Foreword

As I read the Second Edition of *A Practitioner’s Guide to Tax Evidence* in preparation for writing this foreword, I was struck by how many questions it answered that students and practitioners had asked me in the past few years. The book provides a useful guide for the practitioner preparing for a Tax Court trial or evaluating a case for settlement. Re-reading it in its entirety reminded me that I should be consulting it more often.

Professor Larson’s book, unlike any other, provides a detailed passage through the Federal Rules of Evidence (FRE) as applied by the Tax Court. This compilation results in an easy-to-read collection of cases to support or guide a practitioner facing an evidentiary problem in a Tax Court case. The Second Edition updates the cases and the rules changed or created since the First Edition was published.

Many tax practitioners find themselves in Tax Court on an occasional rather than frequent basis. The tendency to settle and the infrequency of taking a case to trial creates challenges in presenting evidence and otherwise complying with both the Tax Court rules and the Federal Rules of Evidence. This book serves as a valuable guide to those, like me, whose actual trial time occurs in varying intervals and who sometimes need to understand the value of the evidence available in order to properly assess settlement.
The biggest benefit of this book comes from the work Professor Larson has done to pull together large numbers of cases on the various FREs. Because Tax Court practice has issues that receive regular attention, this book offers a chance to find those cases easily and to compare the Court’s reaction to the application of the FRE in similar but distinct circumstances. She provides a brief description of the relevant evidentiary issue in each case allowing the reader to quickly compare numerous cases decided under a particular FRE provision. The book is also valuable for alerting readers to issues that have never arisen in Tax Court decided opinions.

The practice pointers at the beginning of many sections offer a quick way to capture the major points and provide an easy entry into topics. While the book covers every rule in the FRE, some of the provisions discussed seemed especially valuable and worth mentioning.

Professor Larson does an excellent job explaining the burden of proof, the burden of production, and the burden of going forward. Section 7491 created much uncertainty regarding the responsibility of each party to put forward evidence and carry the ultimate burden. The burden of proof section allows the reader to see the development of this issue through the cases. The discussion of burden provides the reader with a thorough explanation of what the party must do to prevail. While few cases turn on burden of proof, understanding what you must prove remains an important part of any trial preparation or settlement consideration.

Chapter III addresses judicial notice. Because the Tax Court travels and the judge coming to a city to try a case usually does not know the city as a local judge would, practitioners have to take care to prove matters which, in front of a local judge, the practitioner might expect the judge to formally (or informally) take judicial notice. The chapter on judicial notice not only provides guidance on how to establish judicial notice but also serves as a reminder that when dealing with a judge unfamiliar with the locality many matters will require proof that the practitioner might take for granted at their peril.

The role of expert testimony continues to factor prominently in many cases. Early in a case in which an expert will testify, the practitioner should review the chapter on expert testimony in order to properly prepare for the use of the expert in the trial and the submission of the report. Because Professor Larson combines her discussion of the Federal Rules of Evidence (FRE) with the relevant Tax Court rules, this section allows the practitioner to walk through each step necessary to successful use of expert testimony. The recent Tax Court decision in
Estate of Kollsman v. Commissioner, T.C. Memo 2017-40, shows the dangers present when the expert’s report is disregarded. Using the guidance in the book in planning for expert testimony can greatly assist in avoiding the disqualification or the disregard of the testimony of an expert.

Having a book that focuses on the Tax Court’s rulings regarding FRE issues greatly aids the bar of that Court. Professor Larson’s condensed and well-organized sections allow one to easily spot a particular issue or the Evidentiary Rule at hand and to find the supporting cases. The case discussions have sufficient detail to allow the reader to know whether to go and read the full case. Overall, those practicing in the Tax Court owe a debt of gratitude to Professor Larson for her work to assist in preparing for trial.

Keith Fogg
Clinical Professor, Harvard Law School
Boston, MA
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