



**THE STUDENT POWERPOINT VERSION INTENTIONALLY DOES NOT
COMPLETELY MATCH THE PRESENTATION**

PRACTICE & PROCEDURE

2025 EXAM CYCLE
LIVE FROM LAS VEGAS
VIRTUALLY VIA LIVESTREAM




Text




**Preparing to
Practice before the
US Tax Court**

Practice & Procedure
2025 Exam Cycle




May 2025 Handout (bound)



**Preparing to
Practice before the
US Tax Court**

May 2025 Handout
QUESTIONS
2025 Exam Cycle



May 2025 Handout (downloaded)

MAY 2025 HANDOUT – QUESTIONS

PRACTICE & PROCEDURE – QUESTIONS IN CLASS	1
PRACTICE & PROCEDURE – QUIZ #1 – PLETHOR/ANSWER/REPLY	6
PRACTICE & PROCEDURE – QUIZ #2 – JURISDICTION	8
PRACTICE & PROCEDURE – QUIZ #3 – DISCOVERY	10
PRACTICE & PROCEDURE – QUIZ #4 – TRIAL	11
PRACTICE & PROCEDURE – QUIZ #5 – MISCELLANEOUS ITEMS	12
EVIDENCE – QUIZ #1 – HEARSAY	13
EVIDENCE – QUIZ #2 – MISCELLANEOUS TOPICS	14
FEDERAL TAXATION – QUESTIONS IN CLASS	15
FEDERAL TAX – QUIZ #1 – GROSS INCOME	27
FEDERAL TAX – QUIZ #2 – INCOME CONCEPTS	29
FEDERAL TAX – QUIZ #3 – BUSINESS ENTITY CALCULATIONS	31
FEDERAL TAX – QUIZ #4 – ENTITY ISSUES	36
PRACTICE & PROCEDURE – CONCEPT REVIEW	37
EVIDENCE – CONCEPT REVIEW	41



Exam Information

60 minutes, 25% exam

Easiest part to pass – TC rules available

Toughest part of study is jurisdiction

Reading TC cases is good preparation (often tested here)

For 2021 remote exam it was paired with Evidence in one 110 minute segment

For 2023 remote exam it was paired with Evidence in one 120 minute segment



Text Info

Prior Exam questions reinforce learning but shouldn't be your only source of study material

- By topic, with questions and suggested answers
- By year, with questions and suggested answers
- By year, with questions only 2000-2023



Some question types repeat

Jurisdiction

Counting the days

Elements of a petition

Court cases – we'll talk more about this



Common Topics by Exam – P&P

TOPICS	2023	2021	2018	2016	2014	2012	2010	2008	2006	2004	2002	2000	TOTAL
# TIME	# TIME	# TIME	# TIME	# TIME	# TIME	# TIME	# TIME	# TIME	# TIME	# TIME	# TIME	# TIME	# TIME
ANSWERS			1	2								1	1
AWARD OF COSTS												1	1
BURDEN OF PROOF/COULD BE IN EVIDENCE	1	4	1	2	1	2	2	4	1	3			9
COPIC COLLECTION DUE PROCESS	1	2		1	2		1	6	1	6			11
COUNSEL									1	1	2	3	6
DISCOVERY	2	6	2	6	1	2	1	2	4	7	4	8	4
EQUITABLE RECOUPMENT	1	4							2	4	3	7	1
ESTOPPEL/RELIANCE	1	2							1	2			2
INNOCENT SPOUSE	1	2							1	1	4	6	1
JUDICIAL REVIEW	1	1	2	4	1	2	1	2	1	1			10
JOINT PETITIONS			1	2									1
JURISDICTION	3	8	1	11	5	17	3	11	1	10	2	13	2
JURISDICTION - P&HP	1	2											1
LAST KNOWN ADDRESS/7502			2	7	3	11	3	6	1	3	1	2	1
MISC PROCEDURES	6	19	9	16	4	7	3	7	2	4	2	4	3
MOTIONS	1	3	3	8	1	4	3	11	5	14	3	11	3
PETITIONS													
PETITION/AMENDED													
PROTECTIVE ORDERS/PRIVACY													
SANCTIONS													
SMALL TAX CASES	2	4											2
STATUTE OF LIMITATIONS	1	4											1
SUMMARY JUDGMENT													
STIPULATIONS/ADMISSIONS													
TOTAL	22	60	23	60	23	60	25	60	23	60	21	60	22



New to 2025

Latest Tax Court Rules online

(complete rules are at ustaxcourt.gov, current as of 8/8/24)

If you see something we missed in any text, let us know



Basics (p 3-5)

Limited jurisdiction

Court office in DC

Legal Holidays and DC Holidays

Most recent one (for counting only) is 4/16

Judges



Basics

Special Trial Judge

- appointed by Chief Judge to hear cases
- make decision for small cases, whistleblower and §§6320 6330
- Tax Court Rule 9/05



Who Appears (p 6)

For Respondent (IRS)

For Petitioner (TP)

- Pro Se (self-represented)
- Attorney
- Non-attorney



Counsel Not Recognized

ORDER

The Petition filed to commence this case served on July 16, 2021, was not properly executed in that it did not bear the original signatures of petitioners or of a practitioner admitted and recognized to practice before the Tax Court, as required by the Tax Court Rules of Practice and Procedure. Rather, it appears that petitioners' non-attorney representative who is not admitted to practice before this Court signed the petition on their behalf. The United States Tax Court, which is separate and independent from the IRS, has certain requirements that must be met before an individual can be recognized as representing petitioners before the Court. The Court has prepared Q&A's on the subject "Representing a Taxpayer Before the U.S. Tax Court." A copy of these Q&A's are attached to this order. The Court also encourages practitioners and non-attorneys seeking admission to practice before the Court to consult "Guidance for Practitioners" on the Court's website at www.ustcp.org/practitioners.html. At this juncture, Kristina M. Lott will not be associated with this case and we encourage petitioners' representative to review the Court's admissions requirements.

Therefore, in order for this Court potentially to acquire jurisdiction to consider this case, it is necessary to obtain a Ratification of Petition bearing petitioners' original signatures and ratifying the petition previously filed. Upon due consideration and for cause, it is

ORDERED that, on or before September 10, 2021, petitioners shall file with the Court in paper form a Ratification of Petition ratifying and affirming the filing of the Petition on their behalf (preferably in "wet ink" signature, not a photocopied signature). Petitioners should note that the ratification of petition may not be electronically filed. It is further

ORDERED that the Clerk of the Court is directed to attach to this Order a form that petitioners may use to comply with this Order. It is further



Limited Entry of Appearance (p 9)

New Rule 201(a)

Required for each case

- Executed by practitioner
- Contain executed acknowledgement by petitioner
- Be served on parties

Can't be filed earlier than start of scheduled trial session and automatically terminates earlier of adjournment of trial session or end of date specified in the form.



MEMORY TOOL (p 9)

Limited entry of appearance elements:

- S** – **S**eparate appearance required for each case
- L** – **L**imited to date/time or activity
- A** – **A**dmitted to the bar
- P** – **P**etitioner executed acknowledgment
- S** – **S**erved on all parties

SLAPS



2021/P-23: Limited Entry of Appearance

(2 minutes) Briefly describe the significant aspects of the Tax Court Order with respect to limited appearance by a practitioner in the Tax Court.

SUGGESTED ANSWER:



Counsel Admitted to Practice

Individuals only ... not corporation or firm

Individual must sign all petitions/pleadings. A corporate or association taxpayer's name is indicated by one of its active and authorized officers or members.

Example: Mary Doe, Inc. by Richard Roe, President



Precedent (p 10)

Where appealed ...

Golsen rule

Circuit shop?



How Counsel Makes an Appearance

Initial appearance ... sign the petition

If TP originally pro se ... entry of appearance

If TP previously represented by counsel ... substitution of counsel

[Copies of forms are in the text, including Limited Entry of Appearance]



Withdrawal of Counsel (p 14)

Rule 24

Must file a motion to request Court's leave to withdraw

No later than 30 days before the first day of calendar call

Opposing counsel must be notified and motion must include statement as to any objection

Court may deny the motion at its discretion



Conflict of Interest

A conflict is present if counsel:

1. was involved in planning or promoting a transaction or operated an entity that is connected with any issue in a case,
2. represents more than one person with differing interests with respect to any issue in a case, or
3. is a potential witness in a case.



Withdrawal of Counsel

For 1) and 2) counsel can either secure the informed consent of all parties, withdraw, or take steps to obviate the conflict of interest.

For 3) counsel **MUST** withdraw - conflict cannot be waived.



Withdrawal of Counsel

TC Rules also permit counsel to withdraw in the event of death, or if there is a change in party or authorized representative (such as a corporate officer or a change in fiduciary).

The ABA Model Rules of Professional Conduct permit counsel to withdraw if the client:

- breaks a promise to attorney (refuses to pay fees),
- becomes a financial burden on attorney, or
- is uncooperative.



MEMORY TOOL (p 11)

Withdrawal required under TC rules:

- P** – Plan/promote transaction – informed consent waives
- C** – Conflict of interest – informed consent waives
- W** – Witness – cannot be waived by informed consent

PCW



2008/P-22: Withdrawal of Counsel

(1 minute) TP retains Counsel a person properly admitted to practice before the Tax Court, to represent TP in filing a petition with the Tax Court and in trial of the case Counsel receives a payment as a retainer for services, and Counsel submits to the court a petition that subscribes as counsel. TP thereafter refuses to pay Counsel for additional services. Under these circumstances, if Counsel submits a motion to the Tax Court to withdraw as counsel, explain whether the court must grant the motion.

SUGGESTED ANSWER:



Effect of Counsel's Signature – Rule 33 (p 15)

Every pleading must be signed –

- counsel certifies read the pleadings,
- believe after reasonable inquiry and to the best of his or her information, knowledge and belief that it is well grounded in fact and is warranted by existing law, or is a good faith argument for the extension, modification, or reversal of existing law,



Effect of Counsel's Signature – Rule 33

- believe no improper purposes such as to harass or cause unnecessary delay or needless increase in the cost of litigation,
- and
- is authorized as counsel to represent the party or parties on whose behalf the pleading is filed.



Effect of Counsel's Signature – Rule 33

Counsel may not knowingly sign anything false

If pleading is signed in violation of Rule 33, Court can impose any sanction deemed appropriate ...



