

# Foreword

This third edition of *A Practitioner's Guide to Tax Evidence* continues to provide a useful guide for the practitioner preparing for a Tax Court trial or evaluating a case for settlement. The opportunity to write this foreword has forced me to read the guide again reminding me that I should do so at regular intervals. In a practice that settles Tax Court cases much more often than trying them, a regular dose of the rules of evidence provides me with helpful reminders applicable even to the cases that settle.

As expected, the third edition adds new material to every chapter. Cases decided since 2017, when the last edition was published, provide helpful insights not only to the Court in general but to several of the new judges who have joined the Court since the second edition. Additionally, the third edition adds a new chapter devoted to those cases in which the Court reviews the administrative record rather than taking new evidence. This edition also contains many cases decided in the past few years regarding I.R.C. 6751(b) and the many Tax Court decisions following *Graev v. Commissioner*, 149 T.C. 485 (2017). I will separately discuss each of these developments and their importance to practitioners.

As Congress has added new areas of jurisdiction to the Tax Court moving it away from a Court almost exclusively deciding deficiency cases, it has done so by placing the Court in a position of reviewing the determination of the IRS based on the administrative record. These cases require practitioners to move their thinking forward from the point of trial to the administrative process. This edition's new Chapter II discusses the principle

areas of Tax Court jurisdiction where the review of the administrative record occurs. In any case a practitioner must consider evidentiary issues from the outset. It's never too early in a case to gather evidence and to think about the implications and quality of evidence in order to decide the next move. In the areas discussed in Chapter II, the practitioner must focus on the evidence well before the Court date in order to place information into the record for the Court to consider. The book helps in thinking about cases decided on the administrative record.

The *Graev* case and its progeny have placed a burden on the IRS to prove the timeliness of its decision to impose a penalty. The high volume of these cases in the past few years coupled with the evidentiary issues presented as the IRS tries to meet its burden make for a rich new body of case law applicable not only in I.R.C. 6751(b) cases but across the board. This edition captures the new case law and presents it across a broad array of provisions in the Federal Rules of Evidence (FRE) implicated by the issues arising in these cases.

Not directly discussed by the book but lurking in the background is the impact of the pandemic on Tax Court proceedings. During the time of the pandemic, the Court has not held trials in person but via Zoom. The ordinary difficulties of presenting evidence become somewhat magnified in the virtual setting. Knowledge of the rules of evidence and planning for the many issues that can occur during a trial gets even more challenging as practitioners plan to proceed virtually. Becoming comfortable with the information the book provides can allow the practitioner to best prepare for trial in this setting and to know when to seek a motion in limine or how to best prove the admissibility of a document or testimony in a setting in which the judge sits across the Internet rather than across the courtroom.

As mentioned in my foreword to the previous edition, 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. The third edition of this evidentiary guide keeps the practitioner up to date on the latest ruling from the Tax Court allowing even those practitioners who do not often go to trial to feel more comfortable that the necessary information will make its way into the Court record in support of their position.

Keith Fogg  
Clinical Professor, Harvard Law School  
Boston, MA  
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