

Online Appendix: Spot-Checking Terms

This appendix accompanies my article, *An Empirical Study of Statutory Interpretation in Tax Law*.¹ It confirms that the terms used in that article serve as effective proxies for particular interpretive methodologies when used by the Tax Court. That is, it attempts to confirm that when the Tax Court uses a term that my algorithm designates as “purposivist,” “textualist,” “interpretive,” or “normative,” an ordinary scholar (myself) reading the same opinion would agree.

1. Purposivist Terms

1942 - 1948	<i>Corporation of America</i> ²	
	Total	6
	<i>committee report</i> ³	1
	<i>legislative history</i> ⁴	2
	<i>house committee</i> ⁵	1
	<i>senate committee</i> ⁶	2
1949 - 1955	<i>Estate of Lande</i> ⁷	
	Total	5
	<i>h. rept.</i> ⁸	2
	<i>s. rept.</i> ⁹	1
	<i>committee report</i> ¹⁰	2
1956 - 1962	<i>Pursell</i> ¹¹	
	Total	10
	<i>h. rept.</i> ¹²	1
	<i>s. rept.</i> ¹³	3
	<i>committee report</i> ¹⁴	5

¹ 95 N.Y.U. L. REV. (forthcoming 2020).

² Corp. of Am. v. Comm’r, 4 T.C. 566 (1945).

³ *Id.* at 571.

⁴ *Id.* at 571–72.

⁵ *Id.* at 571.

⁶ *Id.* at 572.

⁷ Estate of Lande v. Comm’r, 21 T.C. 977 (1954).

⁸ *Id.* at 984 n.4, 989.

⁹ *Id.* at 989.

¹⁰ *Id.* at 988–89.

¹¹ Pursell v. Comm’r, 38 T.C. 263 (1962).

¹² *Id.* at 273.

¹³ *Id.* at 271, 272 n.11, 273.

¹⁴ *Id.* at 273–74.

	<i>legislative history</i> ¹⁵	1
1963 - 1969	<i>Estate of Gilruth</i> ¹⁶	
	Total	3
	<i>s. rept.</i> ¹⁷	2
	<i>committee report</i> ¹⁸	1
1970 - 1976	<i>Estate of Honigman</i> ¹⁹	
	Total	5
	<i>s. rept.</i> ²⁰	2
	<i>legislative history</i> ²¹	3
1977 - 1983	<i>Estate of Coon</i> ²²	
	Total	6
	<i>h. rept.</i> ²³	1
	<i>s. rept.</i> ²⁴	2
	<i>committee report</i> ²⁵	1
	<i>legislative history</i> ²⁶	1
	<i>senate committee</i> ²⁷	1
1984 - 1991	<i>DeMartino</i> ²⁸	
	Total	7
	<i>h. rept.</i> ²⁹	2
	<i>committee report</i> ³⁰	2
	<i>legislative history</i> ³¹	1
	<i>conference committee</i> ³²	2
1992 - 1999	<i>Chicago Metropolitan Ski Council</i> ³³	
	Total	11

¹⁵ *Id.* at 269.

¹⁶ *Estate of Gilruth v. Comm'r*, 50 T.C. 850 (1968).

¹⁷ *Id.* at 854–55.

¹⁸ *Id.* at 853.

¹⁹ *Estate of Honigman v. Comm'r*, 66 T.C. 1080 (1976).

²⁰ *Id.* at 1083–84.

²¹ *Id.* at 1083–84.

²² *Estate of Coon v. Comm'r*, 81 T.C. 602 (1983).

²³ *Id.* at 607.

²⁴ *Id.* at 607, 613.

²⁵ *Id.* at 613.

²⁶ *Id.* at 613.

²⁷ *Id.* at 613.

²⁸ *DeMartino v. Comm'r*, 88 T.C. 583 (1987).

²⁹ *Id.* at 586, 589.

³⁰ *Id.* at 586–87.

³¹ *Id.* at 586 n.7.

³² *Id.* at 586–87.

³³ *Chi. Metro. Ski Council v. Comm'r*, 104 T.C. 341 (1995).