MEMORY TOOL

Certifications of counsel's signature:

- R** – Read the pleading
- I** – No **improper** purpose
- B** – **Belief** it is well grounded
- A** – **Authorized** to represent

RIBA



Suspension/Disbarment of Counsel (p 15-16)

Effective as of 1/1/10 a member of the Bar of the Tax Court may be disciplined as a result of:

- conviction in any court of the US of any felony or of any lesser crime involving false swearing, misrepresentation, fraud, criminal violation of any provision of the IRC, bribery, extortion, misappropriation, theft, or moral turpitude;



Suspension/Disbarment of Counsel

- imposition of discipline by any other court of whose bar an attorney is a member, or an attorney's disbarment or suspension by consent or resignation from the bar while an infestation of misconduct is pending,
- conduct with respect to the Court which violates the letter and spirit of the ABA Model Rules of Professional Conduct, the Rules of the Court, or orders or other instructions of the Court, or
- any other conduct unbecoming a member of the Bar of the Court.



Suspension/Disbarment of Counsel

Counsel cannot be suspended > 60 days without a hearing.

May be immediately suspended for ≤ 60 days for contempt/misconduct during any trial or hearing.

If counsel is suspended ≤60 days, automatic reinstatement ...

If counsel is suspended >60 days, Court order required ...



Suspension/Disbarment of Counsel

Other discipline may include

- Disbarment
- Suspension from practice before the Court
- Admonition
- Reprimand
- Any other sanction deemed appropriate



QUESTIONS AND ANSWERS



Overview: The IRS Examination Process (NOT IN THE TEXT)

1. Case selected for examination
2. Examination or review of return occurs
 - a) Automated Underreporter (AUR)
 - b) Correspondence examination
 - c) Office examination
 - d) Field examination
3. Revenue Agent Report issued
 - a) Agreed – matter closed
 - b) Unagreed – matter continues



Overview: The IRS Examination Process (NOT IN THE TEXT)

4. Challenge results of unagreed case
 - a) IRS Independent Office of Appeals
 - b) United States Tax Court
5. Notice of deficiency must be issued prior to expiration of assessment statute of limitations (ASOL)
6. Assessment of balance due



Overview: The IRS Collection Process (NOT IN THE TEXT)

1. Assessment of balance due and notice & demand made
2. Pay balance due
 - a) Full payment
 - b) Short-term payment plan
3. Collection alternative
 - a) Installment agreement
 - b) Offer in compromise
 - c) Spousal defenses
 - d) Currently not collectible (Status 53)



Overview: The IRS Collection Process (NOT IN THE TEXT)

4. Enforced collection
 - a) Notice of Federal Tax Lien
 - b) Notice of Intent to Levy
5. Collection Due Process Hearing
 - a) Collection alternative
 - b) Liability for underlying balance due (in certain circumstances)
 - c) Enforced collection sustained
6. IRS must initiate lawsuit or levy prior to expiration of the collection statute of limitations (CSOL)



Filing a Petition in Tax Court (p 18)

90/150 day petition period

During petition period no collection activity allowed

No petition, IRS issues notice/demand for payment

Pay before NOD?

NO!!!!!!



Is the Time to File Jurisdictional or Subject to Equitable Tolling?

Boechler found 30 days for CDP is subject to equitable tolling

Tax Court resists for notice of deficiency in *Hallmark Research Collective* (unanimous reviewed decision)

In *Culp*, 3rd Circuit reversed and held equitable tolling applies to NOD.

In *Sanders*, Tax Court reaffirms its holding in *Hallmark* for NOD.



Is the Time to File Jurisdictional or Subject to Equitable Tolling?

In *Frutiger*, Tax Court held deadline is jurisdictional for §6015

In *Belagio Fine Jewelry*, Tax Court held deadline is NOT jurisdictional for §7436

Exam Alert! This is developing and likely to be tested.



Tax Court Advantages

- no prepay tax in controversy (interest continues)
- no trial by jury is permitted;
- TC judges are tax law experts;
- restricted discovery;
- unless referred to the TC by Appeals, all docketed cases subject to review by the Appeals Division;
- S case procedure even less formal.



Of note ...

Appeals
Supreme Court

Generally the IRS can subject TP's return for any given year to only 1 audit, but can re-audit if fraud is suspected or to correct math errors.

Frequent audit, previous no change?

IRS can assert greater deficiencies than on NOD once in Tax Court



Required jurisdiction elements

Notice of Deficiency issued by the IRS to the taxpayer's last known address within the statute of limitations period,

--- AND ---

Taxpayer's timely filed petition



Other Requirements

Proper Party must file: corporation that lost its charter/franchise and can't sue under its state law cannot file a petition

Court of Limited Jurisdiction: Congress must expressly give them power to hear the case, but it can determine if it has jurisdiction to hear the case



Notice of Deficiency (p 21)

IRS must determine a deficiency exists

Must examine tax return in question

If one NOD is invalid, may issue new NOD as long as SOL is open



Deficiency (p 22)

... amount by which the correct amount of tax determined by the IRS exceeds the total of the amount of tax shown by the TP on the return plus rebates.

Do NOT eliminate a deficiency before NOD is issued

Can pay after NOD is issued to stop interest and/or penalties.



Notice Requirements

IRS doesn't have to explain deficiency (Tax Court won't look behind it)

No required format

Not all demands = NOD

Must identify it is NOD, indicate tax due, and must identify taxable period

Must identify the proper party



US Auto Sales, Inc
(153 TC 4 (10/28/19))

In 5/12 respondent issued an 11 page NOD to petitioner – the first 4 pages identify P, but the last 7 identify a separate, related corporation. Timely petition issued on the May 2012 NOD.

The real question is whether the May notice actually reflects a “determination” in order to give jurisdiction – but it can’t. The May notice is consistent about deficiencies and years at issues, but it is “fatally inconsistent” as to identify of the against whom the deficiencies are determined. The Tax Court mentions the “four corners” of the purported notice.

Reviewed decision – concurring and dissenting opinions.



Assessment (p 23)

... amount that can be collected by the IRS through administrative means w/out any court action.

No TC jurisdiction for assessments, including math or clerical errors

If the IRS corrects an overstated withholding or estimated payment credit as if it is a math error, there is no TC jurisdiction



IRS Form 870-AD

If the TP executes Form 870-AD (Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment), the IRS is not required to issue a NOD before assessing the tax.

No NOD = No Tax Court jurisdiction!!!



Statute of Limitations – 3 years (p 24)

NOD must be mailed prior to SOL expiration for assessment.

Generally the SOL for an income tax return that is timely, completely, and nonfraudulently filed is 3 years from the date the tax return is due or when it actually was filed (the date received by the IRS).



Statute of Limitations – 3 years

If TP timely files the return ...

Tax Deadline	Mailing Date	Received by the IRS	Statute Date
4/18/22	2/14/22	2/18/22	4/15/25 (RR 81-269)
4/18/22	4/14/22	4/21/22	4/15/25 (§7502)

If extended:

10/17/22	7/12/22	7/15/22	7/15/25
10/17/22	10/11/22	10/14/22	10/14/25
10/17/22	10/15/22	10/26/22	10/15/25 (§7502)



Statute of Limitations – 6 years

The SOL extends to 6 years on any return where there is an understatement or omission of income exceeding 25%.

This amount is calculated as the amount of omitted income divided by the original gross income reported on the return.



6 year example (p 25)

Schedule C gross \$150,000 (\$175,000)
 Schedule C net \$ 45,000 (\$ 75,000)
 Interest \$ 1,500 (\$ 15,000)
 Dividend \$ 2,500 (\$ 3,500)

Which information is important?



6 year example

Schedule C gross \$150,000 (\$175,000) (\$25,000)
 Schedule C net
 Interest \$ 1,500 (\$ 15,000) (\$13,500)
 Dividend \$ 2,500 (\$ 3,500) (\$1,000)
 Gross change

$$\frac{(\$25,000 + \$13,500 + \$1,000)}{(\$150,000 + \$1,500 + 2,500)}$$

$$\$39,500 / \$154,000 = 26\%$$
 6 year statute > 25%



6 year SOL

Effective 7/31/15, the 6 year SOL includes when the failure to report the income is the result of an overstatement of basis in property that was sold.

The new law clarifies that overstating basis, resulting in a reduced gain upon the sale of the property, is the same as omitting gross income from a tax return.



Statute of Limitations (p 26)**NO Statute of Limitations**

No return = no SOL running

Fraudulent return = no SOL running even if later, correct income tax return is filed.



No SOL until return is filed***Beard***

- must contain enough information
- purport to be a return
- honest/reasonable attempt to satisfy law
- be executed under penalty of perjury

Once fraudulent, always fraud – TP or preparer



§7502 Timely Mailed/Filed (p 26)

Under §7502 if any return, claim, statement, or other document required to be filed, or any payment required to be made, is delivered by US mail to the agency, officer, or office where such item is required to be filed or paid, the date of the US postmark stamped on the cover is deemed to be the date of delivery or the date of payment.



Timely Filed Electronic Petition (p 27)

Can electronically file petition through DAWSON, the court's secure filing and case management system.

Electronically filed petition must be filed by 11:59 p.m. (eastern time) on the last day for filing.

If the Court's electronic filing system is not accessible on the last date for filing, the period in which to file is extended.



Timely Filed Electronic Petition

They mean it: 11:59 pm eastern time. Electronic filing extends the number of hours to file, not the number of hours to file.

In *Nutt*, petition was filed at 11:05 Central time – motion to dismiss for lack of jurisdiction due to untimely receipt of petition was granted

In *Sanders*, petitioner had computer problems and filed through DAWSON at 12:00:11 a.m. on the morning after it was due - motion to dismiss for lack of jurisdiction due to untimely receipt of petition was granted



§7502 Timely Mailed/Filed (p 28)

Also can use designated commercial or PDS to take advantage of timely mailed/timely filed rule.

Must be approved PDS – IRS updates periodically – no annual list

DHL Express

FedEx

UPS



§7502 Timely Mailed/Filed

Using designated PDS or Certified, Return Receipt Requested services allows TP to defend IRS motion to dismiss for lack of jurisdiction.

Date-marked receipts offer the appropriate proof of mailing. Remember, a deficiency petition filed after the 90th day is invalid ...

Different rule postmarks OUTSIDE US borders

Different rules for private postmark



"Modern equivalent of old fashioned postage meter ..."

Stamps.com postage label indicates date by which customer purchased the postage

Similar treatment to private postage meter – valid unless received outside normal time, then must explain why



Michael J Seeley and Nancy Seeley **NOT IN TEXT**
(TC Memo 2020-6 (1/13/20))

How is the petition filing date evaluated if Respondent believes it is late?

NOD issued 3/28/17

Last day for filing: 6/26/17

Attorney-prepared petition received by Tax Court: 7/17/17

Envelope was properly addressed, had postage stamps, and appeared to be delivered by USPS, but there was no discernable postmark or other markings affixed by USPS.

