



U.S. Tax Court— An Overview of Rules and Procedures

by David M. Fogel, CPA, CFP®

Do you know how to advise a client who has received a Notice of Deficiency or a Notice of Determination from the IRS?

Do you simply refer them to an attorney? While that may be the proper decision if the amount of the deficiency or the issue in dispute is significant, in some cases you may be able to assist your client by preparing a simple petition for her to sign and file with the U.S. Tax Court. This article provides an overview of the Court’s rules and procedures for preparing and filing a petition, and what to expect after the petition is filed.

Tax Court’s Website

The Tax Court’s website is www.ustaxcourt.gov. Several helpful documents may be downloaded from this website in Adobe Acrobat format (.pdf), including preprinted forms (see sidebar listing the 13 forms available), and the full text of the Tax Court’s Rules of Practice and Procedure.

DOWNLOADABLE FORMS AVAILABLE AT TAX COURT’S WEBSITE

Form Number	Description
Form 1	Petition (Other Than Small Tax Case)
Form 2	Petition (Small Tax Case)
Form 3	Entry of Appearance
Form 4	Substitution of Counsel
Form 5	Designation of Place of Trial
Form 6	Subpoena
Form 7	Application for Order to Take Deposition
Form 8	Certificate on Return
Form 9	Notice of Appeal to Court of Appeals
Form 10	Certificate of Service
Form 11	Notice of Election to Intervene
Form 12	Notice of Election to Participate
Form 13	Petition for Administrative Costs – IRC §7430(f)(2)

Tax Court’s Jurisdiction

There are several different types of cases that may be petitioned to the Tax Court (upper right).

In general, the IRS must have issued the taxpayer a notice of deficiency (most types of cases), a determination letter (abatement of interest, worker classification, innocent spouse, lien/

TYPES OF CASES THAT MAY BE PETITIONED AT TAX COURT

Type of Case	Rule No.
Income Tax	13(a)
Gift Tax	13(a)
Estate Tax	13(a)
Certain Excise Taxes	13(a)
Transferee Liability	13(a)
Declaratory Judgment (includes qualification of certain pension plans, values of certain gifts, status of certain government obligations, an estate’s qualification for installment payments under IRC §6166, and qualification of certain exempt organizations)	210(c)
Certain Disclosure Actions	220(c)
Adjustment of Partnership Items of a “TEFRA” Partnership	240(c)
Administrative Costs under IRC §7430(f)(2)	270(c)
Review of IRS’s Failure to Abate Interest under IRC §6404(e)	280(b)
Bankruptcy Cases (the taxpayer must ask the Bankruptcy Court, under Bankruptcy Code §362(d)(2), to lift the automatic stay so that the taxpayer may file a petition with the Tax Court)	13(e)
Determination of Worker Classification (Employment Status) under IRC §7436	290(b)
Determination of “Innocent Spouse” Relief	320(b)
Certain Lien and Levy Actions under IRC §§6320(c) and 6330(d) (“Collection Due Process” cases)	330(b)

levy cases), or a final partnership administrative adjustment (for “TEFRA” partnerships). The Tax Court has jurisdiction if a “timely petition” (a petition filed within the statutory time period) is filed with the Court. Tax Court Rule 13(c). The “statutory time period” is usually 90 days from the date the notice of deficiency was issued, or 150 days if the notice of deficiency was mailed to a foreign address; 180 days for an abatement of interest case; 90 days for a worker classification or innocent spouse case; and 30 days for a lien/levy case.

The statutory time periods are strictly enforced. For the Court to have jurisdiction, the petition must be filed on or before the dead-

line. The Court recognizes the “timely mailed is timely filed” rule of IRC §7502, so if the petition is mailed to the Court close to the deadline, proof of mailing should be obtained from the post office.

Almost any document—no matter how imperfect—will usually be accepted as a petition as long as the Court can determine that some identifiable person is petitioning something. If an imperfect petition is filed, the Court will give the petitioner a chance to perfect it.

But a petition filed late (even one day) will not invoke the Court’s jurisdiction. The case will be dismissed, and this will be followed by assessment and collection efforts. It will upset your client and quite possibly result in a malpractice claim.

Who can represent in Tax Court?

Taxpayers may represent themselves (*pro se*). Alternatively, they may be represented by counsel. A person may “enter an appearance” as counsel either by signing the petition and specifying his or her name and address, or by filing with the Court a separate Entry of Appearance (Tax Court Form 3). Rule 24.