	<i>h. rept.</i> ³⁴	1
	<i>senate report</i> ³⁵	1
	<i>s. rept.</i> ³⁶	4
	<i>legislative history</i> ³⁷	5
2000 - 2007	CRSO ³⁸	
	Total	6
	<i>s. rept.</i> ³⁹	3
	<i>legislative history</i> ⁴⁰	3
2008 - 2015	Graev ⁴¹	
	Total	3
	<i>legislative history</i> ⁴²	1
	<i>joint committee</i> ⁴³	1
	False Positive	
	<i>senate committee</i> ⁴⁴	1

Textualist Terms

1942 - 1948	<i>Dunitz</i> ⁴⁵	
	Total	4
	<i>dictionary</i> ⁴⁶	3
	<i>funk & wagnalls</i> ⁴⁷	1
1949 - 1955	<i>Marsman</i> ⁴⁸	
	Total	5
	<i>dictionary</i> ⁴⁹	3

³⁴ *Id.* at 346.

³⁵ *Id.* at 348.

³⁶ *Id.* at 346, 348–49.

³⁷ *Id.* at 346, 348, 350.

³⁸ *CRSO v. Comm’r*, 128 T.C. 153 (2007).

³⁹ *Id.* at 15–16.

⁴⁰ *Id.* at 14, 16.

⁴¹ *Graev v. Comm’r*, 140 T.C. 377 (2013).

⁴² *Id.* at 402 n.15.

⁴³ *Id.* at 392.

⁴⁴ The Senate Committee on Finance was mentioned in the findings of fact. The taxpayer had engaged in tax planning in anticipation of tax reforms announced by the Senate Committee. *Id.* at 386.

⁴⁵ *Dunitz v. Comm’r*, 7 T.C. 672 (1946).

⁴⁶ *Id.* at 684.

⁴⁷ *Id.* at 684.

⁴⁸ *Marsman v. Comm’r*, 18 T.C. 1 (1952).

⁴⁹ *Id.* at 6.

	<i>plain meaning</i> ⁵⁰	2
1956 - 1962	Kemper ⁵¹	
	Total	3
	<i>dictionary</i> ⁵²	1
	<i>ejusdem generis</i> ⁵³	2
1963 - 1969	Jos. K., Inc. ⁵⁴	
	Total	6
	<i>dictionary</i> ⁵⁵	6
1970 - 1976	Farley Funeral Home ⁵⁶	
	Total	3
	<i>funk & wagnalls</i> ⁵⁷	1
	<i>dictionary</i> ⁵⁸	2
1977 - 1983	Insilco Corp. ⁵⁹	
	Total	2
	<i>ejusdem generis</i> ⁶⁰	2
1984 - 1991	Robinson ⁶¹	
	Total	7
	<i>dictionary</i> ⁶²	6
	<i>in pari materia</i> ⁶³	1
1992 - 1999	Mountain State Ford Truck Sales ⁶⁴	
	Total	7
	<i>dictionary</i> ⁶⁵	7
2000 - 2007	Keene ⁶⁶	
	Total	6
	<i>dictionary</i> ⁶⁷	6

⁵⁰ *Id.* at 12.

⁵¹ *Kemper v. Comm'r*, 30 T.C. 546 (1958).

⁵² *Id.* at 548.

⁵³ *Id.* at 548.

⁵⁴ *Jos. K., Inc. v. Comm'r*, 51 T.C. 584 (1969).

⁵⁵ *Id.* at 595–96.

⁵⁶ *Farley Funeral Home, Inc. v. Comm'r*, 62 T.C. 150 (1974).

⁵⁷ *Id.* at 163–64 (quoting *United States v. Kintner*, 216 F.2d 418, 427–28 (9th Cir. 1954)).

⁵⁸ *Id.* at 163–64 (quoting *Kintner*, 216 F.2d at 427–28).

⁵⁹ *Insilco Corp. v. Comm'r*, 73 T.C. 589 (1979).

⁶⁰ *Id.* at 599.

⁶¹ *Robinson v. Comm'r*, 82 T.C. 444 (1984).