Attorney gave declaration of mailing on 6/22/17. The Court discussed §7502 rules and all agreed the postmark was missing. There is no regulation that covers where there is no postmark, but case law instructs Court to deem postmark illegible and permit introduction of extrinsic evidence to ascertain mailing date. The Court took judicial notice of 7/4 holiday, and the sworn statement, and found it was more likely than not the petition was mailed 6/22/17.



MEMORY TOOL (p 31)**IRC 7502 requirements met**

- P** – Proper postage
A – Properly addressed
D – deposited on (or before) last date for filing
E – proper envelope

PADE

2021/P-6: §7502

(2 minutes) TP received a §6212 notice of deficiency for which the last day timely to file a Tax Court petition was Tuesday, March 6, 2018. On March 6, 2018, TP placed the petition in an envelope properly addressed to the Court on which TP placed a private postage label printed from a website for buying postage acceptable by the United States Postal Service (USPS). The date printed on that private postage label was March 6, 2018. TP then delivered, on March 6, 2018, to the USPS the envelope bearing the private POSTAGE LABEL. The envelope received by the Court bore two USPS postmarks each of which was after March 6, 2018, and the envelope did not arrive at the Court until 20 days after the date shown on the private postage label. The IRS moves to dismiss the case for lack of jurisdiction because the petition was not timely filed. How should the Tax Court rule on the motion?



2021/P-6: §7502**SUGGESTED ANSWER:**

2018/P-5: §7502

(3 minutes) Discuss whether any delivery service other than the U.S. mail qualifies within the 7502(a) timely-mailing-is-timely-filing rule.

SUGGESTED ANSWER:



Notice Mailing Requirements

NOD valid when IRS sends to TP via certified (registered) mail

Mailing it to the TP's last known address 'sufficient'

What if TP does not get the NOD?

Physical receipt of NOD = actual notice



Notice Mailing Requirements

How many days are 'in time'?

Burden on IRS to prove both the mailing occurred and date mailed.

Remember: the IRS notice must be MAILED, not received, within the SOL period to be valid.



Last Known Address (LKA) (p 32)

TC defined it to be the TP's '... last permanent address or legal residence known by the Commissioner ' unless TP provides clear, concise notification ...

Only 1 last known address at a time

IRS maintains 1040/709/706 data separately so must advise for each



Last Known Address (LKA)

Notification may be written, oral or electronic – generally written (others are limited)

Not on Form 4868 or 2848 *Damian Gregory and Shayla Gregory* (152 TC 7 (3/13/19))



2021/P-2(a): Last Known Address

(2 minutes) Discuss the meaning of the phrase "last known address" with respect to a §6212 statutory notice of deficiency.

SUGGESTED ANSWER:



2021/P-2(b): Last Known Address

(2 minutes) Discuss the significance of the phrase "last known address" with respect to Tax Court litigation.

SUGGESTED ANSWER:



Bankruptcy Proceedings (p 34)

The IRS can issue a NOD while the TP is subject to bankruptcy court proceedings, but an automatic stay prohibits a TP in bankruptcy from filing a petition.

Suspension period lasts for the time TP cannot file because of the automatic stay plus 60 days thereafter.



Rescinding Notice of Deficiency

With consent of the TP the Secretary may rescind any NOD mailed to the TP

If NOD is rescinded it is no longer valid; no Tax Court petition can be filed on rescinded NOD



QUESTIONS AND ANSWERS



Computation of Time (Rule 25) (p 35)

Exclude the day of the event that triggers the period – count every day. If it ends on a Saturday, Sunday, or legal DC holiday, move to the next day that is not a Saturday, Sunday, or legal DC holiday.

If the Clerk's office is inaccessible on the last day of a filing period, the time for filing any paper other than a petition is extended to the first accessible day that is not a Saturday, Sunday, or legal DC holiday.

Unless otherwise defined, the last day ends:

- For electronic filing at 11:59 pm Eastern Time, and
- For filing by other means, when the Clerk's Office is scheduled to close



Counting The Number of Days

Time for filing a TC petition is within 90 or 150 days after the authorized NOD is MAILED.

The 90 days applies to most TPs, but it becomes 150 days when:

- TP is out of the country for the entire 24 hours of the day the NOD is mailed, or
- notice is mailed to an address outside the country (even if the TP actually is in US).



Counting The Number of Days

NOD required by §6213(a) to indicate the last day for filing a TC petition.

TP may rely upon the date shown on NOD if it is > than the 90-day filing period. If it is <90-day filing period, by statute TP still has 90 days to file petition.



Notice of Deficiency valid if this date is missing or wrong

Department of the Treasury
Internal Revenue Service
Large Business & International
400 N. 3rd Street, Box 211
RM 1002
Richmond, VA 23219

CERTIFIED MAIL

SARASOTA, FL 34249-3602

Date: **NOV 2 4 2017**

Exemption ID number:
15462

Person to contact:
Mary G. Pugh

Employee ID number:
2122011

Contact telephone number:
202 541-6478

Contact fax number:
888-838-5442

Last day to file petition with tax court:
NOV 2 7 2018

Notice of Deficiency

Tax Year Ended:	December 31, 2016	December 31, 2017
Deficiency:		
Increase in tax	\$58,499.00	\$60,284.00
Penalties or Additions to Tax		
IRC 6620a	\$11,699.80	\$12,055.80



Counting The Number of Days

Know how to count the appropriate number of days.

Even 1 day late results in a dismissed petition and potential malpractice issues.

More importantly – you'll likely be tested on this in 2025



Sample Counting Days Problem

(4 minutes) TP is physically present in the United States at all relevant times. On July 6, 2020, the IRS mailed to TP, to an address in the United States, a §6212 notice of deficiency (bearing the date of July 6, 2020), regarding TP's 2018 income tax liability. The notice of deficiency states that the last day on which a Tax Court petition may be filed is October 2, 2020. TP received the notice on July 9, 2020. What is the last day on which TP timely can file a petition with the Court? The attached 2020 calendar may be of use to you.

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
July		1	2	3	4	5	6
	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
	28	29	30	31			
August	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				
September	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				
October	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				
November	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				



Sample Counting Days Problem- What Matters?

(4 minutes) TP is physically present in the United States at all relevant times. On **July 6, 2020, the IRS mailed** to TP, to an address in the United States, a §6212 notice of deficiency (bearing the date of July 6, 2020), regarding TP's 2018 income tax liability. The notice of deficiency states that the **last day on which a Tax Court petition may be filed is October 2, 2020**. TP received the notice on July 9, 2020. What is the last day on which TP timely can file a petition with the Court? The attached 2020 calendar may be of use to you.



4 Methods to Count days

Find the method that works best for you

Practice so this is automatic

4 methods are:

- 1) Chief Counsel Method
- 2) By Calendar Date
- 3) Weeks Shortcut
- 4) Count 90 days



1) Chief Counsel Method (p 38)

Must know filing date

How many days are in each month

1. Calculate number of days left in filing month
2. Calculate next 2 full month days
3. $90 - (1+2) =$ petition filing date
4. Compare that (Saturday, Sunday, DC holiday?)
5. Compare that (last date for filing per NOD?)



	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
July	5	6	7	8	9	10	11
	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
	26	27	28	29	30	31	
August							1
	2	3	4	5	6	7	8
	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					
September			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30			
October	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

Holidays in the District of Columbia during the months in the table above are: (1) Friday, July 3, 2020, Monday, September 7, 2020, and Monday, October 12, 2020.



31-6 = 25

25 + 31 = 56

56 + 30 = 86

90-86 = 4

1) Chief Counsel Method

Filing date: 7/6

Jul = 31; Aug = 31; Sep = 30

1. $31-6 = 25$ days
2. $25 + (30+31) = 86$
3. $90 - (86) = 4^{\text{th}}$ (petition filing date in next month)
4. 10/4 is Sunday, move to 10/5
5. That is after 10/2, so 10/5 is answer



2) By Calendar Date (p 39)

Must know filing date

How many days are in each month

1. Calculate 30 days to next month for next 3 months
2. Compare that (Saturday, Sunday, DC holiday?)
3. Compare that (last date for filing per NOD?)



	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
July	5	6	7	8	9	10	11
	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
	26	27	28	29	30	31	
August							1
	2	3	4	5	6	7	8
	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					
September			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30			
October					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

Holidays in the District of Columbia during the months in the table above are: (1) Friday, July 3, 2020; Monday, September 7, 2020; and Monday, October 12, 2020.



7/6 + 30 = 8/5

8/5 + 30 = 9/4

9/4 + 30 = 10/4

2) By Calendar Date (p 38)

Filing date: 7/6

Jul = 31; Aug = 31; Sep = 30

1. $7/6 + 30 = 8/5$ (July has 31)
2. $8/5 + 30 = 9/4$ (Aug has 31)
3. $9/4 + 30 = 10/4$
4. 10/4 is Sunday, move to 10/5
5. That is after 10/2, so 10/5 is answer



	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
July				1	2	3	4
	5	6	7	8	9	10	11
	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
	26	27	28	29	30	31	
August							1
	2	3	4	5	6	7	8
	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					
September			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30			
October					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

Holidays in the District of Columbia during the months in the table above are: (1) Friday, July 3, 2020; Monday, September 7, 2020; and Monday, October 12, 2020.

USTCP
The United States Tax Court Practice

7/6, count down 13
Ends 10/5 minus 1
10/4 is Sunday so plus 1

3) Weeks Shortcut (p 40)

Use calendar for this method:

1. Start with day of NOD
2. Down 13 weeks
3. Subtract 1 day
4. Compare that (Saturday, Sunday, DC holiday?)
5. Compare that (last date for filing per NOD?)



4) Count 90 Days (Brute Force) (p 41)

Use calendar for this method:


1. Start with day after NOD
2. Count 90 days total
3. Compare that (Saturday, Sunday, DC holiday?)
4. Compare that (last date for filing per NOD?)

Time consuming, greater possibility of error?



	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
July		5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	31
August							1
	2	3	4	5	6	7	8
	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					
September			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30			
October		1	2	3	4	5	6
	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
	28	29	30	31			

Start day after 7/6 and count 90 days
End on 10/4, which is a Sunday



Electronic Filing (Rule 26) (p 41)

For parties represented by counsel, electronic filing is required for all papers filed, unless the Court otherwise orders

Mandatory electronic filing does not apply to:

- A. Any papers not eligible for electronic filing (see the Court's electronic filing instructions on the Court's website for a complete list of those papers);
- B. Any counsel in a case who for good cause shown is granted an exemption from the electronic filing requirement.

Pro-se petitioners are not subject to mandatory electronic filing requirements, including a petitioner assisted by a low-income taxpayer clinic or Bar-sponsored pro bono program.



Exam Alert!

