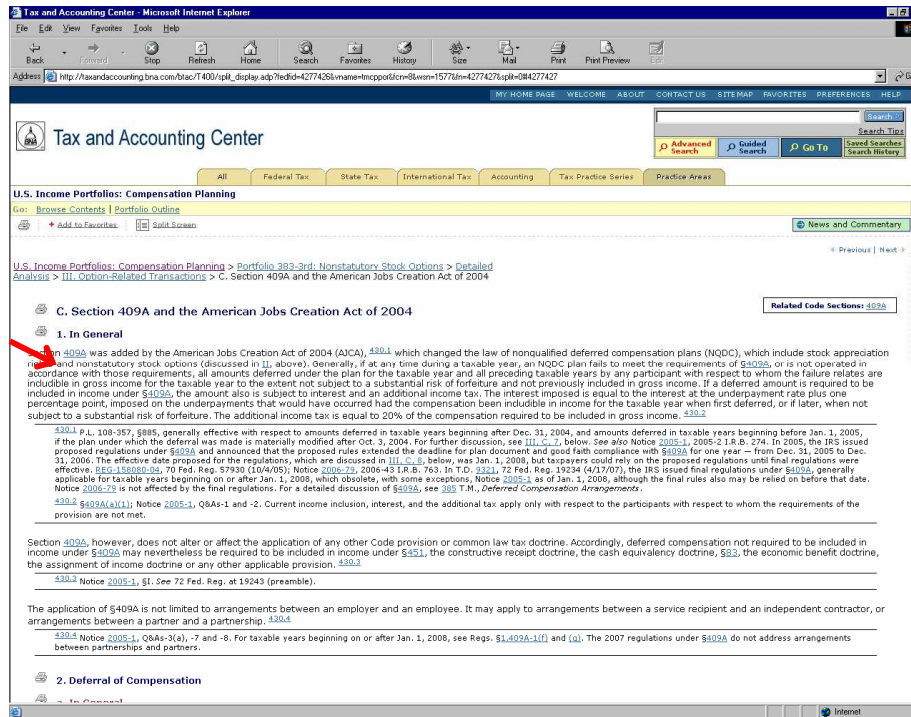
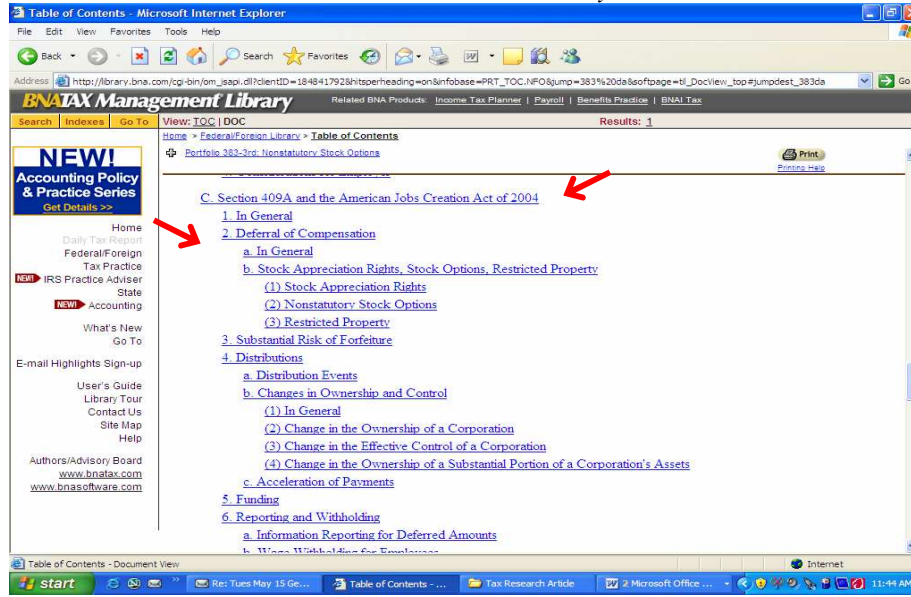
*Summary of search pathways:*

Home > Federal/Foreign Library > U.S. Income Portfolios<sup>59</sup> > “Compensation Planning” topical heading > Portfolio 383-3rd: Nonstatutory Stock Options (TOC view) > Click on TOC subheading III.C. “Option-Related Transactions; Section 409A and the American Jobs Creation Act of 2004” > click on section 409A and regulations links in the text.



58. The first two and fourth screen shots below show the results of our search on the BNA Tax Management Library platform. The third screen shot below looks different because it is a screen shot from the recently revised BNA platform, which is called the BNA Tax and Accounting Center. Although we did not update all of the screen shots from our original research, to reflect the look of recent revisions to the LexisNexis and BNA platforms, we included this screen shot from the revised BNA platform because it illustrates a useful new feature of the platform, the direct link (in the upper right corner of the screen shot) to News and Commentary from the BNA portfolios.

59. Table of Contents browsing.



We also searched in the table of contents of Portfolio 384, “Restricted Property -- Section 83.” Section III of the portfolio explains the operation of section 83. Scrolling down in Section V, “Interrelationship of

section 83 with Other Provisions,” leads to subsection D “Nonqualified Deferred Compensation Plans under section 409A.” This subsection contains a brief discussion of section 409A, as applied to nonqualified options, with a link to a detailed discussion of section 409A in Portfolio 385, Deferred Compensation Arrangements.<sup>60</sup>

Searching by index also offers a way to find the relevant portfolios without knowing which Code section applies. We found “Nonstatutory Stock Options” in the keyword index for the portfolios. This heading led us to a list of subtopics, including subheadings on: (1) options with a readily ascertainable FMV at grant; and (2) options without a readily ascertainable FMV at grant. These subheadings linked to subsections of Portfolio 383 and Portfolio 384 in which application of section 83 to options was explained, but did not link to the subsections of those two portfolios in which the section 409A issue was raised with respect to options.

*Summary of search pathways:*

Home > Federal/Foreign Library > Federal/Foreign Indexes > U.S. Income Portfolios Keyword Index > click on the letter “N” > click on “Nonstatutory Stock Options (NSOs)” > scroll down to index subheadings under “Readily ascertainable FMV” > click on links to Portfolio 383 and Portfolio 384.

Searching in the BNA Daily Tax Report is also a good way to look for current developments related to a research topic. Searching all issues of the BNA Daily Tax Report for “83 and options” yields many results, some of which are not relevant. However, about one page down from the top of the results are two hits for “IRS Final Rules (T.D. 9321) on 409A Nonqualified Deferred Compensation Plans.” Searching for “409A and options” yields many potentially useful articles as well.

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60. A. Thomas Brisendine, E. Thomas Veal, & Elizabeth Drigotas, Deferred Compensation Arrangements, 385-4th Tax Mgmt. (BNA).

*Summary of search pathways:*

Daily Tax Report > Search All Issues > keyword search of “83 and options” yields 1000 hits > scroll down to hits from 4/11/2007, to view final regulations under section 409A.

*Summary of alternate search pathways:* Daily Tax Report > Search All Issues > keyword search of “409A and options” yields 275 hits.

A citation search could provide another route to the relevant portfolios. From the home page, a researcher could click on “Go To,” which brings up a citation template with boxes in which to enter various types of citations. Entering “83” in the IRC box and clicking on “Go” would take the researcher to the text of section 83. Links to the portfolios are embedded in the text of section 83. A researcher could also access the portfolios with a citation search of Regulations section 1.83-7.

The BNA platform offers many different ways to access the relevant portfolios. Which of the alternative routes is best depends on how much is known about the research problem and the researcher’s preferences. Our first and second searches clearly identified the section 409A issue. The portfolios on section 83 and on Nonqualified Stock Options both discussed section 409A, which would alert a researcher to the issue, even if he did not know to look for it. The portfolios and the BNA Daily Tax Report provided quite

useful content, but we did not find most of the other secondary source content on the BNA platform to be particularly helpful.

### *B. CCH research results*

We started our research by browsing the Table of Contents of the Standard Federal Income Tax Reporter, which led us to section 83, Regulations section 1.83-7, and a “CCH Explanation” of the section 83 treatment of nonqualified options.

#### *Summary of search pathways:*

Federal Tax > CCH Explanations and Analysis > Standard Federal Income Tax Reporter (TOC view<sup>61</sup>) > Income – Secs. 61-90 > Property exchanged for services – Sec. 83 > Final-Reg 2007FED ¶6388, § 1.83-7., Taxation of nonqualified stock options > Click on link to “CCH Explanations” > Click on link to “Related Topics.”

Regulations section 1.83-7 provides the general rule that section 83 does not apply to the grant of a nonqualified stock option if the option does not have a readily ascertainable fair market value. Section 83 instead applies on the subsequent exercise of the option. A click on the “CCH Explanations” link yields explanatory text consistent with this understanding, and a click on the “Related Topics” link takes us to some broadly related topics. Importantly, the CCH editorial material does not alert the researcher to the potential interaction of section 83 and new section 409A.

Next, we formulated a keyword search (using the search term “83 and options”) and searched again in the Standard Federal Income Tax Reporter. This search produced 41 “hits,” the first of which was a “CCH Explanation” with a cross-reference to *Proposed* Regulations section 1.409A-1(b). We clicked on the first hit, to view the CCH Explanation, and clicked on a top line link to view the *final* section 409A regulations. (In other words, the internal links to proposed regulations sections, including section 1.409A-1(b), actually linked to the final regulations.)

#### *Summary of search pathways:*

Federal Tax > CCH Explanations and Analysis > Standard Federal Income Tax Reporter > keyword search of “83 and options” yields 41 hits > click on first hit, CCH Explanation ¶ 18,960.042 > click on top line link to “Regulations.”

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61. Table of Contents view.