⁶² *Id.* at 453 nn.17–19.

⁶³ *Id.* at 455.

⁶⁴ *Mountain State Ford Truck Sales, Inc. v. Comm'r*, 112 T.C. 58 (1999).

⁶⁵ *Id.* at 73–74.

⁶⁶ *Keene v. Comm'r*, 121 T.C. 8 (2003).

⁶⁷ *Id.* at 15, 34–35.

2008 - 2015	Summitt ⁶⁸	
	Total	11
	<i>plain meaning</i> ⁶⁹	9
	<i>expressio</i> ⁷⁰	1
	<i>dictionary</i> ⁷¹	1

Interpretive Terms

1942 - 1948	Commercial Union Assurance ⁷²	
	Total	7
	<i>section . . . construed</i> ⁷³	2
	<i>construction . . . section</i> ⁷⁴	2
	<i>section . . . interpretation</i> ⁷⁵	1
	<i>section . . . interpreted</i> ⁷⁶	2
1949 - 1955	Manoogian Fund ⁷⁷	
	Total	6
	<i>statute . . . construed</i> ⁷⁸	1
	<i>interpret . . . congress</i> ⁷⁹	2
	<i>construed . . . congress</i> ⁸⁰	1
	<i>interpret . . . section</i> ⁸¹	2
1956 - 1962	Payne ⁸²	
	Total	8
	<i>interpretation . . . sections / statute</i> ⁸³	1
	<i>interpretation . . . statute</i> ⁸⁴	1
	<i>section . . . construction</i> ⁸⁵	4

⁶⁸ Summitt v. Comm’r, 134 T.C. 248 (2010).

⁶⁹ *Id.* at 257, 261–64.

⁷⁰ *Id.* at 266 n.14.

⁷¹ *Id.* at 266 n.14.

⁷² Commercial Union Assurance Co. v. Comm’r, 1 T.C. 1166 (1943).

⁷³ *Id.* at 1171 & n.1, 1172.

⁷⁴ *Id.* at 1172, 1178.

⁷⁵ *Id.* at 1172.

⁷⁶ *Id.* at 1172–73.

⁷⁷ Marie & Alex Manoogian Fund v. United States, 24 T.C. 412 (1955).

⁷⁸ *Id.* at 414.

⁷⁹ *Id.* at 414.

⁸⁰ *Id.* at 414.

⁸¹ *Id.* at 414 & n.1

⁸² Payne v. Comm’r, 30 T.C. 1044 (1958).

⁸³ *Id.* at 1056.

⁸⁴ *Id.* at 1057.

⁸⁵ *Id.* at 1046, 1055, 1058.

	<i>subsection . . . construction</i> ⁸⁶	2
1963 - 1969	Hollywood Baseball ⁸⁷	
	Total	8
	<i>construction . . . section</i> ⁸⁸	1
	<i>construed . . . section</i> ⁸⁹	6
	<i>construction . . . statutory</i> ⁹⁰	1
1970 - 1976	Aboussie ⁹¹	
	Total	6
	<i>interpretation / construe . . . section</i> ⁹²	1
	<i>interpretation . . . section</i> ⁹³	3
	<i>interpretation . . . congressional</i> ⁹⁴	1
	<i>section . . . construction</i> ⁹⁵	1
1977 - 1983	Midwest Savings ⁹⁶	
	Total	6
	<i>statutory interpretation</i> ⁹⁷	1
	<i>section . . . interpretation</i> ⁹⁸	1
	<i>statutes . . . interpreting</i> ⁹⁹	1
	<i>interpret . . . section / statute</i> ¹⁰⁰	1
	<i>construe . . . section</i> ¹⁰¹	1
	<i>construe . . . section / statute</i> ¹⁰²	1
1984 - 1991	Judge ¹⁰³	
	Total	9
	<i>interpreting . . . section</i> ¹⁰⁴	2
	<i>interpreted . . . section</i> ¹⁰⁵	2

⁸⁶ *Id.* at 1046 n.3.