Electronic filing of petition?? DAWSON allows practitioners and pro se petitioners to upload documents electronically

Rule 26: The Tax Court will accept for filing by a party any papers submitted, signed or verified by electronic means that comply with procedures established by the Court

Not required for petitions, but mandatory for papers filed by a party represented by counsel unless the Court otherwise orders

Pro se taxpayer not subject to mandatory electronic requirements (including those assisted by LITC or bar-sponsored pro bono program)



Tax Court Petition (p 42)

No requirement that the petition be on a certain form, but under Rule 34 the petition must comply with the requirements related to pleadings.

Cannot be made by telegram, cablegram, radiogram, or telephone call

Can be electronically uploaded through DAWSON, sent by mail, or delivered in person



Tax Court Petition

A petition that does not satisfy the applicable requirements may be dismissed without giving TP chance to fix defect

The filing period is statutory and NO extensions of time can be granted

Untimely petition will be dismissed, and cannot be refiled.



Elements of Tax Court Petition (p 43)

Generally tested – Know this!

Memorize them

OR

Look up Rule 34????

Decide what works best for you ...



Exam Alert!

Elements of a petition looks different in 2025
than on prior exam cycles due to rule change

We revised the suggested answers to reflect these changes



Rule 34: Deficiency or Liability Petition

... Content must be "substantially in accordance with Form 1
petition and must contain"

- A. If the petitioner is an individual, the petitioner's name and state of legal residence
- B. If the petitioner is not an individual, the petitioner's name and principal place of business or principal office or agency
- C. The petitioner's mailing address and the office of the IRS with which the tax return for the period in controversy was filed.
- D. The date of the notice and the city/State of the Internal Revenue Office that issued the notice, or other allegations, establishing the Court's jurisdiction.



Rule 34: Deficiency or Liability Petition

- E. If the petitioner's name differs from the name on the notice, a statement of the reasons for the difference.
- F. The amount of the deficiency or liability determined by the Commissioner, the nature of the tax, and the year or years or other periods for which the commissioner determined the deficiency or liability. If only a part of the determination is disputed, the petition must state and identify the approximate amount of taxes in dispute.
- G. In separately lettered paragraphs, clear and concise assignments of each and every error, including any assignments of error as to which the burden of proof is on the Commissioner, that the petitioner alleges the Commissioner made in the determination of the deficiency or liability. Any issue not raised in the assignments of error will be deemed conceded.



Rule 34: Deficiency or Liability Petition

H. In separately lettered paragraphs, clear and concise statement of the facts on which the petitioner relies to establish the errors alleged in the petition, except for those assignments of error as to which the burden of proof is on the Commissioner.

I. Any special matters as required by Rule 39.

J. A request for the relief that the petitioner seeks.

K. The signature, mailing address, email address, and telephone number of each petitioner or petitioner's counsel, as well as counsel's Tax Court bar number. The use of a properly completed Form 2 petition satisfies the requirements of this Rule.



Rule 34: Deficiency or Liability Petition

(2) Copy of the notice of deficiency or notice of liability must be attached to the petition.

A claim for reasonable litigation or administrative costs must not be included in the petition (specified now in Rule 34).

Form 4 is the Statement of Taxpayer Identification Number

Form 5 is the Request for Place of Trial

Form 6 is the Corporate Disclosure Statement



Sample Language (p 48) Errors

d. The Commissioner erred in determining that
Petitioner is liable for the penalty under section
6662 (a) of the Internal Revenue Code with respect to
the calendar years 2010 and 2011.



Sample Language Facts Relied Upon

6. As the basis of its case, Petitioner relies on the following:

- a. Petitioner accurately stated its gross receipts for the calendar years 2010 and 2011.



Sample Language Prayer for Relief

WHEREFORE, Petitioner ~~asks~~ that the Court provide the following relief:

1. Determine that there are no tax deficiencies for Petitioner's calendar years 2010 and 2011; and

Now petitioner requests relief



New Suggested Answer

SUGGESTED ANSWER: Rule 34:



Waiver of Filing Fee

\$60 must accompany petition or it can be dismissed

Can be waived if TP files affidavit with enough financial info to establish inability to pay fee



Tax Court Petition

Joint Petition

Usually separate petition filed for each NOD

Can file joint petition when there are multiple NODs issued to one individual.

H/W always file a joint petition, even if separate NOD were issued to them.

If the NOD is directed to > 1 person, each person can file separate or joint petitions.



2021/P-10: Joint Petition

2021/P-10 (2 minutes) TP and Spouse file a joint return in 2017. TP and Spouse were divorced in 2018. In 2019, the Commissioner sends a separate notice of deficiency with regard to the 2017 taxable year. The §6212 notice of deficiency as to TP was mailed to TP's address. The §6212 notice of deficiency as to Spouse was mailed to Spouse's address. Explain whether TP and Spouse may file a joint petition in the Tax Court.

SUGGESTED ANSWER:



2023/P-16: Petition

(2 minutes) Acme, Inc. was duly organized as a corporation under the laws of one of the states (hereinafter the 'State' of the United States). The IRS examined Acme's federal income tax return for year 5. On June 1, year 8, the State suspended Acme's corporate capacity. On August 1, year 8, Acme filed a petition with the Court challenging the notice of deficiency. On September 1, year 8, the IRS moved to dismiss Acme's petition. On September 10, year 8, before the Court acted on the IRS's motion, the State reinstated Acme's corporate capacity. Describe the applicable principle of law under which the Court should decide the motion.

SUGGESTED ANSWER:



Form 2 Sample

PETITION

1. Please check the appropriate box(es) to show which IRS ACTION(S) you dispute:

- | | |
|---|--|
| <input type="checkbox"/> Notice of Deficiency | <input type="checkbox"/> Notice of Determination Concerning Relief From Joint and Several Liability Under Section 6015 (or Failure of IRS to Make Determination Within 6 Months After Election or Request for Relief)* |
| <input type="checkbox"/> Notice of Determination Concerning Collection Action | <input type="checkbox"/> Notice of Certification of Your Seriously Delinquent Federal Tax Debt to the Department of State |
| <input type="checkbox"/> Notice of Final Determination for [Full/Partial] Disallowance of Interest Abatement Claim (or Failure of IRS to Make Final Determination Within 180 Days After Claim for Abatement)* | <input type="checkbox"/> Notice of Determination Under Section 7623 Concerning Whistleblower Action* |
| <input type="checkbox"/> Notice of Determination of Worker Classification* | |

*For additional information, please see "Taxpayer Information: Starting a Case" at www.ustcp.org (accessible by hyperlink from asterisks above, or in the Court's information booklet).

2. If applicable, provide the date(s) the IRS issued the NOTICE(S) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): _____

3. Provide the year(s) or period(s) for which the NOTICE(S) was/were issued: _____

4. SELECT ONE OF THE FOLLOWING (unless your case is a whistleblower or a certification action):

If you want your case conducted under small tax case procedures, check here: ☐ (CHECK ONE BOX)

If you want your case conducted under regular tax case procedures, check here: ☐ (CHECK ONE BOX)



Rule 27/Privacy (p 50-51)

Redacted filings (electronic or paper) must OMIT this information:

- Taxpayer identification numbers (SSN and EIN)
- Dates of birth (year only)
- Names of minor children (initials used)
- Financial account numbers (last 4 used)



Statement of ID Sample

STATEMENT OF TAXPAYER IDENTIFICATION NUMBER (E.g., Social Security number(s), employer identification number(s))

Name of Petitioner _____

Petitioner's Taxpayer Identification Number _____

Name of Additional Petitioner _____

Additional Petitioner's Taxpayer Identification Number _____

If either petitioner is seeking relief from joint and several liability on a joint return pursuant to Section 6015, I.R.C. 1986, and Rules 320 through 325, name of the other individual with whom petitioner filed a joint return:

Taxpayer Identification Number of the other individual, if available:



Rule 27/Privacy

The Court may order sealed any filing that contains any of this information without redaction

Protective orders can be issued (for good cause) requiring redaction of additional information



Rule 27/Privacy

Responsibility to redact a filing rests with the party or nonparty who makes the filing ...

But a person may correct an inadvertent disclosure of identifying info in a prior filing by submitting a properly redacted duplicate filing (with attachments) within 60 days of the original filing without leave of the Court (after that, only by leave of the Court).



2021/P-11: Privacy

(2 minutes) Describe the information in a filing with the Tax Court that a party or nonparty making the filing should refrain from including (or should take appropriate steps to redact).

SUGGESTED ANSWER:



Answer (Rule 36) (p 51)

The Answer advises the petitioner and Court fully of the nature of the defense and must contain a specific admission or denial of each material allegation.

If the IRS is without knowledge or info to form a belief about the truthfulness of an allegation, the Answer must so state (treated as denial). IRS may deny or qualify only part of an allegation.

Any issue not addressed in the answer is deemed conceded.



Answer (Rule 36)

Any affirmative defense or increased deficiency raised by respondent in the Answer must provide clear, concise statements of the grounds and facts pertaining to those matters.

If petitioner doesn't attach the notice of deficiency or relevant jurisdictional document, the Commissioner must include a copy with the Answer or state that the document is not available or was not issued.



Sample Answer

ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1. Admits.
2. Admits.
3. Admits; except denies that the notice of deficiency attached to the petition served on respondent was marked as Exhibit A.
4. Admits that the determined deficiencies, additions to tax, and penalties are as stated.
5. Denies respondent erred as alleged.
6. a. through d. Denies.
e. Denies for lack of sufficient knowledge or



Reply (Rule 37) (p 52)

May not be required

Yes, if the Answer raises new issues or increases the tax deficiency

Reply indicates which items asserted in the Answer are disputed

45 days to respond or 30 days to move • must deny or admit each material allegation ...



Reply (Rule 37)

Effective 1/1/10: If a Reply is filed every affirmative allegation in the Answer must be expressly admitted or denied or it is deemed admitted.

If a Reply is NOT filed, all affirmative allegations are deemed denied UNLESS IRS files motion w/in 45 days of expiration for Reply requesting they be deemed admitted

Any new material in the Reply is similarly deemed denied (except for declaratory judgment).



Joinder of Issue (Rule 38) (p 53)

A case is at issue when the Answer is filed, or when the Reply is filed if one is required.

The date is important date - formal discovery may not commence until 30 days after joinder of issue occurs.



2021/P-12: Answer/Reply

(1 minute) A reply pleading is required of the petitioner with respect to the IRS answer in all circumstances. True or False?

SUGGESTED ANSWER:



Special Matters (Rule 39) (p 53)

All affirmative defenses, including

res judicata,
collateral estoppel,
duress,
fraud and
SOL

must be set forth in the party's pleadings.



Special Matters (Rule 39)

An affirmative defense is more than just a denial of the charges ... it presents evidence or arguments in the arguing party's favor.

SOL argument must be pleaded in TP's original petition or TP is deemed to concede issue.