The IRC and regulations indicate that section 409A accelerates inclusion of income for non-qualified deferred compensation and imposes interest and a 20% penalty unless the taxpayer meets rather burdensome election requirements, the timing of which is somewhat unclear.<sup>62</sup> The regulations also provide that a nonqualified stock option is generally outside of the scope of section 409A if it is not “in-the-money” at the time of the grant.<sup>63</sup> Under this rule, the tax treatment of the issuance of Kanan’s stock options depends on the fair market value of the underlying Rmail stock at the time the options were granted. The regulations provide rules for valuing the stock of a non-public company.<sup>64</sup> This search revealed that section 409A is clearly relevant, for purposes of providing tax advice regarding the issuance of the Rmail options.

We followed this search with a keyword search, using the search term “Options and 409A,” in a CCH content grouping called “Current Features and Journals.”<sup>65</sup> This search yields 92 hits, several of which provide further discussion of how section 409A applies to nonqualified stock options. A search of the excellent Ginsburg & Levin treatise, *Mergers, Acquisitions & Buyouts*, yielded one very useful and extended discussion of section 409A and how it applies to various compensation agreements.<sup>66</sup>

The results of these searches demonstrate that different searches produce different results. There is no warning of the section 409A issue in the Standard Federal Income Tax Reporter explanation of section 83. However, a keyword search for “83 and option” produced a section 409A discussion as the first hit. The third and fourth searches also were productive. The series of searches revealed important related primary sources, as well as relevant discussions and explanations.

### *C. RIA Checkpoint research results*

An easy way to begin researching on RIA Checkpoint is to go straight to the text of the relevant code section. We began our search by clicking on the “Research” tab and selecting “Federal” as the search practice area. We clicked on “Code & Regs” (under the heading “Find by Citation”

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62. IRC § 409A(1), Reg. § 1.409A-2.

63. Reg. § 1.409A-1(b)(5).

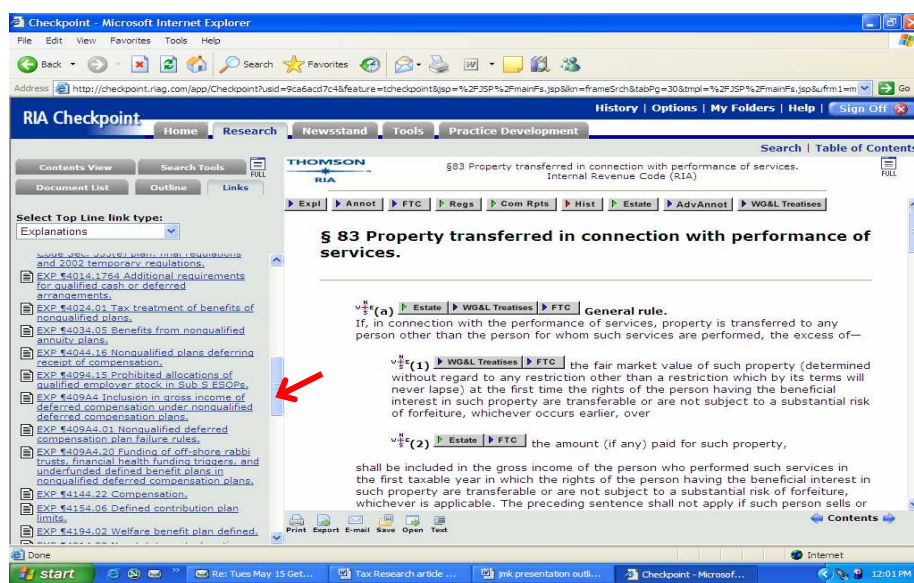
64. *Id.*

65. This CCH grouping includes the following income tax sources: (1) Federal Tax Day; (2) Tax Shelter Alert; (3) CCH Federal Tax Weekly; (4) TAXES, the Tax Magazine; (5) Corporate Business Taxation Monthly; and (6) ADVANCE RELEASE Documents.

66. See Ginsburg & Levin, *supra* note 22, at § 1505.6.2. At the time we performed our research, this treatise was included in the standard CCH federal tax research package. This treatise is now available on the CCH platform only if the user purchases a separate subscription to a specialized mergers and acquisitions database.

on the left hand toolbar), to bring up a citation search template. We typed “83” in the “Current Code” box and clicked on “Search.”

From the text of the Code section, a researcher can click on the top line buttons to link directly to: (1) explanations and annotations in the US Tax Reporter; (2) the Federal Tax Coordinator; (3) regulations; (4) legislative history; and (5) Warren, Gorham & Lamont treatises. Clicking on the top line “Expl” link produces links along the left side of the split screen to specific relevant paragraphs in the U.S. Tax Reporter. (In each paragraph number, the numbers to the left of the “4”<sup>67</sup> indicate the Code section to which the paragraph relates.) Midway down the left side list of links is a link from section 83 to ¶409A4, “Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.” Knowing only that section 83 applies to the issuance of nonstatutory stock options, a researcher thus would immediately see that section 409A may apply as well.

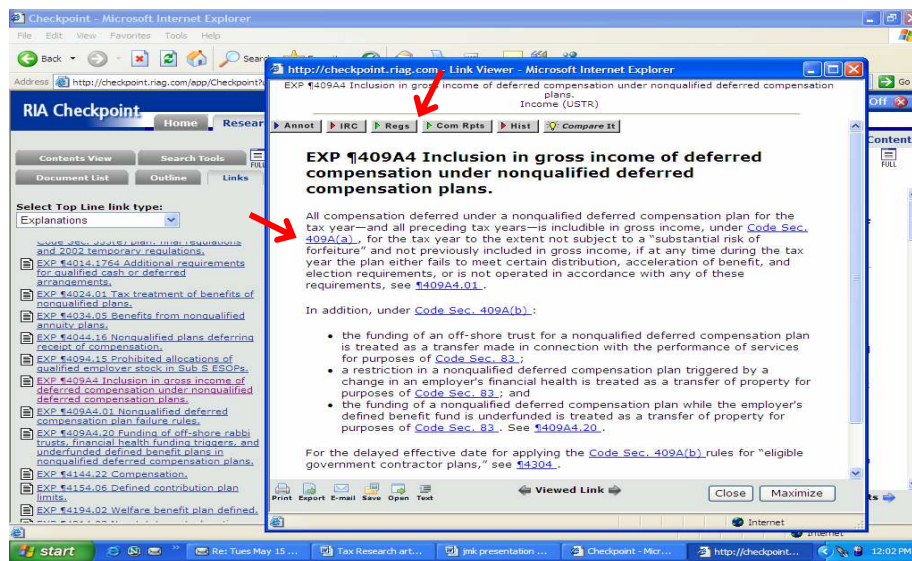


Clicking on the left side link to EXP ¶409A4 allows the researcher to view that paragraph, which provides an overview of section 409A, explains

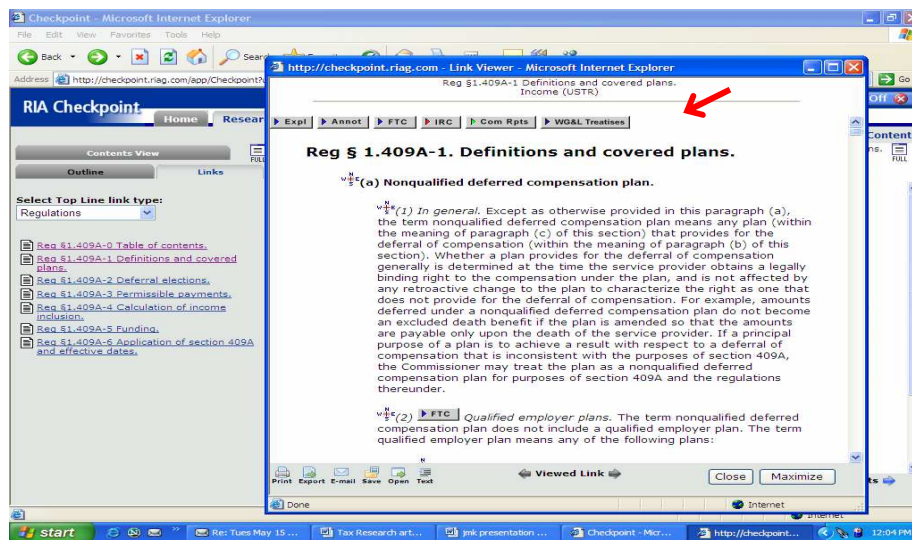
67. In the RIA Checkpoint system, there are left side links to other content, designated by paragraph numbers. These paragraph numbers include a series of numerals with a period in the middle of the paragraph number. The numeral just to the left of the period designates the type of linked content: (1) a “1” designates an IRC link; (2) a “2” designates a committee report link; (3) a “3” designates a treasury regulation link; (4) a “4” designates a U.S. Tax Reporter explanations link; and (5) a “5” designates a U.S. Tax Reporter annotations link.



how it applies to nonqualified deferred compensation plans, and cross references section 83.

