

BOOK REVIEW

A Practitioner's Guide to Tax Evidence

by Joni Larson

By Keith Fogg*

Professor Joni Larson has done a great service for all Tax Court practitioners. Her new book, *A Practitioner's Guide to Tax Evidence*, 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.

My Tax Court practice spans over the past 35 years, but the actual trial of cases by me has run in fits and starts with occasional lengthy periods of inactivity. Like many Tax Court practitioners, most of my cases settle, making my knowledge of the FRE one that lacks the quality of a more frequent litigator. As an initial response to the book, I found reading it quite helpful in jogging my memory on issues that arise infrequently or that I have never faced. For this reason alone, the book deserves attention from those who practice in Tax Court regularly but engage in litigation infrequently.

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.

After each FRE section that receives regular attention from the Tax Court, Professor Larson gives a brief summary of the requirements of that section. These bracketed summaries offer a helpful entry to the case discussion. The discussion following the summaries contains a well-documented, 1,258 footnote, insight into the Tax Court's take on the FRE.

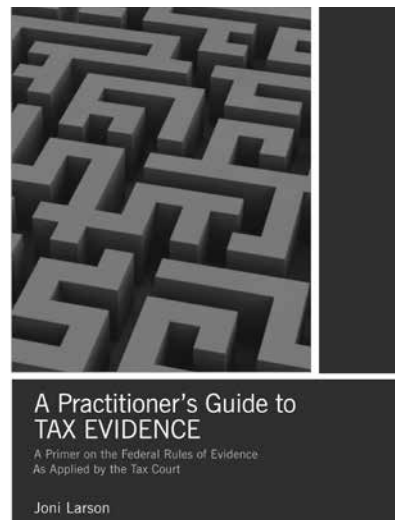
Several of the provisions deserve specific mention.

The change to the Internal Revenue Code in 1998 with respect to burden of proof 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. Between the case law and the accompanying text, the burden of proof section may contain the most thorough discussion of this issue I have seen.

The discussion of relevance sets out an extensive collection of cases on this topic. The benefit to having a detailed discussion of this issue, which contains only Tax Court decisions, comes from the frequency with which certain relevance issues arise in tax matters. The discussion of the use of information on returns subsequent to the year at issue highlights the benefit of a tax-focused discussion of this provision of the FRE. Having so many cases on this issue analyzed allows anyone researching this issue to quickly reach conclusions concerning the use of tax information outside the year at issue.

Some of the FRE discussions also tie into the Tax Court rules. Section 615 on excluding witnesses offers a good example of the link between the two provisions. Having the evidentiary rules linked with the Court's rules aids in understanding and applying both provisions.

The method of using experts in trial is one of the unique features of the Tax Court. The book's section on FRE 702 contains an excellent discussion of the factors the Tax Court considers in the use of expert witnesses. The extensive case compilation on this subject will aid anyone trying to prepare for the use of an expert in Tax Court. Because the proper use of an expert requires careful planning, the book provides significant value on this subject. The



discussion of the *Rovakat* case at the end of this section serves as an excellent reminder of the discretion available to the Court on this issue, reminding the reader of the role of the expert as a guide and aid to the Court.

In addition to the many FRE sections containing exhaustive and detailed discussion of the Tax Court decisions, the book also provides value by quickly confirming those sections on which the Court has not ruled. In the pursuit of an answer when researching, finding a negative result proves as difficult as finding the right cases. Professor Larson lists all FRE sections and notes those sections which the Tax Court has not yet addressed.

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 brief summary of requirements of the major rules assists the practitioner in charting the proof necessary to succeed. Overall, those practicing in the Tax Court owe a debt of gratitude to Professor Larson for her work to assist in preparing for trial. ■

For more information and to order a copy of *A Practitioner's Guide to Tax Evidence: A Primer on the Federal Rules of Evidence As Applied by the Tax Court*, by Joni Larson, ISBN 978-1-61438-721-3, \$79.95 Tax Section Members, visit www.shopABA.org.

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