Affirmative Defenses

Affirmative defenses must be pleaded with particularity and offer proof

Res judicata ("a thing already judged") prevents repetitious lawsuits on the same causes of action. Parties are bound on all issues that were tried and all that could have been tried.



Affirmative Defenses (p 55)

Affirmative defenses must be pleaded with particularity and offer proof.

Collateral estoppel only applies to situations where the second lawsuit is identical in all respects to a matter decided in a previous lawsuit involving identical events and facts, and prevents lesser offenses from being tried.



Affirmative Defenses

Affirmative defenses must be pleaded with particularity and offer proof.

Statute of limitations as an affirmative defense means the party believes the Tax Court is barred from action on this matter because the relevant statute of limitations expired.



Know these terms and Use them! (p 56)

Admit – is to concede/agree with assertion

Deny – is to disagree with assertion

Silence on any matter – is a deemed admission



Petition Problems

No second chances ... if no claim for relief, petition is dismissed ...

If issue is missing from a petition TP may be barred ...

Can the petition be changed after it is filed?

Yes ... but Court cannot permit an amendment that confers jurisdiction over a matter that otherwise would not exist.



Amended Pleadings (Rule 41) (p 56-57)

As a matter of course, a party may amend a pleading once before a responsive pleading is served.

Can't amend a petition after expiration of the relevant filing time if it grants jurisdiction over any matter that would not otherwise be conferred.

Can be done to conform when issues are tried by express or implied consent of the parties.



2018/P-12: Amending the Petition

2018/P-12 (2 minutes) Explain the proper method/s of amending a petition that previously was filed with the Court.

SUGGESTED ANSWER:



Substitution of Parties (Rule 63)

If a petitioner dies, the Court, on its own or motion of a party or the decedent's successor/representation can substitute the proper parties.

If a petitioner becomes incompetent, the Court may order the party's representative to proceed with the case.

The Court, on its own or own motion of a party, may order a change or correction in a party's name or title.



QUESTIONS AND ANSWERS



Jurisdiction (p 58)

General grant of jurisdiction is in the IRC

Limited jurisdiction as granted by Congress

Core authority to redetermine a deficiency asserted by the IRS

If Court has jurisdiction can find an over or underpayment

Court has jurisdiction to determine jurisdiction



Income Tax Deficiency

A deficiency in income tax includes:

- tax on accumulated earnings,
- personal holding company taxes,
- self-employment tax, and
- liability for withholding of tax on nonresident aliens and foreign corporations



Excise Tax Deficiency

Not all excise taxes require a NOD be filed to determine a deficiency, so not all excise taxes are under Court jurisdiction:

- tax imposed on certain public charities, private foundations (§4940), excess lobbying (§4911) and other tax-exempt organizations,
- funding deficiencies on qualified plans (§4971), and
- undistributed income imposed on REITS (§4981) and regulated investment companies.



Additions to Tax (p 60)

Penalties treated the same as taxes due

Court has jurisdiction over additions to tax that are related to jurisdictional taxes even if no tax is due.

'Additions to tax' are civil tax penalties including those shown on NOD (late filing and/or late paying, accuracy, and fraud penalties and the penalty for failure to pay estimated tax if no return is due).



Additions to Tax

No jurisdiction on other penalties (for example, preparer penalties or the Trust Fund Recovery Penalty) ... unless through CDP

No jurisdiction over increased interest only.



Jurisdiction (p 60-62)

Transferee Liability

Declaratory Judgments

Disclosure Actions



Claims for ... Administrative Costs (p 63)

TPs who prevail in IRS administrative proceedings where the IRS position is not substantially justified can seek an award of reasonable litigation and administrative costs under §7430 from the IRS.

If the award is denied, that action may be appealed to the TC.



TEFRA Partnership Items

FPAA occurs at the entity level to redetermine partnership items, and is binding on all partners who did not previously settle the issue or for a Notice Partner who opted out of proceedings.

Partnership items are those properly decided at partnership level



Partnership under BBA Section 1101 (p 64)

TC doesn't have jurisdiction unless

- 1) Commissioner has mailed FPAA for the partnership's taxable year and
 - 2) The partnership representative files a petition within 90 days after the date on which the notice of FPAA is mailed
- Decision entered by TC is binding on the partnership and all partners



Collateral Jurisdiction

The Court has collateral jurisdiction over some matters relating to cases pending before it. These include Motions to Restrain Premature Assessments and Motions for Review of Jeopardy Assessments and Levies. Also:

- Amounts Collected When IRS is Prohibited From Collection
- Overpayments
- Redetermine Interest
- Modify Decision on §6166 Estate Election



Overpayments (Rule 260)

A proceeding can't be commenced before the expiration of 120 days after the decision of the Court determining the overpayment has become final.

The Commissioner must file a written response within 30 days after service of a motion pursuant to this Rule, which specifically admits or denies each allegation in petitioner's motion



Actions for Administrative Costs (p 65-66)

Administrative costs = IRS proceedings

Judicial costs = civil action in U.S. court

TPs who prevail in court can recover a portion of the administrative and litigation costs incurred during TC litigation, as well as costs associated with litigating the fee issue.



Actions for Administrative Costs

Litigation costs (filing/transcript/expert witness fees/analysis or studies and attorney fees) are more commonly awarded.

\$7430 is the exclusive means to recover attorney fees.

\$250 per hour for fees incurred in 2025. Remember attorney fees are statutory – don't worry about exact amount at time of exam.

Form 3 for Petition for Administrative Costs



Actions for Administrative Costs

To win a recovery of costs/fees TP must:

- meet net worth requirement when petition filed.
- exhaust all administrative remedies within the IRS, including choosing an Appeals conference if one is offered prior to filing petition.
- not unreasonably protract proceedings (must follow standing pretrial order (Appendix C in text),



Actions for Administrative Costs

To win a recovery of costs/fees TP must ...

be the prevailing party who substantially prevails. IRS position must not be substantially justified.

Can't request when you file petition (must prevail first)



Actions for Administrative Costs

IRS burden to prove its position was substantially justified

"Substantially justified" means reasonable basis in law/fact

"Substantially prevails" means the TP either prevails on amount or most significant issues

In an agreed case, an award of costs may be included in the stipulated decision submitted by the parties.



Actions for Administrative Costs

The government is not entitled to cost recovery per se ...

There are provisions to penalize the TP under §6673(a)

Maximum \$25,000



Qualified Offers (p 70)

Qualified offers (QO) can be made and TP can be treated as a prevailing party if she or he made a QO that was not accepted by the IRS, and subsequently obtains a judgment in which the tax liability determined by the Court is < than QO.

QO must be in writing, be made during a QO period, specify the amount of tax liability, state it is a QO, and remain open from the date made to the earliest of 1) date offer is rejected, 2) the date the trial begins, or 3) 90 days after the offer was made.

Once a QO is accepted it is a contract, and cannot be revised unilaterally by TP



MEMORY TOOL (p 70)

Requirements for §7430 Award of Costs

N – **net** worth requirements met

A – all **administrative** remedies exhausted

P – not unreasonably **protract** proceedings

P – substantially **prevails**

J – IRS not substantially **justified**

Detailed **LIST** of all costs

PRAYER for relief

NAP PJ + LIST + PRAYER



IRS Refusal to Abate Interest

The Court has jurisdiction over the abatement of interest due to an error or delay by an IRS official performing a ministerial or managerial act

Requires Notice of Final Determination not to abate interest under §6404, and a petition for review filed with Tax Court within 180 days after the IRS rules on the abatement request or fails to act.

TP must meet net worth and size requirements and prove the IRS's failure to abate the interest was an abuse of discretion ... VERY DIFFICULT!!



Ministerial/Managerial Act (p 71)

Ministerial: procedural or mechanical act that does not involve the exercise of judgment or discretion ... occurs during the case processing after all prerequisites occur

Managerial: administrative act, occurring during case processing, involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel.



Ministerial/Managerial Act

Deciding proper application of Federal tax law is NOT ministerial or a managerial act.

It is ministerial if IRS misinforms TPs about their total tax liability



Employment Status (p 72)

Requires an actual controversy that ≥ 1 worker(s) is employee(s) and TP not entitled to §530 safe harbors relief.

Court can determine whether workers are employees or independent contractors – ALSO now related employment tax due.



Employment Status

Petition only be filed by the person for whom the services were performed ... must be filed before the 91st day (w/in 90) after IRS mails notice of determination or 180 days failure.

Small case procedure if the tax < \$50,000 qtr

If TP prevails, §7430 attorney's fees/costs can be awarded.

NO general grant of jurisdiction applying to employment tax!



Employment Status

The Court now has jurisdiction to determine the proper amount of employment tax, additions to tax, and penalties relating to employment tax arising from worker classification or Revenue Act of 1978 §530 safe harbor determinations.



Joint and Several ... §6015 (p 74)

MFJ = each jointly/severally liable for the ENTIRE amount of tax due ... even if one spouse ... is unaware of what is or is not on the return ... the other spouse earned all of the money

For tax on the filed return and all later deficiencies ...



Joint and Several ... §6015 Jurisdiction

... granted in RRA 98.

Tax Court petition must be filed:

- w/in 90 days of IRS denying relief, or
- anytime after 6 months passes and IRS fails to act on request.

Relief is "designed to protect the innocent, not the intentionally ignorant"



§6015 Tax Court Basics

New since 2020 - Cases will be reviewed de novo based on the administrative record at the time of the determination and any additional newly discovered or previously unavailable evidence (§6015(e)(7), *Taxpayer First Act*).

Blog posts can be used against a taxpayer – they existed but were not part of the administrative record. The IRS role is an arbiter not an advocate when evaluating the request for relief. After she filed petition, the Respondent discovered the posts by searching the internet. (*Sidney Ann Chaney Thomas*, 160 TC 4 (2/13/23))



§6015 Relief

3 types of relief available:

- §6015(b) – innocent spouse*
- §6015(c) – separation of liability*
- §6015(f) – equitable relief**

*Must request no later than 2 years after IRS begins collection activity

** New since 2020 (if tax is unpaid before CSOL, if tax is paid before RSOL) – *Taxpayer First Act*



§6015(b) Basics (p 75)

- Joint return filed.
- Understatement of tax from other spouse's erroneous item.
- TP signed return, but ...
- Under facts and circumstances, inequitable.
- TP elects status on Form 8857 no later than 2 years after collection starts

An innocent spouse request can generate refund



§6015(c) Basics (p 76-77)

- Joint return filed.
- Understatement of tax attributable to an erroneous item by other spouse.
- When election is made TP is not married, is widowed, legally separated from, or has lived apart for more than 12 months from spouse.
- No fraudulent transfer of assets.
- No return with liability when filed.
- Request for separate liability cannot generate a refund of taxes.



