

## Introduction

Litigating in the U.S. Tax Court is unlike the experience of litigating in any other court. Besides being the only Federal court to hear exclusively tax cases, the Tax Court has its own set of procedural rules, which often diverge from the Federal Rules of Civil Procedure; vastly different expectations of the parties during discovery than other Federal courts; and an array of precedential and non-precedential opinions it may issue, from full Court-reviewed opinions to non-binding bench opinions.

One of the most unique features of the Tax Court is also its most valuable for taxpayers. It is the only Federal court that offers a pre-payment forum when the Internal Revenue Service makes adjustments to a taxpayer's return asserting additional tax due. While other Federal fora—specifically, the Federal district courts and the Court of Federal Claims—can and do hear tax cases, the Tax Court is generally the only one that does not require a taxpayer to first pay the full asserted liability. The pre-payment feature of the Tax Court is essential for taxpayers who are of limited financial means and would lack a forum to air their tax disputes otherwise. For this reason, the Tax Court serves a crucial role in Federal tax administration.

Unlike Article III courts, the Tax Court’s authority is statutory.<sup>1</sup> It may hear only the types of cases for which Congress has granted jurisdiction. The jurisprudence analyzing the Tax Court’s jurisdiction is complex, and complications manifest in unexpected ways. For example, the Tax Court has no authority over a case where a petition is filed more than 90 days after the IRS issues a valid notice of deficiency, no matter the equities.<sup>2</sup> It is easy to imagine, given the stakes of untimely filing, the myriad scenarios where taxpayers have challenged the sufficiency of a notice of deficiency—from notices mailed to an outdated address, to notices with a different taxpayer’s name, and even to notices incorrectly showing \$0 of tax due—with varying results that are sometimes hard to reconcile. Further compounding the complexity are the (often unsettled) nuances that arise when invoking the Tax Court’s jurisdiction outside the deficiency context, such as partnership actions, collection due process cases and, more recently, passport revocation review.

Another unique aspect of the Tax Court is that, although a full Court comprises 19 presidentially appointed judges, the Court strives to speak with a uniform voice. Whereas Federal district judges are generally free to disagree with the opinions of their fellow judges, published Tax Court opinions are binding on all the judges unless overturned. Moreover, as a court of national jurisdiction, the judges travel to dozens of cities across the country to try cases. In addition to the convenience this provides to taxpayers, it also means that appellate jurisdiction lies with the Court of Appeals where the taxpayer is located. In other words, the Tax Court has many more “bosses” than judges who sit on Federal district courts, which generally may be overturned only by the Court of Appeals in the circuit where the district court is located. Because the Tax Court applies precedential law of the circuit with appellate jurisdiction,<sup>3</sup> an early awareness of the appellate venue and its case law is critical.

A further unique aspect of the Tax Court lies with the court’s commitment to accessibility for all taxpayers. In addition to the aforementioned pre-payment feature, the Tax Court provides a forum that is agreeable to both represented and unrepresented taxpayers. For example, in this book, the authors have outlined the procedures for

---

<sup>1</sup> See sections 6214, 7441.

<sup>2</sup> Or, if the notice is addressed to a person outside the United States, 150 days. Section 6213(a).

<sup>3</sup> *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff’d on other grounds*, 445 F.2d 985 (10th Cir. 1971).

requesting small tax case designation allowing unrepresented taxpayers an option to exercise their right to dispute their tax liability in a streamlined and more understandable manner. For many taxpayers facing small liabilities, the small case designation option creates a legal setting that is much less daunting, albeit without an option to appeal. The accessibility of the Tax Court is further accentuated by the assigning of Special Trial judges to small case designated cases, as many of the Special Trial Judges have extensive experience in working with low-income taxpayers and the issues they may be facing. The Tax Court's commitment to accessibility is bolstered by the many resources and forms found on the court's website, many of which have been presented and discussed by the authors as to their usefulness and appropriateness in certain situations.

This book serves as a guide to these and other distinctive features of litigating in the Tax Court. Originally published as a chapter in the multivolume *Effectively Representing Your Client Before the IRS*, this standalone version is meant to increase access for practitioners and taxpayers whose focus is Tax Court litigation. From pleadings to motions practice to trial and beyond, this publication tracks each step in the Tax Court litigation process, providing analysis and citations to Tax Court Rules and seminal case law along the way. The authors also share their practice tips, words of caution, and helpful suggestions along the way, learned from years of appearing before the Tax Court. An accompanying website provides various forms and templates to provide a starting place for the most common filings. The authors hope that this book, along with the forms and templates, will provide a useful tool to all taxpayers or their counsel who find themselves in the United States Tax Court.

Sean M. Akins, Kandyce Korotky, and David Sams  
July 2021