

Reminders on Presenting Your Own Work

(that is, not plagiarizing (representing someone else's work as your own))

Overview

In your academic, professional and personal work, it is important that what you represent as being your own words and ideas are truly yours. In tax research work, you must be sure to write with your own words. Where you are explaining a legal item, such as a Code section or court case, you must state your source (this is commonly done in the law section of a research file memo). If you believe that how the drafter of the original document stated something is the best way to note it in your writing, be sure to cite your source and use quotation marks so it is clear that you are using someone else's words and ideas. This paper provides guidance and examples to help you to avoid plagiarism in your tax research work.

SJSU Policy on Academic Integrity

The SJSU Academic Integrity Policy (section 1.2 of University Policy F15-7), which you are required to comply with, defines plagiarism as follows:

“the act of representing the work of another as one's own without giving appropriate credit, regardless of how that work was obtained, and submitting it to fulfill academic requirements.

Plagiarism includes:

- 1.2.1 Knowingly or unknowingly incorporating the ideas, words, sentences, paragraphs, or parts of, or the specific substance of another's work, without giving appropriate credit, and representing the product as one's own work;
- 1.2.2 Representing another's artistic or scholarly works such as computer programs, instrument printouts, inventions, musical compositions, photographs, paintings, drawing, sculptures, novels, short stories, poems, screen plays, or television scripts as one's own.”

Be sure to read the entire policy which can be found at Professor Nellen's course website as well as at <http://www.sjsu.edu/senate/docs/F15-7.pdf>.

Guidance and Examples

1. Statutes (for example, IRC sections) – often, the words used in a statute are crucial and should not be changed. For example, IRC §469 provides rules on passive activities. You must not change the word “passive” to a synonym because the word “passive activity” is a term of art that is key to application of the rule and IRC §469 definitions. Statutes typically include words that are defined in the statute or rulings and changing those words would make it unclear what the definition applies to.

For example, here is the actual text of an excerpt from IRC §162(a): “There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.” You do not want to substitute other words for “ordinary,” “necessary,” “carrying on,” or “trade or business” because these terms have particular meaning and have been defined in regulations and rulings. So, what would be appropriate to put in the law section of your research memo if IRC §162(a) is relevant? Here is an example:

IRC §162(a) provides the general rule on what a business may deduct on its tax return. It states that a deduction is allowed for “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.”

On the other hand, rarely should you include the entire text of a Code section as it will not help you or the reviewer to know the parts that are crucial to your particular research question. For example, IRC §121 on exclusion of gain from a principal residence includes many special rules that may not be relevant to your research problem. Thus, there is no need to include them (that is, inserting the entire Code section in your memo in quotes is not helpful). It would be fine to include a summary of key points, being sure to keep key words, such as “principal residence” in quotes to signify that they have a particular definition and usage in the provision. Here is how the provision might be summarized in a memo where the special rules, such as for involuntary conversion, were not pertinent:

IRC §121 allows an individual to exclude up to \$250,000 (\$500,000 if MFJ) of the gain from the sale or exchange of a “principal residence.” To qualify for the exclusion, the residence must have “been owned and used by the taxpayer as the taxpayer’s principal residence” for “periods aggregating 2 years or more” during the 5 years preceding the sale or exchange date. For taxpayers filing as MFJ . . . [you would include the provisions on joint returns if applicable, as well as the limitation on how often taxpayers may use IRC §121.]

2. Here is a paragraph from a court decision, *Pike v. U.S.*, 78 AFTR 2d 96-5324 (1st Cir.), that supports the U.S. Supreme Court’s holding in *Arkansas Best*, 485 U.S. 212 (1988). That case held that the motive of a business is not relevant in determining whether an asset is a capital asset. Instead, whether or not something is a capital asset depends on whether it does *not* fit into one of the enumerated asset types at IRC §1221.

The final paragraph of *Pike* follows:

“Overall, Taxpayer was simply seeking capital gains by an intermediate step — acquiring enough capital investments, that, jointly, might be converted into new assets. His scheme was manifestly not a “hedge” integral to protecting inventory or an inventory- purchase system. That it involved work on his part and was necessary to his overall business plan does not change the basic picture. His theory that the building blocks of his would-be empire should qualify as “inventory” would allow aspiring entrepreneurs significant influence over whether losses receive capital or ordinary treatment. *Id.* at 222. An ordinary investor in capital stock, objectively not entitled to take losses not offset by gains, could do so if he could show a business-related motive to realize gains through conversion and disposition of those assets. Such an alluring door for escaping taxpayers was firmly locked in *Arkansas Best*.”

When you read this, you might find that the last sentence is a wonderful way to describe the relevance of *Arkansas Best*. The metaphors used in that sentence are not the common way to describe something – they are the unique work of the judge. If you decide to use all or part of that last sentence, you need to use quotes because it is not your creative expression – it is that of someone else. For example:

Relying on the Supreme Court’s decision in *Arkansas Best*, the court held that the stock was a capital asset. The court noted that *Arkansas Best* “firmly locked” the “alluring door” of efforts to categorize capital losses as ordinary losses by arguing that the asset was used in a business.

3. Court cases tend to be lengthy and have lots of words and facts that are not crucial to understanding the case and its relevance to the tax research issue before you. Thus, you can summarize it in far fewer words than used in the decision itself. It is also permissible to include quotes from the case if you believe they best explain the key holding. Following is an example of a

summary of a case that includes a quote from the court to emphasize the holding. But note that the facts, law and parts of the holding are summarized in the tax researcher's own words.

In *Tax Comm'r. of the State of West Virginia v. MBNA America Bank*, 640 SE2d 226 (2006), the court held that the *Quill* decision requiring physical presence to establish nexus only applies for sales and use tax, not for franchise or income taxes. The court noted that franchise and income taxes do not pose the same compliance burden as do sales and use tax. The court ruled that significant economic presence test was appropriate for income taxes. The court noted: "although a substantial economic presence standard is by nature more elastic than the bright-line physical presence test, we are convinced that when properly applied, a greater nexus is required under the substantial economic presence standard than under the minimum contacts analysis." The court also noted that it did not agree with *J.C. Penney Nat'l Bank v. Johnson*, 19 S.W.3d 831 (Tenn.Ct.App. 1999) and so would not be following it. Finally, the court, commenting on how the ways of doing have changed since the time the Commerce Clause was originally written, noted: "This recognition of the staggering evolution in commerce from the Framers' time up through today suggests to this Court that in applying the Commerce Clause we must eschew rigid and mechanical legal formulas in favor of a fresh application of Commerce Clause principles tempered with healthy doses of fairness and common sense. This is what we have attempted to do herein." Thus, the court found that MBNA had nexus in the state due to its mail and phone solicitation of WV customers.

Be sure to look at the full text of this case. You can find it in RIA or CCH by going to the state library, searching in the West Virginia database for a state corporate income tax case using the search term "MBNA."

Conclusion

You must use your good judgment and knowledge of rules on plagiarism, paraphrasing and good writing to be sure what you represent as your writing is indeed your writing. When you are using words of someone else (even of the government) you need to use quotes. You also need to state your sources (which is already part of the research memo format) to indicate where the rules and concepts you are summarizing originated from.

You can find a link at the course website to a helpful tutorial from the University Library on plagiarism. It does not take long to complete and you should find it will answer most questions you may have on paraphrasing, quoting and citing.

When in doubt, ask your professor or supervisor, or look it up in a grammar or writing book.