§6015(f) Basics (p 77-78)

"... inequitable to hold spouse liable ..."

Joint return – understated or underpaid

No §6015(b) or (c) relief available

No fraudulent transfer of assets

No disqualified assets transferred to requesting spouse

No fraudulent intent when return was filed.



Equitable Relief Requirements ...

requesting spouse no longer married;

had no knowledge tax would not be paid when return was signed;

requesting spouse to suffer economic hardship if relief is not granted.



Factors Favor Relief

Abuse existed in the relationship, even if not legal duress;

Nonrequesting spouse is legally obligated to pay; or

Liability is attributable to the non-requesting spouse.



Factors Against Relief (p 67)

- Requesting spouse's liability;
- Requesting spouse had knowledge;
- Requesting spouse received a significant benefit;
- No economic hardship;
- Requesting spouse is noncompliant;
- Requesting spouse is legally obligated to pay the amount due.



Specifics of Review

Understatement of tax

Erroneous items

Actual knowledge

Factors of relief

Unfairness indications



Specifics of Review

Participate Meaningfully

H died before case was decided, and petitioner filed Form 8857 claiming she didn't participate meaningfully in the deficiency case – she personally didn't participate in Appeals, pretrial meetings, settlement negotiations and didn't sign court documents, and only sat in the courtroom. But she had counsel who did – she lost in *Susan Kechijian*, TC Memo 2022-127 (12/28/22)



2023/P-1: Jurisdiction

(3 minutes). On March 1, year 2, TP mailed to the IRS her federal income tax return for Year 1. The IRS received TP's year 1 return on March 5, year 2. The return (1) reported total income tax liability of \$45,000, (2) claimed \$48,000 of credits for income tax withheld from TP's wages, and (3) directed the IRS to refund to TP the \$3000 overpayment. Instead of receiving such a refund, on June 4, year 2 TP received a notice from the IRS, which the IRS had mailed on June 1, year 2. The notice (1) stated that the IRS had determined that only \$41,000 of income tax had been withheld from TP's wages, (2) stated that the IRS had assessed the \$45,000 per the return, and (3) directed TP to pay \$4000, the difference between the \$45,000 of liability and the \$41,000 of credits for withholding. On August 30, year 2, TP filed a petition with the Court. The petition asked the Court to determine that \$48,000 of income tax had been withheld from TP's wages, thus that TP was not liable for an income tax deficiency for year 1. State whether the Court has jurisdiction to hear this case and explain why or why not.

SUGGESTED ANSWER:



2023/P-22: Innocent Spouse

(2 minutes). Esther and Ronald were married to each other at the time they filed a joint federal income tax return. Later, Esther and Ronald separated but remained married. After audit, the IRS sent notices of deficiency as to the return to Esther and to Ronald at their last known addresses. Ronald did not file a petition with the Court challenging the notice he received. Esther filed a petition on her behalf only. Esther's petition assigned error to the IRS's determination of a deficiency. Her petition also claimed relief from any liability under the § 6015 spousal relief rules. Describe the rights, if any, that Ronald has in the ensuing case.

SUGGESTED ANSWER:



QUESTIONS AND ANSWERS



Collection Activities (p 83)

Challenge proposed collection activity in a hearing, either in CDP or CAP

Collection Due Process (CDP)

Collection Appeal Rights (CAP)



Lien v Levy

Lien arises automatically when there has been a proper assessment, notice and demand for payment, and a failure to pay (§6321).

... attaches to all property and rights to property (real or personal) owned by the TP then and property acquired after the lien arises.

Levy generally can be issued 30 days after notice and demand to seize property to collect assessed taxes (§6331) – or immediately if jeopardy



CDP Hearing

Available for lien and levy notices.

Form 12153 requests CDP w/in 30 days.

Statutory period – no more time!

Or, is there?



Boechler, P.C. v Commissioner of Internal Revenue No 20-1472 (4/21/22)

Boechler is a ND law firm that was assessed an intentional disregard penalty and intent to levy notice. The firm requested a CDP hearing – Appeals sustained. Boechler filed the Tax Court petition 1 day late and Tax Court dismissed for lack of jurisdiction. Supreme Court disagreed, ruling that §6330(d)(1) 30 day filing deadline is a nonjurisdictional deadline, subject to equitable tolling.

The filing deadline can be equitably tolled in appropriate cases.



CDP Issues Available

Appropriateness of collection actions.

Other alternatives (IA or OIC).

Appropriate spousal defenses.

Whether tax is due IF no NOD.



CDP Basics

- No IRS levy action w/in 30 days of levy notice.
- 30 days to request CDP hearing.
- Timely appeal stops collection activity.
- Collection SOL suspended.
- Appeals issues written determination letter.
 - AGREE • IRS and TP bound to agreement.
 - DISAGREE • 30 days to go to court (unless equitably tolled).
- Equivalent hearing may be given • no judicial review • collection activity not suspended.



CDP (p 85-86)

- Audio record possible/advance notice
- Won't get face to face if frivolous issues
- Can be by telephone
- Evaluate using which standard:
 - Abuse of discretion?
 - Or de novo? (underlying tax is issue)



Equitable Recoupment (p 88-89)

To 'recoup' is to 'get back the equivalent of something lost.'

Judicially created doctrine that allows a claim for a refund of or a deficiency in taxes barred by SOL to be recouped against a tax claim of either the government (time-barred refund) or a TP (time-barred deficiency)



Equitable Recoupment

Requirements:

- the refund or deficiency is time-barred (beyond statute),
- the offset arises out of the same transaction, item or taxable event as the overpayment or deficiency before the Court, and
- the transaction, item or taxable event previously was inconsistently subject to two taxes (such as estate and income taxes).



Whistleblower (p 89)

Depends on both actions by IRS:

1. Initiation of administrative or jurisdiction action and
2. Collection of tax proceeds

Each WBO letter denying a claim gives 30 days to petition Tax Court

30 day period begins on date of mailing



Whistleblower

Tax Court:

Looks at the Commissioner's Award determination

Cannot redetermine tax liability – if IRS fails to proceed or does not collect any proceeds, there is no Whistleblower award



Passport Certification (p 92)

New jurisdiction on certification (or failure to reverse certification action) under §7345(e) when those conditions are met (TP can bring a civil act to determine whether the IRS erroneously issued a certification described in the code). If TP owes >\$50K* in valid tax debts (valid levy or lien filed), IRS can work with State Dept to modify or restrict passport issuance.

*For 2025 - \$64,000



Passport Certification

- 1) IRS sends Notice CP508(C) to TP when IRS certifies seriously delinquent tax debt – sent by regular mail (no copy to POA)
- 2) Before denying passport, State Dept holds app for 90 days for TP time to resolve issues, pay debt, or make payment arrangement
- 3) Notice CP508R sent when IRS reverses certification



Passport Tax Court

Jurisdiction to determine whether certification or failure to reverse a certification under §7345(e)

Guidance is fairly new ... but new court cases during this cycle makes it a possible topic

Tax Court doesn't have jurisdiction to determine if TP has constitutional right to international travel or to review the underlying liabilities in *Blake Adams* (160 TC 1 (1/24/23))

Tax Court doesn't have jurisdiction to determine if notification requirement met in *Meduty* (160 TC 13, 2023)



No Jurisdiction Exists (p 93)

IRC sections that do not involve deficiencies do not confer jurisdiction on the Court – no jurisdiction IF IRS is not required to issue a NOD. This includes:

- §6672 penalty (TFRP),
- §6682(a) penalties (filing false W-4),
- §6654/6655 penalties (underestimated income tax), unless no return is filed for the year,



No Jurisdiction Exists

IRC sections that do not involve deficiencies do not confer jurisdiction on the Court – no jurisdiction IF IRS is not required to issue a NOD.

This includes:

- interest only – can determine any addition to tax, which refers to civil tax penalty, not to interest, and
- notice of assessments under §6213(b)(1) arising of math or clerical errors (not considered to be NOD).



Exclusivity of Jurisdiction (p 94)

Once invoked it is exclusive.

TP cannot go to a district court or the Court of Federal Claims for a refund relating to the same tax in the same period under §6512(a).

Once invoked, TP cannot withdraw petition for review without prejudice.

No transfer of jurisdiction from the TC is permitted to allow a TP have a jury trial.



2023/P-2(a): Equitable Recoupment

(2 minutes) Describe the doctrine of equitable recoupment, including the principal requirements for its application. Also state whether the Court has authority to apply the doctrine of equitable recoupment.

SUGGESTED ANSWER:



QUESTIONS AND ANSWERS



What is Burden of Proof? (p 94)

Generally burden is on petitioner to preponderance of evidence, except as by statute below or where TP introduces credible evidence.

Refers to the amount of evidence necessary to establish a disputed fact or a degree of belief.

2 elements of burden of proof:

- the burden of going forward
- the burden of persuasion



Standards of Proof

preponderance

clear and convincing

beyond a reasonable doubt



Shifting Burden of Proof to the IRS

Quick & Dirty (in Evidence also)

Burden shifts to IRS on factual issue if TP produces credible evidence, complies, cooperates, meets net worth

--- and ---

Other specific instances



Shift Burden to IRS (p 95)

The 1998 IRS Restructuring Act shifted the burden of proof to the IRS if taxpayer presents credible evidence and meets these conditions under §7491:

- compliance
- cooperation
- net worth limitations



Shift Burden to IRS

TP's credible evidence is what the Court, after critical analysis, finds sufficient if no contrary evidence were submitted

Evidence must be worthy of belief.

If the Court believes the evidence is equally balanced, it will find that the Respondent has not met the burden of proof.



2021/P-20: Burden/Standard of Proof

2021/P-20 (2 minutes) Define and compare "burden of proof" and "standard of proof."

SUGGESTED ANSWER:



Discovery (Rule 70) (p 97)

... enables litigants to obtain docs/info to prepare a case or to assess opposing party's position.

Requested info/docs must be produced if reasonably likely to lead to discovering admissible evidence.

Any unprivileged, relevant matter is discoverable.

Discovery may lead to evidence but is not evidence.

Informal discovery part of TC procedure



Discovery (Rule 70)

Branerton conference required before formal discovery period ends ...

Can't simply make informal request for info ...

There must be discussion, deliberation, and an exchange of ideas between the parties.



Discovery (Rule 70)

Must conclude formal discovery 45 days before calendar call

Request must be served > 75 days prior to allow 30 days for response.



Discovery (Rule 70)

Count backwards from the day before calendar call, including weekends and holidays. If the last day falls on a Saturday, Sunday, or holiday in DC the discovery date moves to the next PRECEDING day that is not a Saturday, Sunday, or holiday in DC.

Go **BACKWARDS** on the calendar



Interrogatories (Rule 71) (p 98-99)

... written requests for info with separately numbered, sequentially written questions.