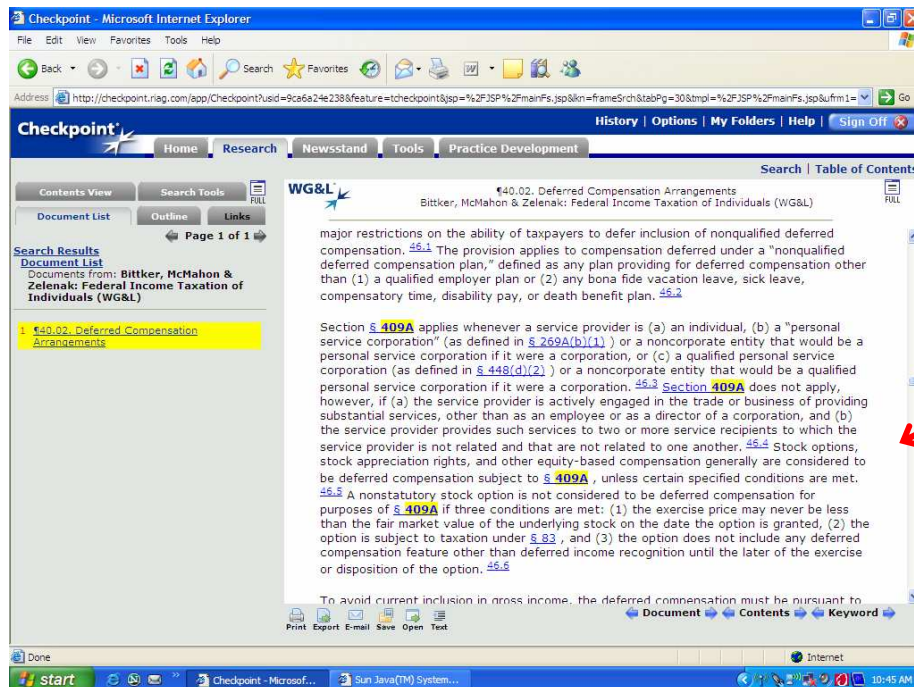


From this screen, the researcher can click on the “Regs” top line buttons to link directly to the section 409A final regulations.



From this screen, the researcher can click on the “WG&L Treatises” top line button to link directly to relevant explanations in Warren, Gorham & Lamont treatises. In this case, clicking on the “WG&L Treatises” button takes us to a description of section 409A in the Bittker, McMahon & Zelenak

treatise, Federal Income Taxation of Individuals.<sup>68</sup> The explanation in the treatise clearly indicates that section 409A may apply to the issuance of stock options.



#### Summary of search pathways:

Click on “Research” tab > select “Federal” as the search practice area > click on “Code & Regs” under the heading “Find by Citation” > type “83” in the citation search template “Code” box > click on “Search” > from the split screen view of the text of § 83, click on the left side link to EXPL ¶409A4 > from the view of EXPL ¶409A4, click on “Regulations” top line button > from the view of the section 409A regulations, click on the “WG&L Treatises” button.

Rather than beginning the search with the text of the code section, the researcher could begin the research with a keyword search. We also performed a keyword search, in the U.S. Tax Reporter and Federal Tax Coordinator, using the search term “83 and options,” with the results illustrated in the following screen shot.

68. Boris I. Bittker, Martin J. McMahon & Lawrence Zelenak, Federal Income Taxation of Individuals (3rd ed. 2002. & Supp. 2007).

The screenshot shows the RIA Checkpoint website interface. The search results are displayed in a table with two columns: 'Source' and 'Documents'. The 'Editorial Materials' section is expanded, showing a list of items. A red arrow points to the link 'Analysis / Federal Tax Coordinator (RIA)' which has 251 documents associated with it.

Source	Documents
<b>Editorial Materials</b>	
Federal Tax Coordinator (RIA)	
<a href="#">Analysis / Federal Tax Coordinator (RIA)</a>	251
<a href="#">Checklists (RIA)</a>	2
<a href="#">Client Letters (RIA)</a>	1
<a href="#">United States Tax Reporter - Explanations (RIA)</a>	48
<b>Archives Materials</b>	
<b>2005 (RIA)</b>	207
2004 (RIA)	
<a href="#">Annotations (as of 12/31/2004) (RIA)</a>	204
<a href="#">Internal Revenue Code History (as of 12/31/2004) (RIA)</a>	33
<a href="#">Explanations (as of 12/31/2004) (RIA)</a>	36
<a href="#">Federal Tax Handbook (as of 10/31/2004) (RIA)</a>	6
<a href="#">Internal Revenue Code (as of 12/31/2004) (RIA)</a>	8
2003 (RIA)	
<a href="#">Internal Revenue Code History (as of 12/31/2003) (RIA)</a>	26
<a href="#">Federal Tax Handbook (as of 10/31/2003) (RIA)</a>	4
<a href="#">Internal Revenue Code (as of 12/31/2003) (RIA)</a>	6
<a href="#">IRS Publications (as of 12/31/2003) (RIA)</a>	5
2002 (RIA)	
<a href="#">Internal Revenue Code History (as of 12/31/2002) (RIA)</a>	24

Clicking on the “Analysis/Federal Tax Coordinator” link produced a list of 251 hits. One of listed hits is ¶H3200.29, “When nonstatutory stock options (NSOs) defer compensation under the nonqualified deferred compensation plan failure rules.” This paragraph addresses nonqualified deferred compensation, citing section 409A, again highlighting the applicability of section 409A to stock options.

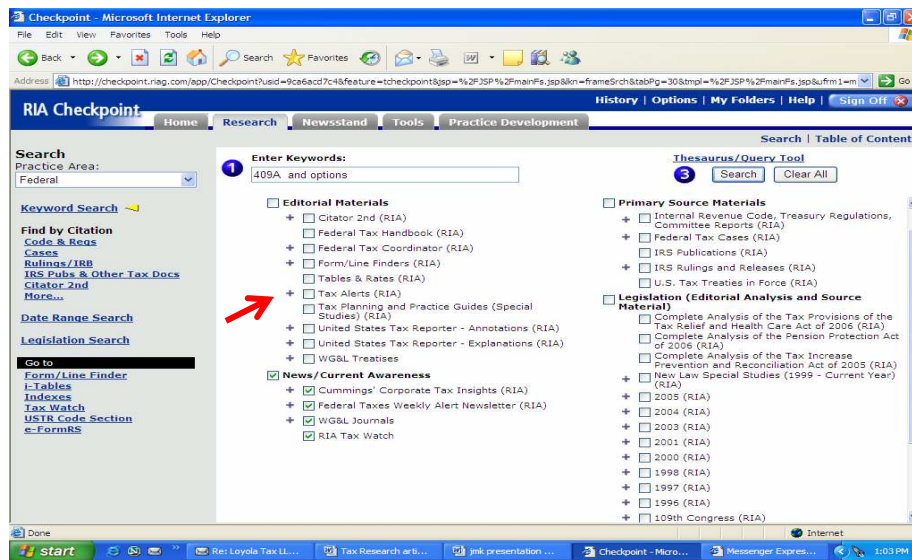
The screenshot shows a list of search results from the RIA Checkpoint website. A red arrow points to the result 'H-3200.29 When nonstatutory stock options (NSOs) defer compensation under the nonqualified deferred compensation plan failure rules.' The results are listed in a table with checkboxes to the left of each entry.

<input type="checkbox"/>	H-2864.2 Enforcement program against tax shelters involving transfers of nonstatutory options to related persons.
<input type="checkbox"/>	H-2864.3 Code Sec. 83 treatment of divorce-related transfers of nonstatutory options.
<input type="checkbox"/>	H-2865 Pre-exercise disposition of nonstatutory option without readily ascertainable fair market value at grant, in transaction not at arm's length—before July 2, 2003.
<input type="checkbox"/>	H-2866 When an option is transferred for income tax purposes.
<input type="checkbox"/>	H-2878 Stock warrants under the nonstatutory option rules.
<input type="checkbox"/>	H-2883 Deduction by employer of compensatory element of nonstatutory options.
<input type="checkbox"/>	H-2885 Compensation deduction by acquired company on exercise of nonqualified stock options granted by acquired company to its employees.
<input type="checkbox"/>	H-3200.2 Effective date of nonqualified deferred compensation plan failure rules.
<input type="checkbox"/>	<b>H-3200.29 When nonstatutory stock options (NSOs) defer compensation under the nonqualified deferred compensation plan failure rules.</b>
<input type="checkbox"/>	H-3200.31C Certain methods of valuing non-tradable service recipient stock are presumed reasonable under the nonqualified deferred compensation plan failure rules—proposed reg.
<input type="checkbox"/>	H-3200.50 “Substantial risk of forfeiture” defined for purposes of the nonqualified deferred compensation plan failure rules.
<input type="checkbox"/>	H-3218 Election to defer prospective earnings.
<input type="checkbox"/>	H-3236 Treatment of the income on, and deductions and credits from, “rabbi trusts.”
<input type="checkbox"/>	H-3246 Distributions from nonqualified trusts for purposes of nonqualified deferred compensation plans.
<input type="checkbox"/>	H-3309.1 Determining whether Code Sec. 457(f) or Code Sec. 83 applies to property transferred under a plan not eligible under Code Sec. 457.
<input type="checkbox"/>	H-3610 Corporation's intention at time of payment—compensatory intent.
<input type="checkbox"/>	H-3653 Year when employer's deduction for compensation paid in property is allowed.

*Summary of search pathways:*

Click on “Research” tab > select “Federal” as the search practice area > enter keyword term “83 and options,” check boxes next to Federal Tax Coordinator and US Tax Reporter, and click on “Search” > Click on “Analysis/Federal Tax Coordinator” link > click on ¶H3200.29, “When nonstatutory stock options (NSOs) defer compensation under the nonqualified deferred compensation plan failure rules.”

We followed this search with a keyword search, using the keyword term “409A and options,” in a content group called “News and Current Awareness,” which includes Warren, Gorham & Lamont journals, Federal Taxes Weekly Alert Newsletter, Cummings Corporate Tax Insights, and RIA Tax Watch. This search produced 99 hits, several of which included relevant discussion of section 409A in the context of nonqualified stock options. For example, clicking on the “Journal of Taxation” link took us to seven hits in the Journal of Taxation,<sup>69</sup> which included detailed discussion of section 409A.



69. Unfortunately RIA Checkpoint’s journal articles currently are not “citable,” as they provide only the issue date, but not the issue number or page number.

The screenshot shows the RIA Checkpoint search results page. The search terms are "409A and options". The results are categorized by source. A red arrow points to the "Journal of Taxation (WG&L)" link in the "Journal of Taxation (WG&L)" section.

