

REPORTS OF THE UNITED STATES TAX COURT



January 1, 2007, to June 30, 2007

Volume 128

(Cite 128 T.C.)

JOHN T. FEE
REPORTER OF DECISIONS

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

ISBN 978-0-16-079312-7

U.S. TAX COURT

2007

LIBRARY



JUDGES AND SENIOR JUDGES

Seated from left—Laurence J. Whalen, Joel Gerber, Arthur L. Nims III, Howard A. Dawson, Jr., John O. Colvin, Herbert L. Chabot, Julian I. Jacobs, Robert P. Ruwe, and Renato Beghe

Standing front row from left—Maurice B. Foley, Carolyn P. Chiechi, Thomas B. Wells, Mary Ann Cohen, Stephen J. Swift, James S. Halpern, and David Laro

Standing back row from left—Mark V. Holmes, Robert A. Wherry, Jr., Harry A. Haines, Michael B. Thornton, Juan F. Vasquez, Joseph H. Gale, L. Paige Marvel, Joseph Robert Goeke, and Diane L. Kroupa

JUDGES OF THE UNITED STATES TAX COURT

Chief Judge

JOHN O. COLVIN

Judges

MARY ANN COHEN
STEPHEN J. SWIFT
THOMAS B. WELLS
JAMES S. HALPERN
CAROLYN P. CHIECHI
DAVID LARO
MAURICE B. FOLEY
JUAN F. VASQUEZ

JOSEPH H. GALE
MICHAEL B. THORNTON
L. PAIGE MARVEL
HARRY A. HAINES
JOSEPH ROBERT GOEKE
ROBERT A. WHERRY, JR.
DIANE L. KROUPA
MARK V. HOLMES

Senior Judges recalled to perform judicial duties under the provisions of section 7447 of the Internal Revenue Code:

HOWARD A. DAWSON, JR.
ARTHUR L. NIMS III
JULIAN I. JACOBS
HERBERT L. CHABOT

ROBERT P. RUWE
LAURENCE J. WHALEN
RENATO BEGHE
JOEL GERBER

Special Trial Judges

PETER J. PANUTHOS, *Chief Special Trial Judge*

D. IRVIN COUVILLION
STANLEY J. GOLDBERG
CARLETON D. POWELL

ROBERT N. ARMEN, JR.
LEWIS R. CARLUZZO
JOHN F. DEAN

ROBERT R. DI TROLIO, *Clerk*

JOHN T. FEE, *Reporter of Decisions*



SPECIAL TRIAL JUDGES

*Seated from left—Carleton D. Powell, D. Irvin Couvillion, Peter J. Panuthos, and Stanley J. Goldberg
Standing from left—John F. Dean, Robert N. Armen, Jr., and Lewis R. Carluzzo*

**AMENDMENT
TO
RULES OF PRACTICE AND PROCEDURE
OF THE
UNITED STATES TAX COURT**

Paragraph (b) of Rule 173 of the Tax Court Rules of Practice and Procedure is deleted and replaced with the following. Paragraphs (a) and (c) remain unchanged and are omitted here.

RULE 173. PLEADINGS

(b) Answer: The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in, and in accordance with the provisions of, Rule 36.

Note

Code section 7463 provides a simplified procedure for resolving tax disputes in small tax cases. When this provision was first enacted as part of the Tax Reform Act of 1969, the amount of deficiency or overpayment placed in dispute in a small tax case could not exceed \$1,000. Congress has increased this jurisdictional amount for small tax cases several times. Most recently, the Internal Revenue Service Restructuring and Reform Act of 1998 increased the amount to \$50,000, effective July 22, 1998, and provided additional categories of small tax cases.

In certain instances, a small tax case proceeding may be discontinued; the case is then conducted under regular procedures. See Code section 7463(d). The conference committee report on the Internal Revenue Service Restructuring and Reform Act of 1998 states:

the conferees anticipate that the Tax Court will carefully consider (1) IRS objections to small case treatment, such as objections based upon the potential precedential value of the case, as well as (2) the financial impact on the taxpayer, including additional legal fees and costs, of not utilizing small case treatment. [H. Conf. Rept. 105-599, at 245 (1998), 1998-3 C.B. 747, 999.]

From the enactment of Code section 7463 in 1969 until May 1, 1979, pleadings requirements in small tax cases and regular cases were identical. Effective May 1, 1979, the Court amended former Rule 175(b) to generally eliminate the requirement that the Commissioner file answers in small tax cases. The note to this 1979 amendment states:

Par. (b) of this Rule is amended to change the existing requirement that the Commissioner file an answer to the petition in all small tax cases. Under the new a provision, the general rule is that the Commissioner need not file an answer in such cases, unless there is matter on which he has the burden of proof, as, for example, where he relies on an affirmative defense or the determination of fraud on the part of the petitioner. How-

ever, even though not required to do so, the Commissioner may file an answer if he so desires.

The experience of the Court under its preexisting procedure has shown that the filing of answers in all small tax cases has not been helpful in the disposition of such cases and has resulted generally in merely calling for unnecessary additional paperwork, particularly in light of the fact that most of these cases are actually disposed of without trial. Furthermore, the Commissioner has assured the Court that, in the relatively small number of cases expected to be tried, he will file with the Court and serve upon the petitioner an informative statement amplifying the matters in dispute that are to be adjudicated.

[71 T.C. 1212.]

Small tax cases now make up about half of the Court's docket. Taxpayers in small tax cases are increasingly represented by low-income-taxpayer clinics, which in recent years have proliferated, partly because of funding provided by legislation. The parties as well as the Court would benefit from improved pretrial communication between the parties in small tax cases.

Because current Rules generally do not require the Commissioner to file answers in small tax cases, taxpayers and low-income-taxpayer-clinics have sometimes had difficulty in identifying and contacting, until shortly before trial, the IRS attorney responsible for a case. Requiring the Commissioner to file answers in all small tax cases will provide taxpayers or their counsel the name, address, and telephone number of the IRS attorney responsible for the case well before trial. This information should facilitate essential pretrial communication between the parties, encourage earlier consideration of small tax cases by the appropriate IRS attorneys, and reduce instances in which the parties and the Court are surprised by 11th-hour procedural and jurisdictional motions.

In addition, small tax cases move through the administrative system relatively quickly and may present novel issues resulting from changes in the tax law. The filing of answers may promote earlier identification of such issues and assist the Court in making informed and timely decisions as to whether it might be appropriate to discontinue small tax case proceedings in particular instances, pursuant to Code section 7364(d). It is not anticipated that the amendment will result in a significant delay in the calendaring of small tax cases for trial.