⁸⁷ Hollywood Baseball Ass'n v. Comm'r, 49 T.C. 338 (1968).

⁸⁸ *Id.* at 339.

⁸⁹ *Id.* at 339–41, 345.

⁹⁰ *Id.* at 342.

⁹¹ Aboussie v. Comm'r, 60 T.C. 549 (1973).

⁹² *Id.* at 556.

⁹³ *Id.* at 556–57.

⁹⁴ *Id.* at 557.

⁹⁵ *Id.* at 557.

⁹⁶ Midwest Sav. Ass'n v. Comm'r, 75 T.C. 262 (1980).

⁹⁷ *Id.* at 265.

⁹⁸ *Id.* at 270.

⁹⁹ *Id.* at 270.

¹⁰⁰ *Id.* at 270.

¹⁰¹ *Id.* at 270.

¹⁰² *Id.* at 270.

¹⁰³ Judge v. Comm'r, 88 T.C. 1175 (1987).

¹⁰⁴ *Id.* at 1182, 1185.

¹⁰⁵ *Id.* at 1184–85.

	<i>interpretation . . . section</i> ¹⁰⁶	3
	<i>reading . . . section</i> ¹⁰⁷	2
1992 - 1999	<i>E. Norman Peterson Marital Trust</i> ¹⁰⁸	
	Total	6
	<i>interpretation . . . statute</i> ¹⁰⁹	1
	<i>interpretation . . . code</i> ¹¹⁰	1
	<i>interpretative . . . section</i> ¹¹¹	1
	<i>interpretation . . . section</i> ¹¹²	1
	<i>reading . . . section</i> ¹¹³	1
	False Positive	
	<i>interpretative . . . section</i> ¹¹⁴	1
2000 - 2007	<i>Medchem</i> ¹¹⁵	
	Total	6
	<i>congress . . . construe / interpretation</i> ¹¹⁶	1
	<i>interpreted . . . section</i> ¹¹⁷	1
	<i>interpreting . . . code / section</i> ¹¹⁸	1
	<i>congress / code / section . . . interpretations</i> ¹¹⁹	1
	<i>section . . . construe</i> ¹²⁰	1
	<i>construing . . . section</i> ¹²¹	1
2008 - 2015	<i>TG Missouri Corp.</i> ¹²²	
	Total	8
	<i>interpreted . . . section</i> ¹²³	1

¹⁰⁶ *Id.* at 1184–86.

¹⁰⁷ *Id.* at 1183, 1185.

¹⁰⁸ *E. Norman Peterson Marital Tr. v. Comm’r*, 102 T.C. 790 (1994).

¹⁰⁹ *Id.* at 797.

¹¹⁰ *Id.* at 798.

¹¹¹ *Id.* at 798.

¹¹² *Id.* at 798, 801.

¹¹³ *Id.* at 805.

¹¹⁴ This passage referred primarily to regulatory interpretation, although it involved statutory issues as well. *Id.* at 797 (“In determining the validity of a regulation, a legislative regulation, which flows from a specific congressional grant of authority, is entitled to greater deference than an interpretative regulation, which is promulgated under the general rulemaking power in section 7805(a).”).

¹¹⁵ *MedChem (P.R.), Inc. v. Comm’r*, 116 T.C. 308 (2001).

¹¹⁶ *Id.* at 329.

¹¹⁷ *Id.* at 329.

¹¹⁸ *Id.* at 329.

¹¹⁹ *Id.* at 336.

¹²⁰ *Id.* at 329.

¹²¹ *Id.* at 329.

¹²² *TG Mo. Corp. v. Comm’r*, 133 T.C. 278 (2009).

¹²³ *Id.* at 287.

