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U.S. Tax Court: A Brief Introduction

The U.S. Tax Court is an Article I court created by Congress to hear tax disputes arising under the Internal Revenue Code (IRC). This In Focus provides background information about the court.

Creation

The entity that eventually became the U.S. Tax Court was created by the Revenue Act of 1924 (P.L. 68-176) as the Board of Tax Appeals. The act established the board as an independent agency within the executive branch. While later renamed the “Tax Court of the United States” by the Revenue Act of 1942 (P.L. 77-753), this action did not change the court’s status as an independent agency. It was not until the Tax Reform Act of 1969 (P.L. 91-172) that Congress established the Tax Court as an Article I court. (For information on Article I courts, see CRS Report R43746, *Congressional Power to Create Federal Courts: A Legal Overview*, by Andrew Nolan and Richard M. Thompson II.)

The statutes providing for the court’s organization and related matters are IRC Sections 7441-7479.

Purpose

The court’s primary purpose is to provide a forum where taxpayers may challenge determinations by the Internal Revenue Service (IRS) of federal tax deficiencies *prior* to paying the disputed amount. Taxpayers also have the option of challenging tax deficiencies in U.S. district court, but only *after* paying the alleged deficiency.

Judges

The Tax Court consists of 19 judges, including the chief judge. Judges are nominated by the President and confirmed by the Senate for a fixed term of 15 years (although judges may be reappointed).

Individuals appointed to the court typically have experience working as government attorneys specializing in tax law. For example, of the 17 active judges on the bench as of November 2015, 16 have experience as attorneys working on tax matters for Congress, the IRS, the Department of Justice, or the Department of the Treasury. Many of the judges, 14 of 17, also worked in private practice as attorneys specializing in tax law.

Prior to the expiration of his or her term in office, a judge can be removed by the President for inefficiency, neglect of duty, or malfeasance in office, but only after notice and opportunity for a public hearing.

Senior Status Judges

The Tax Court, in addition to using full-time active judges to hear cases, also uses senior status judges. Senior status judges are those judges who have retired from full-time

service but continue, on a part-time basis, to hear cases or perform other duties related to judicial administration. A senior status judge may be recalled to hear cases for any period specified by the chief judge.

Special Trial Judges

The chief judge may appoint special trial judges to decide certain cases, including those involving disputes of no more than \$50,000 and lien and levy proceedings.

The chief judge can also authorize a special trial judge to hear, but not decide, other cases. In the 1991 case *Freytag v. Comm’r*, 501 U.S. 868, the Supreme Court rejected the taxpayer’s argument that this authority was limited to minor and relatively simple cases, holding instead that it applied to any case the chief judge determined was appropriate for a special trial judge to hear. The Court also held that the assignment of a case to a special trial judge did not violate the Constitution’s Appointments Clause (Art. II, §2, cl. 2).

When a special trial judge is assigned to hear but not decide a case, he or she provides a report to a regular judge. The regular judge may adopt, modify, or reject the special trial judge’s recommended findings of fact and conclusions of law, or may order further proceedings.

Jurisdiction

The Tax Court is a court of original jurisdiction. Its jurisdiction is limited to federal tax matters as expressly provided in various statutes.

As mentioned, the court provides a forum where taxpayers may challenge the IRS’s determinations of federal tax deficiencies prior to paying the disputed amount. Other issues that fall within the court’s jurisdiction include the authority to hear cases relating to partnership adjustments; to make certain declaratory judgments; to determine worker classification as an employee or independent contractor; to review IRS denial or failure to rule on relief from joint and several liability; and to review IRS determinations in collection due process hearings.

Court Proceedings

Only taxpayers may file suit in the Tax Court—the government may not. The proceedings are adversarial, with the taxpayer suing the IRS commissioner. Taxpayers may represent themselves or be represented by practitioners admitted to practice before the court. The government is represented by the IRS chief counsel or his/her delegate. The vast majority of cases filed with the Tax Court are settled by mutual agreement between a taxpayer and the government, without requiring a trial.