Source	Documents
<b>News/Current Awareness</b>	
Cummings' Corporate Tax Insights (RIA)	0
Federal Taxes Weekly Alert Newsletter (RIA)	34
WG&L Journals	
<b>Business Entities (WG&amp;L)</b>	12
Business Entities Preview (WG&L)	0
Journal of Corporate Taxation (WG&L)	4
Journal of Corporate Taxation Preview (WG&L)	0
Journal of Taxation (WG&L)	7
Journal of Taxation Preview (WG&L)	0
Practical Tax Strategies / Taxation for Accountants (WG&L)	9
Practical Tax Strategies Preview (WG&L)	0
RIA Tax Watch	2
<b>Archive Materials</b>	
2005 (RIA)	2
2004 (RIA)	
Annotations (as of 12/31/2004) (RIA)	0
Internal Revenue Code History (as of 12/31/2004) (RIA)	3
Explanations (as of 12/31/2004) (RIA)	2
Federal Tax Handbook (as of 12/31/2004) (RIA)	1
Internal Revenue Code (as of 12/31/2004) (RIA)	0

The screenshot shows the RIA Checkpoint search results page for the "Journal of Taxation (WG&L)" source. The search terms are "409A and options". The results are listed as a document list.

Document Title	Date
<input type="checkbox"/> Final Regs. Under the New Section 409A Nonqualified Deferred Comp. Rules, Journal of Taxation, May 2007	May 2007
<input type="checkbox"/> Sweeping Changes for Pension Plan Funding and Other Rules, Part 2—Protections and Incentives, Journal of Taxation, Nov. 2006	Nov. 2006
<input type="checkbox"/> Tax-Exempt Entities' 457(f) Deferred Compensation Plans—Juggling Two Sets of Rules, Journal of Taxation, Jul. 2006	Jul. 2006
<input type="checkbox"/> Proposed Regulations Provide Significant Guidance for New Nonqualified Deferred Comp. Rules, Journal of Taxation, Feb. 2006	Feb. 2006
<input type="checkbox"/> Prop. Regs. on Partnership Equity for Services: The Collision of Section 83 and Subchapter K, Journal of Taxation, Aug. 2005	Aug. 2005
<input type="checkbox"/> New Section 409A—AJCA's Major Overhaul of Nonqualified Deferred Comp., Journal of Taxation, Mar. 2005	Mar. 2005
<input type="checkbox"/> Congress Enacts the American Jobs Creation Act of 2004, Journal of Taxation, Nov. 2004	Nov. 2004

### Summary of search pathways:

Click on "Research" tab > select "Federal" as the search practice area > enter keyword term "409A and options," check box next to "New/Current Awareness" content group, and click on "Search" > click on the "Journal of Taxation" link to view seven hits in the Journal of Taxation.

BNA Daily Tax Report is also available on RIA Checkpoint and is accessed from the "Newsstand" tab. Results of keyword searches are listed in

order of relevance, rather than by date. A keyword search of “409A and options” yielded the following results:

The screenshot displays the RIA Checkpoint search results for the query "409A and options". The interface is a Microsoft Internet Explorer window showing the RIA Checkpoint website. The search results are displayed in a table with the following columns: Score, Document Title (Relevance Order), and About Relevance... The results are sorted by relevance, with the highest score being 184. The top results include:

Score	Document Title (Relevance Order)
184	<a href="#">FTB Addresses Compliance Resolution Program (April 2, 2007)</a>
180	<a href="#">IRS Issues Misdated Stock Option Guidance Allowing Firms to Fix Section 409A Violations (February 9, 2007)</a>
178	<a href="#">Proposal From Six Professional Firm Members for IRS Guidance on Correcting Misdated Stock Options (January 18, 2007)</a>
178	<a href="#">SEC Grants Relief on Prompt Payment To Enable Compliance With Tax Code (March 30, 2007)</a>
175	<a href="#">Firms Suggest Resolution Guidelines To Settle Option Dating, Pricing Issues (January 18, 2007)</a>
174	<a href="#">Relief From 'Prompt Payment' Rules Granted for Adobe Offer to Employees (March 7, 2007)</a>
172	<a href="#">IRS Announcement 2007-18 Outlining New Initiative to Provide Tax Relief To Rank-and-File Employees Who Unknowingly Received Back-Dated Stock Options (February 9, 2007)</a>
169	<a href="#">Speakers Offer Suggestions for Corrections When Reporting Noncompliant Stock Options (January 26, 2007)</a>
163	<a href="#">Skillman, Richard - Letter 5 (January 11, 2007)</a>
163	<a href="#">Section 409A Rules Place New Restrictions on 'Linked Plans' (June 14, 2007)</a>
162	<a href="#">Greenwood, James - Letter 2 (February 22, 2007)</a>
161	<a href="#">Practitioners Cautious but Generally Positive Upon First Look at Final Section 409A Rules (April 11, 2007)</a>
160	<a href="#">Treasury Official Cites Retroactivity as One Potential Benefit to Final Section 409A Rules (April 16, 2007)</a>
160	<a href="#">ABA Tax Section Comments on Administration of I.R.C. Section 409A (June 18, 2007)</a>

The page also includes a sidebar with search statistics: Total Documents Found: 357, Search Terms: 409A and options, Sources: BNA Daily Tax Report & TaxCore: BNA Daily Tax Report & TaxCore Archives, and BNA Daily Tax Reprt. 64 documents. The search results are displayed on Page 1 of 2.

#### *Summary of search pathways:*

Click on “Newsstand” tab > select “Search Daily Tax Report” from split screen links on left > enter keyword term “409A and options,” and click on “Search” > click on “BNA Daily Tax Report and Tax Core” to view 64 hits.

RIA Checkpoint, like BNA and CCH, offers tax researchers several different ways to find relevant primary and secondary sources. The RIA top line links and split screen with left side links to paragraphs in the U.S. Tax Reporter provide very convenient linking of relevant primary and secondary sources, including authoritative secondary sources in the Warren, Gorham & Lamont library. Left side links to explanations of section 409A appeared next to the text of section 83, connecting sections 83 and 409A, although the section 409A issue was somewhat buried among numerous left side links. The excellent Warren, Gorham & Lamont sources enhanced the coverage of the section 409A issue.

### D. LexisNexis research results

We started with the text of section 83. On the assumption that most practitioners know how to perform basic tax searches on the LexisNexis platform, we have simply summarized the search pathways we used to view the full text of section 83.

#### Summary of search pathways:

Legal > Area of Law – By Topic > Taxation > select USCS Title 26 Internal Revenue Code Annotated (under the “Find Federal Statutes & Regulations” heading) > enter 83 in search term box, select TOC only, click on Search > click on link to section 83.



We also wanted to view the section 83 regulations, but found that LexisNexis does not provide direct links to those regulations from the full text view of section 83.<sup>70</sup> We ran the following new search to view the section 83 regulations.

70. The “Get a Document” tab sometimes can be used as a shortcut to quickly access a specific document. We tried to use Get a Document to quickly access the § 83 regulations, but were stymied by the rigid formatting requirements for such searches. Without knowing the magic format in which to frame a search for Reg. § 1.83, we could not perform the search. We tried clicking on the link that suggests Get a Document citation formats, but did not see “treasury regulations” listed under the “T” heading or “regulations” under the “R” heading. We subsequently learned

*Summary of search pathways:*

Legal > Area of Law – By Topic > Taxation > click on “Final and Temporary Regulations” (under the “Find Federal Statutes & Regulations” heading) > enter 1.83 in search term box, select TOC only, click on Search > click on links to the eight section 83 regulations > click on “§ 1.83-7 Taxation of nonqualified stock options.”

After reading the regulations, we returned to the full text of section 83. Several links appear on the right side of the screen, under the heading “Practitioner’s Toolbox.” Clicking on the “Interpretive Notes and Decisions” link brings up some brief explanatory notes about the general operation of section 83, along with some irrelevant case annotations. Clicking on “Related Statutes & Rules” activates links to nine IRC sections, one of which is section 409A. Clicking on the section 409A link yields a full-text view of section 409A, which cross-references section 83. Dropping into the middle of section 409A, which is a detailed and technical “employee benefits” section, makes it difficult for a tax generalist to completely understand the relationship between section 83 and section 409A. At this point, however, a tax researcher would know to do more research on section 409A.

We searched for the section 409A regulations, using a search like the search we used for the section 83 regulations. Regulations section 1.409A-1 provides that section 409A is not applicable to out-of-the-money options if section 83 applies to the grant or exercise of the option and other requirements are met.<sup>71</sup> The negative inference to be drawn from this language is that section 409A can apply to options that are in-the-money at the time of the grant.

At this point, we thought it might be helpful to consult treatises for discussion of the application of section 409A to stock options. We searched in the “Analysis, Law Reviews and Journals” file in the “Taxation” materials. We clicked on the link to Tax Planning for Corporations and Shareholders and entered a keyword search, using the search term “409A w/30 options.” This search produced one hit, a discussion of section 409A in the context of deferred compensation for executives, but this discussion did not address the applicability of section 409A to the issuance of stock options.<sup>72</sup>

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that the correct citation format to locate Treasury Regulations from Get a Document is “26 C.F.R. \_\_\_\_”, or in our example “26 C.F.R. 1.83-7.”

