

CC-2016-006

February 1, 2016

PATH Act Legislative Amendments:
Appellate Venue for CDP and Innocent
Spouse Cases, Tax Court Jurisdiction
and S-case Status for Interest
Abatement Cases, and Applicability of
Federal Rules of Evidence to the Tax
Court

Effective until further
notice/Indefinite

Subject:

Cancel Date:

Purpose

The Protecting Americans from Tax Hikes (PATH) Act of 2015, Pub. L. No. 114-113, Div. Q, 129 Stat. 2242, 3041–3129 (2015), was enacted on December 18, 2015. Several provisions in the PATH Act affect Tax Court proceedings. This Notice alerts Chief Counsel attorneys to those provisions and supersedes Chief Counsel Notice 2015-006, *Venue for Appeals from Decisions of the Tax Court*, which addresses appellate venue for cases not listed in section 7482(b)(1).

PATH Amendments

Appellate Venue for CDP and Innocent Spouse Cases

Section 7482(b) of the Code specifies the proper venue for appellate review of Tax Court decisions. The subparagraphs of section 7482(b)(1) set forth venue for specific types of cases. For example, under subparagraphs (A) and (B), the venue for cases involving a redetermination of liability is the circuit of the petitioner's legal residence (if the petitioner is not a corporation) or the petitioner's principal place of business, office, or agency (if the petitioner is a corporation). If no subparagraph applies, the flush language at the end of section 7482(b)(1) places venue in the District of Columbia Circuit.

The subparagraphs do not set forth appellate venue for every type of case in the Tax Court's jurisdiction. Until the PATH Act was enacted, notable omissions included collection due process and innocent spouse cases. As we explained in Chief Counsel Notice 2015-006, the government's general position has been that the venue rules for cases involving redeterminations of liability apply to cases not listed in section 7482(b)(1). We also explained that this general position does not apply to whistleblower cases under section 7623(b)(4) or disclosure cases under sections 6110(d)(3), (f)(3), (f)(4), or (h)(4) because those cases do not

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involve any issues bearing on an underlying tax liability. As such, under the flush language of section 7482(b)(1), decisions in those cases are appealable to the D.C. Circuit.

The D.C. Circuit rejected the government's general position in *Byers v. Commissioner*, 740 F.3d 668 (D.C. Cir. 2014), a CDP case not involving liability. The court held that in CDP cases involving only collection issues and not any redetermination of liability, appellate venue lies in the D.C. Circuit. In response to *Byers*, we issued Chief Counsel Notice 2015-006, which advised Chief Counsel attorneys to continue asserting the government's general position except in whistleblower or disclosure cases.

Section 423 of the Path Act overrules *Byers* by adding two new subparagraphs to section 7482(b)(1). New subparagraph (F) specifies that innocent spouse cases are appealable to the circuit where the petitioner legally resides.¹ New subparagraph (G) specifies that CDP cases are appealable to the circuit of the petitioner's legal residence (if the petitioner is an individual) or the petitioner's principal place of business, office, or agency (if the petitioner is not an individual).

We interpret the new subparagraphs as clarifications of the venue rules for two commonly appealed types of cases. The Joint Committee on Taxation explained that the subparagraphs "clarify" that decisions in innocent spouse and CDP cases "follow the generally applicable rule for appellate review." Joint Committee on Taxation, *Technical Explanation of the Protecting Americans from Tax Hikes Act of 2015, House Amendment #2 to the Senate Amendment to H.R. 2029*, JCX-144-15 at 254 (Dec. 17, 2015) ("Technical Explanation"). For the types of cases still not set forth in the subparagraphs of section 7482(b)(1), such as interest-abatement cases under section 6404(h), we will continue to take the position in Chief Counsel Notice 2015-006 that decisions in those cases are appealable to the regional circuits.

According to section 423(b), the new subparagraphs apply only to cases filed after December 18, 2015, but they should not be construed to create any inference regarding cases filed before that date. For cases filed before that date, the guidance in Chief Counsel Notice 2015-006 applies.

Tax Court Jurisdiction Over Interest Abatement Cases Without a Final Determination by the Service

According to the instructions for Form 843, *Claim for Refund and Request for Abatement*, requests for abatements of interest are made by filing a Form 843. If the Service denies a taxpayer's request, and the taxpayer meets certain net-worth requirements, section 6404(h) allows the taxpayer to obtain Tax Court review of the denial. Until the enactment of the PATH Act, taxpayers had 180 days, beginning the day after the Service mailed its final determination,

¹ On November 2, 2015, Congress, as part of legislation revising the partnership audit procedures, eliminated the prior version of subparagraph (F), which dealt with venue for proceedings under section 6234(c). See Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101(f)(13), 129 Stat. 585, 638 (2015).

to file a petition. Section 6404(h) did not authorize the filing of a petition in the absence of a notice of final determination. *Bourekis v. Commissioner*, 110 T.C. 20, 26 (1998).

Section 421 of the PATH Act amended section 6404(h) to provide that petitions challenging interest-abatement determinations can be filed even in the absence of a notice of final determination. Petitions can now be filed at any time after the earlier of the date the Service mails its determination not to abate interest or the date that is 180 days after the date the taxpayer files an interest-abatement claim (in such form as the Secretary may prescribe). If the Service mails a notice of final determination, petitions cannot be filed more than 180 days after the date of mailing. The amendment applies to claims for abatement of interest filed with the Service after December 18, 2015.

Small Tax Case Election for Interest-Abatement Cases

Section 7463 of the Code allows for a simplified procedure in small tax cases in the Tax Court. See also Tax Court Rules 170–174. It originally applied only to deficiency proceedings. But Congress later expanded the section to cover innocent spouse and collection due process cases. See Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, § 313(b)(1) (adding section 7463(f)).

Section 422 of the PATH Act amends subsection (f) by adding a new paragraph (3) that further expands the section to cover interest-abatement cases in which the total amount of the abatement sought for all tax periods in the petition does not exceed \$50,000. Taxpayers may elect to follow the simplified procedure in cases pending as of December 18, 2015, as well as cases filed after that date.

Application of the Federal Rules of Evidence to Tax Court Cases

With exceptions for designated small tax case proceedings, section 7453 of the Code formerly provided that the proceedings of the Tax Court be conducted in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia. The Tax Court, therefore, required application of the evidentiary precedent of the D.C. Circuit in all cases. See T.C. Rule 143. This treatment represented an exception to the rule established in *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971), that requires adherence to the law of the circuit to which a case is appealable.

Section 425 of the PATH Act amends section 7453 to provide that Tax Court proceedings “shall be conducted ... in accordance with the Federal Rules of Evidence.” The new language requires that proceedings of the Tax Court be conducted in accordance with rules of practice and procedure as prescribed by the Tax Court, and in accordance with the Federal Rules of Evidence. The Tax Court, consequently, will now apply the evidentiary precedent of the circuit to which its decision is appealable, which effectively brings evidentiary issues into conformity with the *Golsen* rule. See Technical Explanation at 256.