If a trial is conducted, a single judge presides and there is no jury. While the court itself is physically located in

Washington, D.C., trials are also held in over 50 designated cities throughout the United States.

In general, the taxpayer and the IRS may call witnesses, conduct cross examination, and enter evidence into the record. There are some situations, such as with declaratory judgments regarding the status of retirement plans or exempt organizations, where the general rule is that only evidence in the administrative record will be considered.

Simplified Procedure

In cases involving disputes of \$50,000 or less, taxpayers may choose to have their case heard under a simplified procedure. These cases are decided by special trial judges and do not involve briefs or oral arguments. Cases decided under the simplified procedure are commonly referred to as “S cases.”

Types of Opinions

Tax Court opinions may be oral or written. Oral opinions, called bench opinions, may be issued in both simplified procedure cases and regular cases.

Written opinions, meanwhile, fall into three categories. The special trial judge’s written decision in a simplified procedure case is called a summary opinion. In other cases, the written decision is issued as either a Tax Court opinion or a memorandum opinion. The chief judge makes the determination of which type is appropriate (the chief judge must also decide, within 30 days of receiving a trial judge’s opinion, whether the entire court should review it). As a general rule, Tax Court opinions are issued in cases that involve novel or significant legal issues, while memorandum opinions are issued in cases dealing with issues of settled law or those whose holdings depend heavily on the specific facts of a case.

Use of Technology

Electronic filing (eFiling) is mandatory for most parties represented by counsel in cases filed with the Tax Court on or after July 1, 2010. Mandatory eFiling does not, however, apply to (1) pro se petitioners—including those assisted by low-income taxpayer clinics and Bar-sponsored pro bono programs; (2) practitioners who apply to the court for and are granted relief from the requirement to eFile based on good cause; (3) documents filed at trial session; or (4) documents not eligible for eFiling in the Tax Court, such as petitions, notices of appeal, and sealed documents.

Given the sensitive nature of many of the documents that are filed with the Tax Court, the court requires filers to redact (or refrain from including) taxpayer identification numbers; dates of birth; names of minor children; and financial account numbers.

The Tax Court also provides electronic access (eAccess) to registered petitioners, persons representing either

petitioners or respondents who are admitted to practice before the court, and certain other participants to electronically view documents in their case or cases.

Appealing Decisions

Summary opinions—the decisions in cases in which the taxpayer chose to use the simplified procedure—cannot be appealed.

The U.S. Courts of Appeals (except for the Federal Circuit) generally have exclusive jurisdiction to review decisions in non-simplified procedure cases. A case is generally appealed to the circuit containing the taxpayer’s legal residence or principal place of business.

Under IRC Section 7482, appellate courts are instructed to review cases “in the same manner and to the same extent as decisions of the district court in civil actions tried without a jury.” Courts of appeals have generally interpreted this to mean that they should review the Tax Court’s legal conclusions de novo (i.e., without deference to the court’s determinations) and its findings of fact for clear error.

Recent Caseload Statistics

For the fiscal year ending September 30, 2013 (the most recent year for which data are available), there were 27,039 new cases docketed, or filed, with the Tax Court. Additionally, for FY2013, 31,983 cases were terminated and 26,517 cases remained pending.

Of the cases handled by the Tax Court for FY2013, 94% were cases involving a tax deficiency, while 5% involved collection due process hearings. The remaining cases involved innocent spouse “stand-alone” actions (cases where the issue is raised without a deficiency determination), partnership actions, and other miscellaneous cases. (Information and statistics cited regarding the Tax Court’s caseload provided by *The United States Tax Court: An Historical Analysis* (second edition) by Harold Dubroff and Brant J. Hellwig).

Recent Appropriations

The Tax Court received \$53 million in FY2014 (P.L. 113-76).

For FY2015, the President requested \$52 million, a decrease of \$1 million from FY2014 enacted appropriations. P.L. 113-235 provided \$51 million for FY2015, \$1 million less than the President requested and \$2 million less than the Tax Court received for FY2014.

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