71. Reg. § 1.409A-1(b).

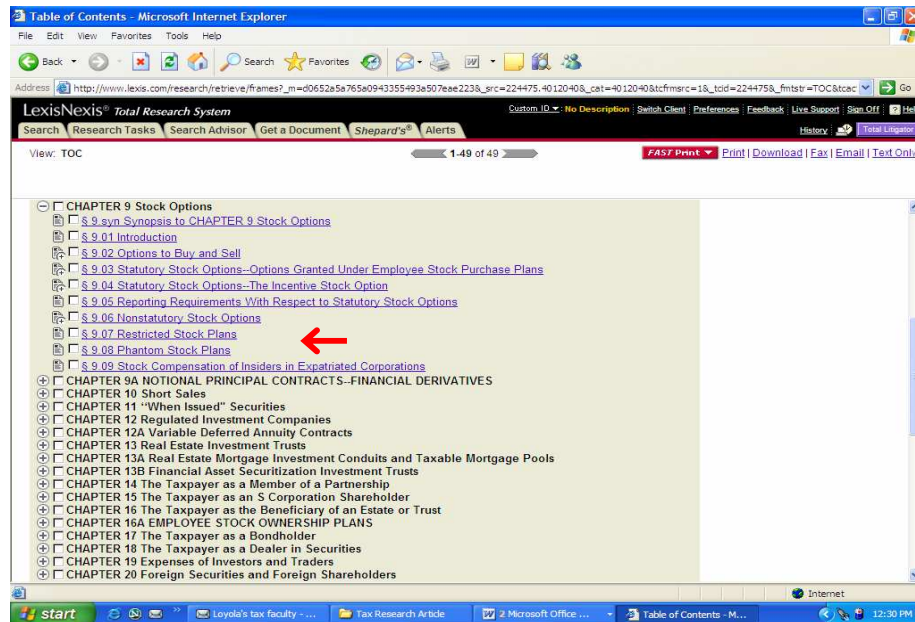
72. Zolman Cavitch & Matthew P. Cavitch, *Tax Planning for Corporations and Shareholders* § 5.05 (2006).



*Summary of search pathways:*

Legal > Area of Law – By Topic > Taxation > Search Analysis, Law Reviews & Journals > click on Tax Planning For Corporations and Shareholders > click on “+” to the left of the heading “Chapter 5 Methods of Compensating the Executive > click on “§ 5.05 How Deferred Compensation Agreements Can Be Used to Maximum Advantage”

We decided to browse through a list of other treatises on the LexisNexis database. On the first page of the “Analysis, Law Reviews and Journals” file, we clicked on the “By Subtopic” link to see a list of treatise topics. From this topic list, we clicked on “Investments and Securities.” From a list of treatises on this subtopic, we clicked on the title of a particular treatise, Taxation of Securities Transactions, and read the table of contents of the treatise, which included a chapter on “Stock Options.” We clicked on the “+” sign to the left of this chapter heading, to expand the table of contents. From this expanded table of contents, we clicked on “§ 9.06 Nonstatutory Stock Options.”<sup>73</sup>



The discussion of section 409A in this treatise included citations to other related sources, with links in the text and footnotes. We followed one

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73. Martin L. Fried, Taxation of Securities Transactions § 9.06 (2006).

of these links to Notice 2006-4.<sup>74</sup> “Shepardizing” this notice led us to eight other “treatises” in the LexisNexis database, including several relevant chapters from the proceedings of the annual NYU and USC Tax Institutes. We clicked on the links for the related sources and found that several of them provided detailed discussion of section 409A, directly addressed the applicability of section 409A to nonstatutory stock options, and raised some new section 409A issues to consider.<sup>75</sup>

Our next search was for the legislative history of section 409A. One simple route to the legislative history was through links in the text of the treatises.<sup>76</sup> When we did our original research, we clicked on a link, in the text, to the section 409A proposed regulations.<sup>77</sup> From the proposed

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74. Notice 2006-4, 2006-1 C.B. 307 (providing interim guidance on application of § 409A to stock options, prior to issuance of final § 409A regulations). For a more direct route to notices, use the search pathways like those described for proposed regulations *infra* at note 77.

75. See, e.g., Federal Income Taxation of Nonqualified Deferred Compensation Plans After The American Jobs Creation Act of 2004, Notice 2005-1, the First Proposed Regulations and Other Tidbits, in N.Y.U. Annual Inst. on Fed. Tax’n 64(S)-3 (2006); and Equity Compensation Issues -- Demons and Dilemmas, in N.Y.U. Annual Inst. on Fed. Tax’n 64-28 (2006).

76. As an alternate route to the legislative history, one can easily access the legislative history of § 409A by searching for the full text of § 409A and clicking on the “History” link that appears under the “Practitioner’s Toolbox” heading on the right side of the screen:

*Summary of search pathways:*

Legal > Area of Law – By Topic > Taxation > select USCS Title 26 Internal Revenue Code Annotated (under the “Find Federal Statutes & Regulations” heading) > enter 409A in search term box, select TOC only, click on Search > click on link to § 409A > click on link to History.

77. 70 Fed. Reg. 57930 (proposed Oct. 4, 2005). (When we did our original research, the final 409A regulations had not yet been issued.) Alternative searches could be used to access the proposed regulations. On the LexisNexis database, a researcher has to use different types of searches to locate (1) proposed regulations and (2) final and temporary regulations.

*Summary of search pathways to access final and temporary regulations:*

Legal > Area of Law – By Topic > Taxation > click on “Final and Temporary Regulations” (under the “Find Federal Statutes & Regulations” heading) > enter the number of the regulation in search term box, select TOC only, click on Search > click on links to the regulations.

regulations, we clicked on a link to the text of Public Law 108-357 (the American Jobs Creation Act of 2004),<sup>78</sup> and from that text we clicked on links to the related legislative history, in particular, to the Conference Report.<sup>79</sup> This series of searches produced numerous helpful primary sources and authoritative secondary sources.

*Summary of search pathways:*

Legal > Area of Law – By Topic > Taxation > Search Analysis, Law Reviews & Journals > By Subtopic > Investments and Securities > Taxation of Securities Transactions > click on “+” sign to the left of heading for “Chapter 9 Stock Options” to expand the TOC > click on “§ 9.06 Nonstatutory Stock Options” > from footnote 1.2, click on link to Notice 2006-4 > click on the “I” to the left of the notice heading to begin Shepard’s search > click on link to citations of the notices in treatises > from the list of eight additional “treatises” citing Notice 2006-4, click on each link to view the related “treatise” text > from the “treatise” footnotes, click on link to “70 FR 57930” for section 409A proposed regulations > from text of 70 FR 57930, click on link to the statute enacting section 409A, “Public Law 108-357” > click on “108 CIS Legis. Hist. P.L. 357” link for legislative history > scroll down to conference report citation > click on link to “CIS No. 04-H783-13” for text of the conference report, H. Rep. 108-755.

When researching current developments, we also like to run searches in Tax Notes Weekly Magazine and Tax Notes Today. We ran keyword searches in each publication, using the search term “409A w/30 options.” The searches produced 92 hits in Tax Notes Weekly and 283 hits in Tax Notes Today. Some of these hits led us to useful information about the application of section 409A to the issuance of stock options. Several of the hits also led us to discussion of pending legislation that could change the

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*Summary of search pathways to access proposed regulations:*

Legal > Area of Law – By Topic > Taxation > Find Federal Administrative Materials > Federal Tax Cases, IRS Decs., Regulations, Legislation and IRS Manual > enter keyword search “1.409A-1 and proposed.”

This line of research produces seven hits, including: (1) several notices (e.g., Notice 2006-4); (2) 72 FR 19234 (final § 409A regulations issued on April 17, 2007); (3) 70 FR 75090 (Dec. 19, 2005 correction to earlier notice of proposed rulemaking); and (4) 70 FR 57930 (Oct. 4, 2005 notice of proposed rulemaking and notice of public hearing).

78. American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004).

79. H.R. Rep. No. 108-755 (2004) (Conf. Rep.).

consequences of the issuance of Rmail stock options.<sup>80</sup> Of course, sorting through several hundred hits takes both time and patience.

*Summary of search pathways:*

Legal > Area of Law - By Topic > Taxation > Search Analysis, Law Reviews & Journals > Federal > Tax Analysts > Tax Analysts Tax Notes Weekly > terms and connectors keyword search of “409A w/30 options”

*Summary of search pathways:*

Legal > Area of Law - By Topic > Taxation > Search Analysis, Law Reviews & Journals > Federal > Tax Analysts > Tax Analysts Tax Notes Today > “Continue with your search” > terms and connectors keyword search of “409A w/30 options”

We also searched for relevant law review articles in the “Tax Law Review Articles, Combined” file in the LexisNexis database. Our keyword search, using the search term “409A w/30 options,” produced nine hits, several of which were potentially relevant.<sup>81</sup>

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80. See, e.g., Thomas Jaworski, Tax Deductions From Executive Stock Options Concern Lawmakers at Senate Hearing, 2007 Tax Notes Today 109-1 (2007).

81. See, e.g., Richard Ehrhart, Section 409A – Treasury “Newspeak” Lost in the “Briar Patch,” 38 J. Marshall L. Rev. 743 (2005) (arguing that Congress did not intend change in the treatment of stock options when it enacted § 409A).

Search - 9 Results - 409A w/30 options - Microsoft Internet Explorer

Address: http://www.lexis.com/research/retrieve/frames?\_n=86aac2c5dcb39e555f47bd6dec314e83cvc=bl&form=boob&fnstr=vCITE&doomum=18\_startdoc=1&vchg=dGLvltz-zSKAWIS

LexisNexis Total Research System

Search Research Tasks Search Advisor Get a Document Shepard's Alerts

FOCUS™ Terms Search Within Original Results (1-9) Go Advanced...