Answers must use the same numbering system.

OK to serve on any party ... NOT on nonparties!



Interrogatories (Rule 71)

Opposing party has 30 days to answer ... serve at least 75 days prior to calendar call.

Complete, good faith response required – objections are noted – reasonable inquiry to obtain facts. Can't say "I don't know."

Signed under oath.



Interrogatories (Rule 71)

Now maximum of 25 can be served by one party to another party (including all discrete subparts)

Encourages voluntary exchange of info, enhances efficiency, and allows the Court to exercise greater control over interrogatories



Interrogatories/Produce Docs

If business info (including electronic) gives the answer, opposing party can be given reasonable opportunity to examine, copy, summarize or abstract answers from data.

OK to request production of docs/things from any party ...
NOT request from nonparty!

Includes requests to enter property ... or that any tangible thing be available for inspection, copying, and testing.



Depositions (Rules 74-85) (p 99-100)

With consent of all parties, dep OK on party or nonparty.

Transcripts made – not filed with the Court.

Although normally frowned upon, deps may be taken on written questions - required when dep is given outside US

Depositions to perpetuate testimony ... substantial risk ... even before case is commenced ... requires good cause



Depositions (Rules 74-85)

Nonparty can be deposed w/out consent of all parties **ONLY** if the Court finds good cause ...

This is an extraordinary method of discovery ...
used only ...

- after notice of trial is issued
- or case assigned to judge or STJ



Depositions (Rule 74)

Expert witness can be deposed without consent ... also extraordinary method ... only after notice of trial or case assigned.

The expert's deposition is limited to these:

- their knowledge, skill, experience, training and, or education,
- their opinion,
- facts or data underlying the opinion, and
- their analysis.



MEMORY SUMMARY (p 101)

Summary of Deposition Rules:

With consent – any party or nonparty

Without consent – nonparty can be deposed **ONLY** if the Court permits

Perpetuate testimony – **ONLY** if real risk ...

Expert witness – allowed without consent only on skill/opinion/facts/analysis



2021/P-15: Depositions

(3 minutes) Explain the circumstances under which a deposition of a party or a witness may be used for discovery.

SUGGESTED ANSWER:



QUESTIONS AND ANSWERS

Supplementation of Response (Rule 102) (p 101)

... if response was complete at the time, not required to supplement for info obtained later except to ID persons who have knowledge of discoverable matters & identity of expert witness

- If party obtains info and knows response was incorrect – or it is no longer true and failure to amend is a knowing concealment
- The Court may order supplementation



Protective Orders (Rule 103)

Upon motion, for good cause, the Court issue order to protect a party from annoyance, embarrassment, oppression, or undue burden or expenses.

Request for improper discovery that is:

- overbroad,
- burdensome,
- unintelligible,
- ambiguous,
- repetitive,
- violates privilege.



Protective Orders (Rule 103)

... when justice requires, including to:

- limit use of a method or procedure,
- prohibit use of a method or procedure,
- limit inquiry areas,
- limit who is present during a deposition,
- require parties simultaneously file docs in sealed envelopes to be opened as directed by the Court,
- Order that documents or records be impounded by the Court,
- prevent a trade secret from being disclosed (or limit its disclosure), or
- require the costs be borne in specific manner.



2018/P-15: Protective Orders

2018/P-15 (3 minutes) Under what circumstances, if any, will the Court issue a protective order regarding nondisclosure of information that constitutes part of the record of the case?

SUGGESTED ANSWER:



Enforcement Action and Sanctions (Rule 104)

Court can order sanctions upon noncompliance with discovery requests or failure to appear at scheduled dep or for any other infraction occurring during a hearing or at trial.

Noncompliance includes failure to answer discovery, failure of a corporate party to assign a proper party to answer, or providing incomplete or evasive answers.



Sanctions (Rule 104)

2 step process:

- 1) party files a motion with the Court to order compliance.
- 2) if the offending party still refuses to cooperate, the moving party then requests the Court to order sanctions.

... at the Court's discretion ...



Sanctions/§6673(a) Award of Costs (p 104-105)

If the TP institutes proceedings primarily for delay

or position is frivolous or groundless ...

or TP unreasonably fails to pursue available administrative remedies ...

the Court may require TP to pay a penalty not to exceed \$25,000



Sanctions/§6673(a) Award of Costs

A private attorney may be required to personally pay the excess costs, expenses and attorney's fees reasonably incurred because of such conduct.

If the offender is a government attorney, the US pays the costs in the same manner as an award by a district court.



Motions – General Info (Rule 50) (p 106)

... formal, written, captioned document requesting the Court take a specified action ... can be orally stated during hearing or trial ... spells out grounds for the motion and what relief is sought ... prior notice to opposing party ...

Court can take any procedural action ... grant or deny, or take under advisement.



Motions – General Info (Rule 50)

In response to a motion, the Court may:

- require a written response from the parties,
- hold a hearing, usually in Washington D.C. (don't have to appear, can send written statement/docs), or
- otherwise act at its own discretion under Rule 50(b).



Selected Motions (Rule 50)

For More Definitive Statement (Rule 51) ...
points out defects when a pleading requiring response is vague or ambiguous.

To Strike (Rule 52) ... made before responding to a pleading –
if granted allows the Court to strike from the record any insufficient claim, redundant, immaterial, frivolous, impertinent, or scandalous matter.

To Dismiss (Rule 53) ... requests the case be dismissed for
cause upon motion of a party or by the Court's initiative.



Selected Motions

To Restrain Assessment/Collection/Order Refund (Rule 55) ...
when IRS attempts assessment and collection activity on a taxable year properly before the Court following the filing of a timely petition.

Motion for Review of Jeopardy Assessment or Jeopardy Levy (Rule 56) ... heard only on then-pending actions when the IRS makes a jeopardy assessment or levy concerning one or more taxable years involved in the case.



Selected Motions

In Limine ... requests a hearing to exclude any reference to
objectionable anticipated evidence until its admissibility

De Novo ... calls for a new hearing, offering a fresh start

Motion to Compel (Rule 104(b)) ... if party won't respond to
formal discovery request, opposing party can file this motion



Admissions (Rule 90) (p 109)

... "voluntary acknowledgement" ... basis of stipulations

... not a confession - does not imply guilt

... establishes undisputed items to save time/effort

Written request served by any party to party to assert the truth of any non-privileged, relevant matter.



Admissions (Rule 90)

Cannot be made until 30 days after joinder

Self-executing after 30 days

Anything admitted is conclusively established for purposes of this trial only



2021/P-17: Admissions

(3 minutes) TP is a Tax Court petitioner who receives from trial counsel for the IRS a request for admission to the truth of a matter (that is not privileged and is relevant to the subject matter involved in TP's case). Describe (a) TP's obligations with respect to the request for admission; (b) the consequences to TP if TP fails to satisfy TP's obligations with respect to the request for admission; and (c) the effect of TP making such an admission.

SUGGESTED ANSWER:



Stipulations (Rule 91) (p 109)

... bedrock ... cornerstone ... facilitates Court process

Parties are required to stipulate to the highest possible extent all non-privileged, relevant matters.

... all facts, all documents, and all evidence that fairly should not be disputed.



Stipulations (Rule 91)

Party can object on the grounds of prejudice or waste of time if the evidence would otherwise be excludable under the FRE ...

... otherwise, objections on grounds of materiality or relevance are noted, but are not grounds for refusal to stipulate as long as the truth is not disputed.



Stipulations (Rule 91)

Must be written with necessary documents attached.

Include all relevant facts, documents and papers ...

Treated as conclusive admissions unless otherwise permitted by the Court ...



Stipulations (Rule 91)

A party

... cannot change, qualify or contradict a stipulation in any part unless the interests of justice so require.

... cannot be relieved of a stipulation even if it is contrary to law although the Court will relieve the TP of stipulation's effects resulting from a mistake of law.



Stipulations (Rule 91)

A fully stipulated case may be submitted any time (Rule 122).

Typically the Judge assigns a brief schedule ... case proceeds like others except the record is only stipulated facts ... no trial transcript.

Burden of proof does not change.

Court bases its decision solely on the record, including admissions, depositions and stipulations ... may require oral arguments or briefs.



2021/P-16: Stipulations

(2 minutes) Define and explain the significance of stipulations in Tax Court cases.

SUGGESTED ANSWER:



2023/P-10: Stipulations

(2 minutes) The notice of deficiency contained two determinations: (1) the notice disallowed a very large deduction claimed by TP on her return and (2) the notice asserted the § 6663 fraud penalty. TP filed a petition challenging both of these determinations. TP refused to enter into discussions with IRS Counsel as to developing a stipulation of facts, despite being directed by the Court to do so. State what relief the IRS could request as a result of this conduct.

SUGGESTED ANSWER:



Pretrial Conference (Rule 110) (p 110)

Not required in Tax Court

Parties may request a conference either in writing or by a motion, or phone call to the Judge's chambers

No conference if Court is satisfied the request is frivolous or made for the purpose of delay.



Summary Judgment Rule 121

... motion is useful when there is no genuine issue as to any material fact and the case can be decided as matter of law

Can be made 30 days after pleadings are closed, but not to delay the trial – no later than 60 days before calendar call

The Court should state on the record the reasons for granting or denying a motion for summary judgment



Submission Without Trial (Rule 122) (p 112)

When sufficient facts are admitted, stipulated or established by deposition, the parties may submit a case at any time after joinder of issue.

The burden of proof is not altered by this submission.



Default/Dismissal (Rule 123)

If party fails to plead or otherwise proceed ... party may be held in default of the Court by motion of another party or by the Court's initiative.

Court can enter a decision against the defaulting party or may impose appropriate sanctions.



Default/Dismissal (Rule 123)

Court can dismiss a case at any time and enter a decision against the petitioner for failure to properly prosecute or comply with TC rules.

That decision is treated as a dismissal.



Default/Dismissal (Rule 123)

Any decision so rendered, unless for lack of jurisdiction, is generally treated as if the case was adjudicated on its merits.

However, if the defaulting party provides sufficient reason and files an appropriate/timely motion, the Court can set aside a default or dismissal ...



Alternate Dispute Resolution (Rule 124) (p 112)

Once case is at issue (before trial) parties can make a motion to use voluntary binding arbitration.

All must agree to be bound by the arbitrator's decision ... it's a contract

Parties cannot be forced into arbitration.



Alternate Dispute Resolution (Rule 124)

May select any voluntary disposition of the case, including voluntary nonbinding mediation.

Motion can be made at any time after case is at issue and before decision is final

Judge/STJ can be mediator



Calendars and Continuances

Hearings are usually held in DC

Can be ex parte (between the Judge and one party) if the opposing counsel or party fails to appear.

Trials may be heard in DC or any available location selected by either the petitioner or the respondent.