	<i>statutes / section . . . interpreting</i> ¹²⁴	1
	<i>statute . . . interpreted</i> ¹²⁵	1
	<i>interpret . . . section</i> ¹²⁶	1
	<i>interpreting . . . code</i> ¹²⁷	1
	<i>reading . . . section</i> ¹²⁸	2
	<i>statutory construction</i> ¹²⁹	1

Normative Terms

1942 - 1948	<i>Baer</i> ¹³⁰	
	Total	2
	<i>unjust</i> ¹³¹	2
1949 - 1955	<i>Hunter Manufacturing</i> ¹³²	
	Total	2
	<i>unjust</i> ¹³³	2
1956 - 1962	<i>Estate of Stein</i> ¹³⁴	
	Total	8
	<i>fairness</i> ¹³⁵	2
	<i>unjust</i> ¹³⁶	1
	<i>unfair</i> ¹³⁷	4
1963 - 1969	<i>Pendola</i> ¹³⁸	
	Total	2
	<i>fairness</i> ¹³⁹	1
	<i>unfair</i> ¹⁴⁰	1
1970 - 1976	<i>Goldstone</i> ¹⁴¹	

¹²⁴ *Id.* at 288.

¹²⁵ *Id.* at 290.

¹²⁶ *Id.* at 291.

¹²⁷ *Id.* at 291 n.20.

¹²⁸ *Id.* at 292, 296.

¹²⁹ *Id.* at 290.

¹³⁰ *Baer v. Comm'r*, 6 T.C. 1195 (1946).

¹³¹ *Id.* at 1200.

¹³² *Hunter Mfg. Corp. v. Comm'r*, 21 T.C. 424 (1953).

¹³³ *Id.* at 429.

¹³⁴ *Estate of Stein v. Comm'r*, 37 T.C. 945 (1962).

¹³⁵ *Id.* at 956.

¹³⁶ *Id.* at 956.

¹³⁷ *Id.* at 956.

¹³⁸ *Pendola v. Comm'r*, 50 T.C. 509 (1968).

¹³⁹ *Id.* at 513.

¹⁴⁰ *Id.* at 513.

¹⁴¹ *Goldstone v. Comm'r*, 65 T.C. 113 (1975).

	Total	1
	<i>burdensome</i> ¹⁴²	1
1977 - 1983	<i>Estate of Bailey</i> ¹⁴³	
	Total	6
	<i>unjust</i> ¹⁴⁴	5
	<i>unfair</i> ¹⁴⁵	1
1984 - 1991	<i>Kerry</i> ¹⁴⁶	
	Total	6
	<i>administrative burden</i> ¹⁴⁷	4
	<i>burdensome</i> ¹⁴⁸	1
	<i>unfair</i> ¹⁴⁹	1
1992 - 1999	<i>Mountain State Ford</i> ¹⁵⁰	
	Total	3
	<i>administrative burden</i> ¹⁵¹	3
2000 - 2007	<i>Johnston</i> ¹⁵²	
	Total	4
	<i>fairness</i> ¹⁵³	2
	<i>unfair</i> ¹⁵⁴	2
2008 - 2015	<i>Wise Guys Holdings</i> ¹⁵⁵	
	Total	1
	<i>fairness</i> ¹⁵⁶	1

¹⁴² *Id.* at 116.

¹⁴³ *Estate of Bailey v. Comm’r*, 79 T.C. 441 (1982).

¹⁴⁴ *Id.* at 448, 450, 451, 454, 456 (considering a claim of unjust enrichment in determining whether the taxpayer would receive a deduction).

¹⁴⁵ *Id.* at 451 (considering fairness as part of the court’s assessment of whether unjust enrichment occurred).

¹⁴⁶ *Kerry v. Comm’r*, 89 T.C. 327 (1987).

¹⁴⁷ *Id.* at 336, 337, 338.

¹⁴⁸ *Id.* at 341.

¹⁴⁹ *Id.* at 335.

¹⁵⁰ *Mountain State Ford Truck Sales, Inc. v. Comm’r*, 112 T.C. 58 (1999).

¹⁵¹ *Id.* at 76 n.12.

¹⁵² *Johnston v. Comm’r*, 119 T.C. 27 (2002).

¹⁵³ *Id.* at 40, 44.

¹⁵⁴ *Id.* at 39, 40.

¹⁵⁵ *Wise Guys Holdings, LLC v. Comm’r*, 140 T.C. 193 (2013).

¹⁵⁶ *Id.* at 197.