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Source: Taxation > Search Analysis, Law Reviews & Journals > Law Reviews & Journals > Tax Law Review Articles, Combined

Terms: 409A w/30 options (Edit Search | Suggest Terms for My Search)

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1. Copyright (c) 2006 University of Florida Florida Tax Review, Special Issue, 2006, 8 Fla. Tax Rev. 5, 68473 words, ARTICLE: Recent Developments in Federal Income Taxation: The Year 2005, Ira B. Shepard \* and Martin J. McMahon, Jr. \*\*\* ... Section 83, and Stock Options 1. Section 409A adds a new ... adds new § 409A which modifies the taxation of nonqualified ... options, incentive stock options and employee stock purchase ... 04. a. Section 409A guidance provides transition ... risk of forfeiture... Stock options, stock appreciation rights, and ... compensation subject to § 409A, unless certain specified ... A nonstatutory stock option is not considered to be deferred ... for purposes of § 409A if the following conditions have been met: ( ... underlying stock on the date the option is granted, (2) the option is subject to taxation under § 83, and (3) the option does not include any deferred ...
2. Copyright (c) 2005 University of Florida Florida Tax Review, Special Issue, 2005, 7 Fla. Tax Rev. 47, 44621 words, ARTICLE: Recent Developments in Federal Income Taxation: The Year 2004, Ira B. Shepard\* and Martin J. McMahon, Jr.\*\*\* ... options, incentive stock options and employee stock purchase ... 04. a. Section 409A guidance provides transition ...
3. Copyright (c) 2005 The John Marshall Law School The John Marshall Law Review, Spring, 2005, 38 J. Marshall L. Rev. 743, 13888 words, ARTICLE; SECTION 409A-TREASURY "NEWSPEAK" n1 LOST IN THE "BRIAR PATCH" n2, Richard Ehrhart\* ... limitation. ... In enacting 409A, Congress did not empower ... Treasury Regulation 1.83-7(a) provides that an option grant is a taxable transfer of property if the option has a readily ascertainable ...

Page: Select a Reporter Doc 9 of 9 Term of of

Done Internet

start Netscape 3M changes to exam... Welcome to Westlaw... Search - 9 Results - 4... 9:17 PM

As Jack Cummings has noted, finding a well written law review article on a specific tax research topic can be extremely helpful.<sup>82</sup> On the other hand, law review articles can quickly become dated, due to the long lead time for publication. When researching a developing topic, such as section 409A, a tax researcher sometimes finds that law review articles are less helpful than more current articles in practice oriented publications or recent working papers posted on the Social Science Research Network.<sup>83</sup>

*Summary of search pathways:*

Legal > Area of Law – By Topic > Taxation > Search Analysis, Law Reviews & Journals > Law Reviews & Journals > Tax Law Review Articles, Combined > enter keyword search “409A w/30 options.”

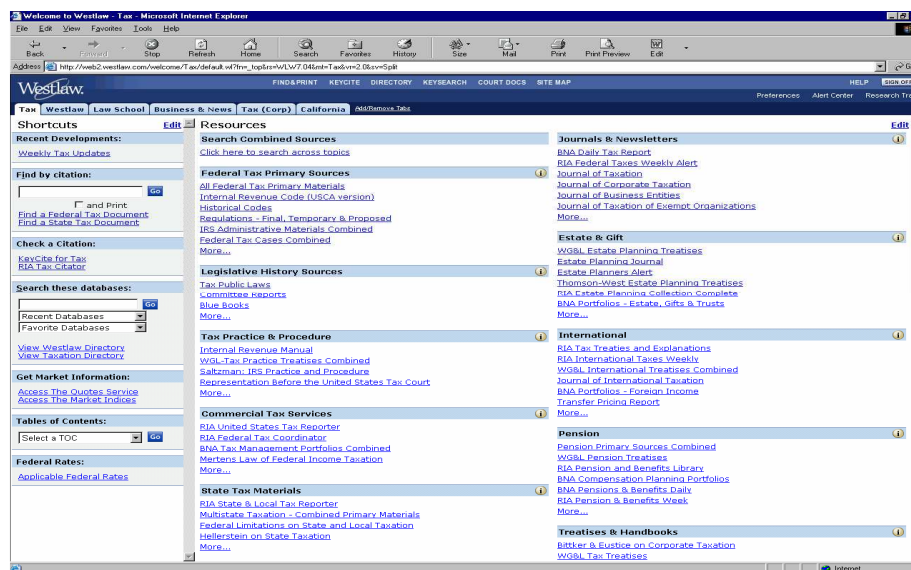
82. Cummings, supra note 5, at 343 (noting that a relevant article written by an authoritative expert is “a thing of beauty” for a tax researcher).

83. Of the nine articles located in the law review file, none were written after the issuance of the final § 409A regulations in April, 2007. A search in the SSRN “e-library” for “409A and options” does not yield any articles written after the issuance of the final § 409A regulations, but does yield a February 2007 working paper in which the authors criticize the proposed § 409A regulations. Daniel I. Halperin & Ethan Yale, *Deferred Compensation Revisited* (Georgetown Univ. Law Ctr., Business, Economics and Regulatory Policy Working Paper Series, Research Paper No. 969074, 2007), available at <http://ssrn.com/abstract=969058>.

Our search results demonstrate that LexisNexis is an extremely comprehensive platform, containing sources that the individual “tax specific” platforms do not offer. The large amount of content on the LexisNexis database can sometimes make it more difficult to find relevant sources, however. LexisNexis does link related sources, but in a way that requires more research steps than are required to do comparable research on the tax specific platforms, especially RIA Checkpoint.

### E. Westlaw research results

The "Tax" tab provides a convenient starting point for tax research using Westlaw. As you can see from the screen shot below, the Tax tab main page includes links to many different types of primary and secondary sources, including many of the most useful tax research sources in the RIA Checkpoint database.



We began by searching for the text of section 83. When we clicked on the “Internal Revenue Code” link (under the "Federal Tax Primary Sources" heading), a search template appeared. We entered “83” in the “IRC section” box and clicked on “search Westlaw.” On the next screen, the full text of section 83 appears on the right, and various links to related primary and secondary sources appear on the left.

The screenshot shows the Westlaw website interface. The left sidebar contains a navigation menu with the following categories and links:

- Print List
- Links for 26 USCA § 83
- Full Screen List
- Edit Search | Locate in Result
- Stock Acquired as Compensation
- Corpus Juris Secundum: Internal Revenue
- Am.Jur.2d: Federal Taxation
- Cases
  - Last 60 Days
  - Notes of Decisions
  - Additional Citations Cases
  - Critical Court Documents
- Analysis
  - Law Reviews
  - American Law Reports (ALR)
  - Treatises and Forms
- Legislative History
  - Tax Amendments
  - Editor's Notes
  - Bill Drafts
  - Reports and Related Materials
- Statutes
  - Cross References
- Administrative
  - Administrative Code
  - Federal Register
  - Agency Opinions and Decisions
- West Key Numbers

The main content area displays the text of Section 83, including subsections (a) and (b). A red arrow points to the 'Administrative' link in the sidebar.

At this point, a researcher might be tempted to start clicking on the various links to related sources, but that approach would be inefficient at this stage of the research because it would produce a large amount of irrelevant section 83 material.<sup>84</sup> A better approach is to proceed to the relevant section 83 regulations, to narrow the scope of the related linked sources. The link in the bottom left corner for "Administrative Code" conveniently links directly to the section 83 regulations.<sup>85</sup> We clicked on that link to view the regulations.

#### Summary of search pathways:

Tax > Federal Tax Primary Sources > Internal Revenue Code > enter "83" in "IRC Section" box and click "search Westlaw" > click on section 83 link > click on "Administrative Code" near bottom of links on left side > click on hit #13, for section 1.83-7.

84. A possible exception is the link to "Cross References" under the heading "Statutes." Clicking on this link would produce 17 hits, the third of which is § 409A. The cross reference to § 83 in § 409A would alert the researcher to the possible connection between the two sections.

85. As an alternate, less direct route to the regulations, a tax researcher could: click on "Regulations – Final, Temporary & Proposed" (under the "Federal Tax Primary Sources" heading on the Tax tab main page); enter the relevant regulation number (in this case, "1.83") in the "Regulation Section" search template box; and click on the links for the regulation sections that seem relevant. In this case, we would click on the link for Reg. § 1.83-7.

The screenshot shows a Microsoft Internet Explorer browser window displaying the Westlaw website. The address bar shows the URL: [http://web2.westlaw.com/Find\(Default.vi?DB=10161888&DocName=26+CFR+§+1%2E83%2D7&FindType=s&CaseCite=26+USCA+§+83&CaseStatKey=26USCASS3&AP=BAQT=ID1](http://web2.westlaw.com/Find(Default.vi?DB=10161888&DocName=26+CFR+§+1%2E83%2D7&FindType=s&CaseCite=26+USCA+§+83&CaseStatKey=26USCASS3&AP=BAQT=ID1). The page title is "Find Result - 26 CFR s 1.83-7 - Microsoft Internet Explorer".

The main content area displays the text of 26 C.F.R. § 1.83-7, titled "Taxation of nonqualified stock options". The text includes the following sections:

- Part 1. Income Taxes (Refs & Annos)
- Normal Taxes and Surtaxes
- Computation of Taxable Income
- Items Specifically Included in Gross Income
- § 1.83-7 Taxation of nonqualified stock options.