Standing Pretrial Order

Approx 5-6 months before calendar call, notice Setting Case for Trial sent ...

Standing Pretrial Order is included – all judges

A party is subject to sanctions for failing to comply with this order.

Parties are to prepare a Pretrial Memorandum not less than 21 days before the first day of the trial session.



Appendix C

Parties begin discussing settlement/stipulating as soon as practical

Efiling required for most pleadings/documents (except petition)

Stipulations – maximum extent possible

Expert Witness reports at least 30 days before trial

Be prepared for trial at any time during trial session



Appendix C – p 369

See Standing Pretrial Memo



Pretrial Documents (p 114)

No **later than 21 days** before calendar call:

Proposed Stipulated Decision – electronically filed if settlement has been reached

Pretrial Memorandum – if settlement hasn't been reached and it appears trial is necessary

Motion to Dismiss for Lack of Prosecution – if party has been unresponsive and failed to cooperate

No **later than 14 days** before calendar call:

Stipulation of Facts – file together with all stipulated documents, except for impeachment documents



Motion for Continuance (Rule 133)

The Court may continue a case or matter on its own or on motion

Motion for Continuance must inform Court of the position of opposing parties on the continuance

Counsel's conflicting engagements or employment usually not grounds for continuance

Motion filed 30 days or less in advance are considered dilatory and denied unless the ground arose during that time or there was good reason for not making the motion sooner



Final Status Report (p 116)

Simple, fill-in-the-blanks form to report settlement (not previously reported) or to provide final estimates about trial if not previously reported to court

Must still be at calendar call



Calendar Call

Calendar call generally is Monday at 10 a.m. for each calendar session scheduled.

Cases are called and counsel provides the current status of the case and an estimate of time required for trial at that time.

Be ready to try the case



Evidence (p 118)

Some material is duplicated in the text ...
May appear/tested in Practice or Evidence.

Brief introduction now
More is discussed in Evidence lectures



Briefs (Rule 151) (p 120)

"a concise statement of the facts of a case, relevant laws, and an argument which cites the reasons and authorities counsel will use to support his case" ... filed after trial or case submission..

simultaneous requires opening briefs filed w/in 75 days, answering briefs 45 days after that.

seriatim requires opening brief be filed w/in 75 days, answering brief w/in 45 days, and the reply brief w/in 30 days.



Briefs (Rule 151)

Party who fails to file opening brief can't file answering or reply brief ...

Usually in 2 parts: proposed findings of fact and legal arguments

No new issues/approaches can be used on brief

Senior Judge Mary Cohen: "briefs should be brief"

Last opportunity to persuade the judge ...



2021/P-22: Briefs

2021/P-22 (2 minutes) Discuss whether a post-trial brief is required in each Tax Court case.

SUGGESTED ANSWER:



Decision (Rule 152) (p 121)

... is the Court's final determination in a proceeding.

The Tax Court can enter a decision:

- for the petitioner, or
- for the respondent, or
- by Rule 155, which indicates a split between the parties.

Court does not recompute the tax deficiency or liability, but instructs the parties to ...



Decision (Rule 152)

In a deficiency action, usually amount of taxes and penalties owed ...

Date of the Court's decision is when the order is entered in TC's records.

90 day appeals period then begins to run

Decision becomes final upon expiration of time to file notice of appeal.



Opinions

Each opinion is considered to be the decision of the entire TC ... not the issuing judge

Collegiate like appellate court, not en banc

A draft opinion is prepared after the final reply brief is filed ... usually by Trial Judge ... circulated to give judges chance to evaluate the case ... reviewed by Chief Judge who may choose w/in 30 days to have the whole Court consider the opinion ... then a 'reviewed' opinion.



Opinions

Full Court review likely if the draft opinion invalidates a regular opinion ... overrules Tax Court precedent ... is a case of first impression ... is likely to come up in another pending case ... if the matter overrules a prior TC decision ... or if the TC was previously reversed on appeal

Concurring or dissenting opinions follow the reviewed opinion

Published in Reports of the Tax Court



Opinions

Chief Judge determines which opinion designation:
Regular are binding precedent ... precedential ... cited

TC Opinion

<p>169 T.C. No. 9 GLADYS L. GERHARDT, ET AL.,¹ Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent Docket Nos. 11127-20, 11128-20, 11129-20, 11146-20. Filed April 20, 2023.</p>



Opinions (p 122)

Memorandum opinion applies settled law to case facts ... not precedential, but not easily ignored ... more important if they were subject to an appellate review ... can be cited

TC Memo

<p>T.C. Memo. 2023-51 SUZANNE JEAN McCORRY, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent</p>
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Opinions

Summary opinions not officially published ... usually small tax cases ... not precedential ... may not be cited

TC Summary

T.C. Summary Opinion 2023-17
CYNTHIA L. HAILSTONE AND JOHN LINFORD,
Petitioners
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent



Opinions

Bench opinion may be issued by presiding judge ... not published, not precedent ... may be used as res judicata, collateral estoppel, and law of the case

LUCELL TRAMMER, III & SHARONDA
M. TRAMMER,
Petitioner
v.
COMMISSIONER OF INTERNAL
REVENUE,
Respondent

Docket No. 6615-22.

ORDER



Rule 155 Computation (p 123)

Entry of a decision can be withheld pending a final computation between the parties ... valuation issues ... split on multiple issues

If the parties agree ... each submits a computation and a statement of agreement ... Court renders decision when agreed computation is received.

Agreement does not waive appeal rights.



Rule 155 Computation

If the parties don't agree, either party may file with the Court a computation of the deficiency, liability or overpayment ... served on opposing party ... if no timely objection Court may enter its decision based on the computation provided, or can order a hearing for oral argument.



Rule 155 Computation

No new issues are raised at hearing

... only issue is correct computation ...

issues of pure law reconsidered ...

mechanical or math adjustments are permitted.



Harmless Error (Rule 160) (p 124)

No error is grounds for granting a new trial or for vacating, modifying or otherwise disturbing a decision unless the refusal to do so is inconsistent with substantial justice.

Court will disregard any error or defect that does not affect the substantial rights of the parties.



Motion for Reconsideration (Rule 161)

File **w/in 30 days** after written opinion issued ...

Requires showing of **unusual circumstances or substantial error** to reconsider a decision

Mutual mistake or misunderstanding is not adequate grounds for reconsideration.

Finding new evidence similarly is not sufficient for reconsideration



Motion to Vacate or Revise (Rule 162)

File **w/in 30 days** unless otherwise permitted by the Court.

Show by clear and convincing evidence that an intentional plan of deception designed to improperly influence the Court in its decision had just that effect on the Court ...

Motion can include a request for new or further trial.

Generally once the decision is final, the Court no longer has jurisdiction to consider a motion to vacate unless it originally lacked jurisdiction or the original decision was obtained by fraud on the Court.



Appeals (Rule 190) (p 125)

Notice of an appeal is filed w/in 90 days after the decision is entered with the TC Clerk.

Clerk prepares the record on appeal and forwards it to Court of Appeals.

Filing an appeal does not stay assessment or collection of a deficiency ... IRS can start 90 days later unless TP files bond.

A dismissal for lack of jurisdiction is appealable as a decision of the Tax Court.

Remember the *Golsen* rule!



Small Tax Cases (Rules 170-175)

S case designed to provide the small taxpayer an opportunity to be heard in court with as little formality, delay and expense as possible.

Including additions to tax, penalties and additional amounts must not exceed \$50,000:

- for any one taxable year, if income tax,
- total due for CDP, §6015 and §6404,
- total per quarter for employment tax,
- for estate taxes in total,
- for any one calendar year, if gift tax, or
- for any taxable period if excise tax.



Small Tax Cases (Rules 170-175) (p 126)

Can pay down the deficiency ... but concede that amount

Petitioner may request when petition is filed or later.... docketed with "S"

Should elect S case procedure when:

- small amount tax due,
- not harmed by lack of appeal rights,
- relies on evidence inadmissible under regular cases rules,
- speedy resolution is important to client.



Small Tax Cases (Rules 170-175)

Court may refuse to allow S status if ... important issue ... common issues w/other pending cases ... involves principle of law applicable to other cases.

IRS may oppose S status if ... issue may continue over a number of years for a petitioner ... or case likely to be litigated.

Case may be discontinued from S status at any time before the decision becomes final.



Small Tax Cases (Rules 170-175) (p 127)

S cases conducted in less formal manner:

- no reply required
- informal proceedings
- relaxed rules of evidence
- generally no briefs
- no oral arguments

- no transcripts
- the decisions have no precedential value,
- no appeal rights,
- often heard by STJ and
- bench decision possible.

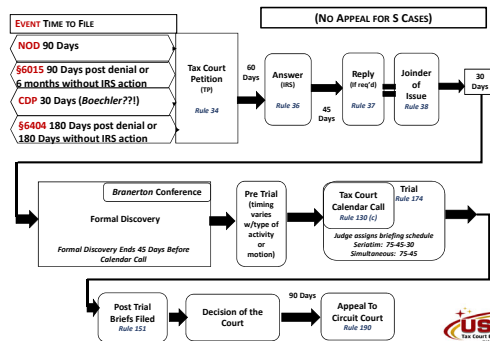


MEMORY TOOL

Differences in S cases:

- R – no reply required
- I – informal proceedings
- T – no transcript
- E – relaxed evidence rules
- S – Special Trial Judge usually hears
- B – bench decision common
- O – no oral arguments
- P – no precedential value
- A – no appeal rights

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QUESTIONS AND ANSWERS



Partnership Jurisdiction (p 128)

Generally not tested so not covered in depth now (see text)

The FPAA must be mailed to the Tax Matters Partner (TMP)

W/in the next 60 days the IRS must also mail the FPAA to all notice partners and 5% notice groups who provide names/addresses to the IRS.

The FPAA sent to partners other than the TMP usually shows the date on which it was sent to the TMP ... this date starts running the petition time clock.



Pship Last Known Address

Not the same as for individuals

Sufficient for the IRS to send the FPAA to the address shown on return for the year at issue

An FPAA addressed to "The Tax Matters Partner" and mailed to the partnership address is valid even if there is no TMP.

Irrelevant whether the TMP or notice partner actually receives the FPAA, as long as the IRS mailed it to the last known address.



Tax Matters Partner

TMP ... usually is the GP designated by the partnership, but can be designated other ways ... IRS can designate anyone if no one else is.

A person who is incompetent or has filed for bankruptcy cannot be TMP. The Court can appoint or remove a partnership's TMP under Rule 250.



Partnership Jurisdiction

An FPAA is still valid even if there is no TMP when it is issued.

Even if the partnership no longer exists when the FPAA is mailed, it remains valid.



QUESTIONS AND ANSWERS