The text of § 1.83-7(a) reads: "(a) In general. If there is granted to an employee or independent contractor (or beneficiary thereof) in connection with the performance of services, an option to which section 421 (relating generally to certain qualified and other options) does not apply, section 83(a) shall apply to such grant if the option has a readily ascertainable fair market value (determined in accordance with paragraph (b) of this section) at the time the option is granted. The person who performed such services realizes compensation upon such grant at the time and in the amount determined under section 83(a). If section 83(a) does not apply to the grant of such an option because the option does not have a readily ascertainable fair market value at the time of grant, sections 83(a) and 83(b) shall apply at the time the option is exercised or otherwise disposed of, even though the fair market value of such option may have become readily ascertainable before such time. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) or 83(b). If the option is sold or otherwise disposed of in an arm's length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option. The preceding sentence does not apply to a sale or other disposition of the option to a person related to the service provider that occurs on or after July 2, 2003. For this purpose, a person is related to the service provider if--"

The left sidebar contains a "RegulationsPlus" section, which is highlighted with a red arrow. This section provides direct links to various types of related primary and secondary sources, including:

- Table of Contents
- RegulationsPlus™ Index
- Section Outline
- Historical
- Prior Versions
- Cases
- Notes of Decisions
- All Citing Cases
- Citing Court Documents
- Agency Opinions and Decisions
- IRS Decisions
- Other Decisions
- Administrative
- FR Summaries
- FR References

The full text of the regulations appears on the right. The "Regulations Plus" feature<sup>86</sup> on the left provides direct links to various types of related primary and secondary sources, including: case annotations; agency decisions; administrative pronouncements; IRC cross references; law review articles; and treatises, forms and PLI publications. These links provide an efficient, "user friendly" way to find related authority. Clicking on "Treatises and Forms" under "Analysis" yields many potentially useful treatise references.

86. This feature is available for final and temporary regulations, but not for proposed regulations.

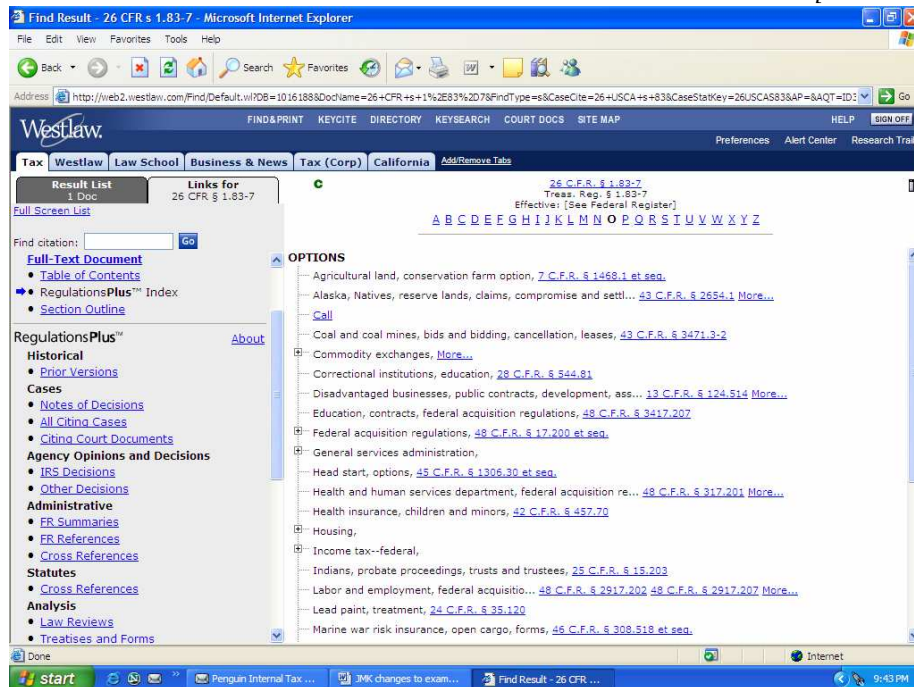


The screenshot displays a Westlaw search result for "26 CFR § 1.83-7". The interface includes a search bar at the top with the query "26 CFR § 1.83-7" and a "Go" button. Below the search bar, there are navigation tabs for "Tax", "Westlaw", "Law School", "Business & News", "Tax (Corp)", and "California". The main content area shows a list of search results, with the first result being "69 Fed. Income Tax'n Corp. & Shareholders: Forms P 6.4, IMPACT OF SHAREHOLDER AGREEMENTS ON SINGLE-CLASS-OF-STOCK REQUIREMENT (2006)". The left sidebar contains a "Result List" section with a "Full Screen List" link, a "Find citation" field, and a "ResultsPlus" section with links to "ALR", "Corpus Juris Secundum: Vendor and Purchaser", and "Options and Exercise Thereof". The bottom of the page shows a Windows taskbar with the "start" button and several open applications.

### Summary of search pathways:

Tax > Federal Tax Primary Sources > Internal Revenue Code > enter "83" in "IRC Section" box and click "search Westlaw" > click on section 83 link > click on "Administrative Code" near bottom of links on left side > click on hit #13, for section 1.83-7 > click on "Treatises and Forms" link under "Analysis" heading near bottom of left side links.

In addition, a researcher can link to a "Regulations Plus" topical index, from Regulations section 1.83-7, by clicking on the "Regulations Plus Index" link (under the "Full Text Document" heading in the upper left part of the screen). Unfortunately the topical index references are too broad to be useful, as the index is for all C.F.R. sections, rather than just for the specific Regulations section under view. For example, the entry in the index for "options" showed the following results.

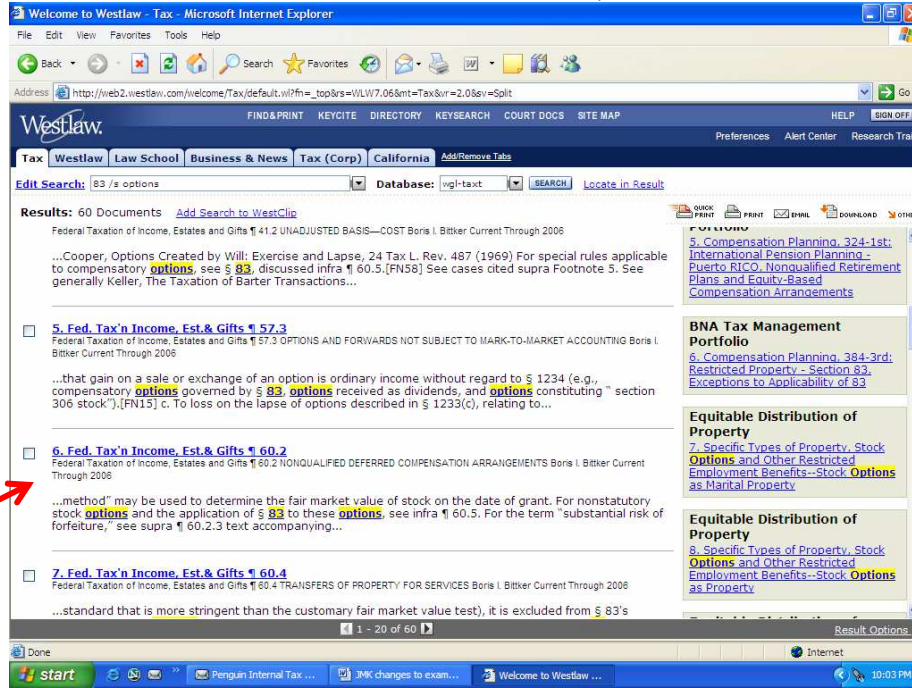


#### Summary of search pathways:

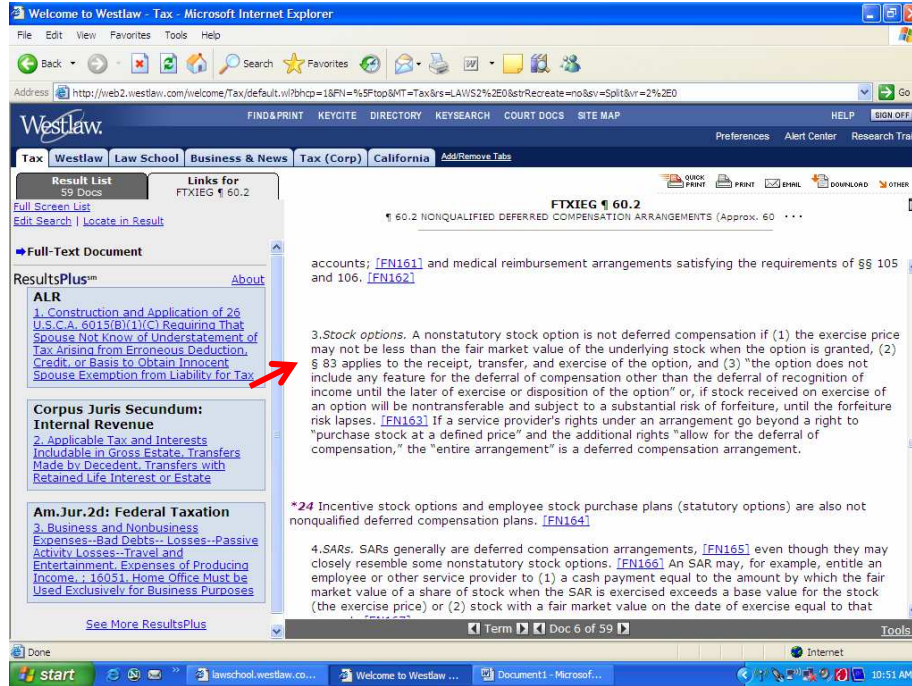
Tax > Federal Tax Primary Sources > Internal Revenue Code > enter “83” in “IRC Section” box and click “search Westlaw” > click on section 83 link > click on “Administrative Code” near bottom of links on left side > click on hit #13, for section 1.83-7 > click on “Regulations Plus Index” link (under “Full-Text Document” heading) > type “options” into search box > click on link for “options.”

We also searched for authoritative secondary sources in the Warren, Gorham & Lamont library. On the Tax tab main page, we clicked on the “WG&L Tax Treatises” link (under the “Treatises and Handbooks” heading). We entered a “terms and connectors” keyword search, with the search term “83 /s [within sentence with] options,” and selected the “WG&L Tax Treatises Combined” database. This search produced 60 hits, the sixth of which was “¶ 60.2 Nonqualified Deferred Compensation Arrangements” in the Bittker & Lokken series, *Federal Taxation of Income, Estates and Gifts*.<sup>87</sup>

87. Boris I. Bittker & Lawrence Lokken, *Federal Taxation of Income, Estates and Gifts* § 60.2 (Rev. 3rd ed. 2005 & Supp. 2007).



The discussion of stock options in this paragraph highlights the section 409A issue.



A new search in the Warren, Gorham & Lamont combined treatises database, using the search term “409A and options,” produced hits for numerous relevant sources.

The screenshot shows a Westlaw search results page for the query "409A and options". The page displays 24 documents. The first result is "1. Fed. Tax'n Income, Est. & Gifts § 60.2" with a red arrow pointing to it. The second result is "2. Limited Liab. Co. § 7.03" with a red arrow pointing to it. The page also includes a sidebar with "ResultsPlus" and various legal briefs.

### Summary of search pathways:

Tax > Treatises and Handbooks > WG&L Tax Treatises > check box for “WG&L Tax Treatises Combined” > search “83 /s options” > click on hit #6.

### Summary of search pathways:

Tax > Treatises and Handbooks > WG&L Tax Treatises > check box for “WG&L Tax Treatises Combined” > search “409A and options”.

We also ran a similar search in the Warren, Gorham & Lamont Journals database. From the Tax tab main page, we clicked on the “more” link under the “Journals & Newsletters” heading. We checked the box for “WG&L Journals Combined” under the “WG&L” heading and again did a keyword search of “409A and options.” This search also produced hits for relevant articles.

The screenshot shows the Westlaw website interface in a Microsoft Internet Explorer browser. The search results for "409A and options" are displayed. A red arrow points to the word "options" in the second search result, which discusses "Options/Warrants".

### Summary of search pathways:

Tax > Journals and Newsletters > click "More" > check box for "WG&L Journals Combined" > search "409A and options".

Westlaw offers a great deal of high quality tax related content, including some content not available otherwise, as well as many functionality features designed to make it easier to find relevant sources. Due to the large size and breadth of the Westlaw database, however, a tax researcher sometimes has to sift through unhelpful sources to find the "gems." If a researcher knows little about a tax research topic, it can be difficult to use Westlaw to gain a broad overview of the topic, although the content in the Warren, Gorham & Lamont treatises often can provide such an overview.

The next Part summarizes the results of using the five electronic tax research platforms to research the Rmail stock option hypothetical and makes recommendations about combining the platforms to create an effective tax research system.

## V. DESIGNING AN EFFECTIVE ELECTRONIC TAX RESEARCH SYSTEM

If presented with the Rmail stock option hypothetical discussed in Part IV, many tax researchers would think they already know the tax consequences of the issuance of the options. They would assume that the tax consequences are determined under section 83 and Regulations sections 1.83-3 and 1.83.7 and would think the answer turns on whether the options

did or did not have a readily ascertainable fair market value. They might reread section 83 and the regulations (just to double check their conclusion) and think they had finished their research. As the research results demonstrate, however, that approach would produce the wrong answer to the hypothetical research question.

The goal in tax research is to find the relevant primary sources that provide the answer to the research question. As the research hypothetical demonstrates, however, sometimes the most efficient way to find all of the relevant primary sources is to consult authoritative secondary sources early in the research process. This is especially true where the researcher (even an experienced researcher) may be unaware of an issue raised by the fact pattern.

To adequately research the Rmail stock option hypothetical, a researcher would need to consider various primary sources in addition to section 83 and Regulations sections 1.83-3 and 1.83.7, including: section 409A; the section 409A final regulations (including the preamble to the regulations); various administrative pronouncements,<sup>88</sup> and the legislative history of section 409A.

Secondary materials offered on the five electronic research platforms would have helped a researcher spot and analyze the section 409A issue lurking in the Rmail hypothetical. As we saw in Part IV, the helpful secondary sources included: several BNA Portfolios; the BNA Daily Tax Report; the Ginsburg and Levin treatise; the proceedings of the NYU Tax Institute, RIA's U.S. Tax Reporter explanations; various Warren, Gorham & Lamont treatises and journals; Tax Notes Weekly Magazine; and Tax Notes Today.<sup>89</sup>

None of the five electronic tax research platforms offers all of these useful secondary sources. We had the luxury of having access to all five platforms when we researched the hypothetical, but few private firms would purchase electronic subscriptions to all five platforms and a researcher certainly could find the correct answer to the hypothetical without having access to all of the platforms.

Which electronic tax research platform or platforms would we recommend to a firm or library? The answer depends on various factors, including the content and functionality features discussed in Parts II and III and illustrated in Part IV. Other relevant factors include: the specific types of tax topics that will be researched; the personal preferences of the firm or

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88. See, e.g., Notice 2005-1, 2005-1 C.B. 274; Notice 2006-4, 2006-1 C.B. 307.

89. The law review articles we found were a bit dated (due to the long lead time for publication of law review articles), but provided some background information about § 409A. See, e.g., Ehrhart, *supra* note 82 (arguing that proposed rulemaking under Notice 2005-1 exceeds the Treasury's authority under § 409A).

library's decision-makers; availability and accessibility of alternative print tax sources; and availability and expertise of technical support staff.<sup>90</sup>

In addition, cost is often one of the key factors. The publishers do not have unitary fixed prices for the electronic tax research platforms. Instead, the subscription price depends on various factors, primarily the number of users and the choice of content.<sup>91</sup> In many cases, discounts are available for users already subscribing to the publisher's print materials.

We recommend combining the platforms to increase the variety of content and functionality features available to the researcher.<sup>92</sup> In our opinion, the best tax research systems are designed to encourage redundancy (and thereby reduce the probability of missing a critical aspect of a tax research project). The optimal combination of electronic tax research platforms will vary for each firm or library. For many firms, the best approach will be to combine one of the comprehensive platforms, LexisNexis or Westlaw, with one or more of the tax specific platforms.<sup>93</sup> Recall that the Westlaw database includes the RIA Checkpoint content, and the LexisNexis database often includes the CCH content.<sup>94</sup> Combining (1) Westlaw and CCH or (2) LexisNexis (with CCH content) and RIA Checkpoint increases the variety of content available to researchers. We like the combination of LexisNexis (with CCH content) and RIA Checkpoint because it gives researchers access to a wide variety of publisher-specific source content, including: comprehensive legislative histories, law review articles, Warren, Gorham & Lamont treatises and journals; Tax Analysts content; and the RIA and CCH looseleaf series.

We offer our Loyola Law School Los Angeles Tax LLM students access to the LexisNexis (with CCH content), Westlaw, and RIA Checkpoint

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90. As we note in Part IIC, *supra*, some tax content is available on-line at no charge but: (1) often is out of date; (2) is difficult to search (due to the absence of functionality features such as terms and connectors searching or table of contents searching) and (3) typically does not include authoritative secondary sources. As we researched the Rmail hypothetical, we searched various websites offering free tax content, but the search results were not particularly helpful. Our experience was consistent with the old bromide: "You get what you pay for." This conclusion is partly a function of the fact that the Rmail hypothetical is a doctrinal tax research problem. If we had been researching a tax policy issue, the free content available on government websites and the websites of tax policy organizations probably would have been much more helpful.

91. The publishers bundle specific types of content together into content groupings and offer subscribers various packages of the content groupings.

92. See also Cummings, *supra* note 5, at 338 (recommending that researchers combine the platforms).

93. BNA content also can be integrated into the content on the other platforms.

94. See *supra*, text accompanying notes 37 and 39.

electronic platforms and require our Tax LLM students to complete advanced tax research training on the LexisNexis and RIA Checkpoint platforms. In our opinion, the combined LexisNexis and RIA Checkpoint electronic databases offer our students much of the content they might require to research a tax question in practice, and RIA Checkpoint offers the benefit of streamlined functionality.<sup>95</sup> In addition, we offer print copies of CCH materials and BNA portfolios in our law library and encourage our students to use them.<sup>96</sup> We also encourage our students to search for new working papers and articles in the SSRN e-library.

### CONCLUSION

The LexisNexis, Westlaw, RIA Checkpoint, CCH, and BNA electronic tax research platforms constitute a new virtual tax library that provides tax researchers with much of the content and functionality of physical libraries, as well as some functionality features not provided by physical libraries. The new virtual tax library offers tax researchers numerous benefits, including the convenience of a portable library, more reliable and current research results, increased research efficiency, and reduced research costs.

Tax researchers should update their tax research techniques to realize the benefits of the new virtual tax library. The comparisons in this Article of the content and functionality features offered by the various electronic platforms can help researchers decide which platforms should be part of their updated tax research system. The optimal combination of electronic tax research platforms will depend on various factors, but we generally recommend subscribing either to (1) a combination of LexisNexis (with CCH content) and RIA Checkpoint or (2) a combination of Westlaw and CCH. We prefer the former combination, which combines the comprehensive content available on the LexisNexis platform (including legislative histories, law review articles, and Tax Analysts materials) with

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95. In our opinion, Westlaw offers more efficient tax research functionality than LexisNexis (with the caveat that the new LexisNexis "Tax Center" platform may offer more streamlined functionality for tax research). We definitely wanted to train our students on RIA Checkpoint, however, due to the exceptional functionality features offered on RIA Checkpoint, and thought that RIA Checkpoint is better paired with LexisNexis to offer our students a greater variety of tax content (including Tax Analysts materials).

96. We assign our Tax LLM students a mandatory "open universe" tax research and writing assignment. Part of the grade for their work depends on the sources they find in their research. If we had given our students the Rmail research hypothetical, we would have expected them to find all of the sources we found, not just the sources available in the electronic databases.



the user-friendly functionality features and authoritative Warren, Gorham & Lamont materials that are available on the RIA Checkpoint platform.<sup>97</sup>

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97. Cost permitting, we also recommend subscribing to BNA and adding the BNA content (including the excellent Tax Management Portfolios) to the RIA Checkpoint platform.