Admission to practice in Tax Court

Persons who are attorneys are admitted to practice by filing an application and paying the appropriate fee (currently \$30). Non-attorneys are admitted to practice by filing an application, passing the Tax Court’s examination, and paying the appropriate fee.

Tax Court’s examination for non-attorneys

The Tax Court is the only federal court that allows non-attorneys to represent taxpayers before it. However, a non-attorney must pass the Court’s examination before being admitted to practice before the Court. The examination is written, and usually given every other year during November in Washington, DC. The examination covers the Court’s rules (20%), the Federal Rules of Evidence (25%), federal tax law (40%) and legal ethics (10%). Applicants who wish to take the exam may obtain copies of recent examinations from the clerk of the Court for 50 cents per page.

Filing the petition

There are two preprinted forms accepted by the Court: Form 1, used for all cases except Small Tax Cases, and Form 2 for Small Tax Cases (the Small Tax Case election is discussed below). These forms may be downloaded from the Court’s website.

Most practitioners prefer not to use the preprinted forms. Instead, they submit a typed petition. A typed petition must conform to certain standards of form and style such as the size and weight of paper, size of type, the font, spacing and margins. See Rule 23.

An original and two copies of the petition must be sent to the Tax Court at 400 Second Street N.W., Washington, DC 20217 along with a \$60.00 filing fee for each petition filed. **Do not send the petition to the IRS.** The Court will do that. Taxpayers who receive—at the same time—separate notices of deficiency which cover several years can save filing fees by combining all years on one petition. An original and two copies of a Designation of Place of Trial (Tax Court Form 5) should accompany the petition and the filing fee.

Small Tax Case election

Under IRC §7463, if the amount in dispute (tax and penalties) is \$50,000 or less for each and every year included in the peti-

tion, the taxpayer may elect to have the case treated as a Small Tax Case. Rules 170-179. The election is made on the petition (see Tax Court Form 2). Advantages to making this election are that the petition is simpler to file, the IRS is not required to file an Answer to the petition (unless it has the burden of proof and must make affirmative allegations of fact to support that burden), and if a trial is held, it is conducted informally with relaxed rules of evidence and no briefs required. Neither party may appeal the Court’s decision. However, by filing a motion with the Court, the taxpayer may “opt out” of the election at any time before the Court’s decision is final.

Content of the petition

The petition consists of four sections—the caption, the body, the prayer and the signature. The caption lists the names of the petitioners and includes a space for the docket number. A sample petition is illustrated on the following page.

The body of the petition, which should be double-spaced, includes an introductory paragraph, and five additional paragraphs. The introductory paragraph states that the petitioner is seeking re-determination of the deficiency set forth in the IRS’s notice of deficiency. Paragraphs 1 through 3 provide identification information such as the petitioner’s address, TIN, and information from the IRS’s notice of deficiency, and states which portion of the deficiency is in dispute. Paragraph 4 lists the errors that the IRS committed in its notice of deficiency (such as: “The Commissioner erred in disallowing petitioner’s \$2,500 interest deduction”). Paragraph 5 lists the facts upon which the petitioner relies as the basis for her position (such as: “Petitioner paid \$2,500 of deductible interest during the taxable year”). Do not include arguments in the petition.

Quite often, practitioners include too much verbiage in paragraphs 4 and 5, sometimes to their detriment. In preparing a petition, the overriding principle should be to “keep it simple.”

The prayer is a paragraph that specifies the relief being requested (*i.e.*, that the Court should determine that there is no deficiency).

In the signature area, the petitioners and/or counsel sign and date the petition and provide their addresses and telephone numbers.

If there are additional deductions or credits that should be allowed (such as from a claim that was filed), and these additional items are not addressed in the notice of deficiency, they should be raised in paragraphs 4 and 5 of the petition. Although the Court generally requires the IRS to determine a deficiency before it will take jurisdiction, it also has jurisdiction to determine an overpayment if that turns out to be the ultimate outcome of the case.

What to expect after filing the petition

The Court will assign a docket number to the case and notify both parties. Rule 35. Unless the Small Tax Case election has been made, within 60 days the IRS counsel attorney will file an Answer either admitting or denying the allegations contained in the petition. Rule 36.


If the IRS has the burden of proof on any matter (for example, a civil fraud penalty), then the Answer must contain affirmative allegations of fact to support that matter. Rule 36(b). If the IRS’s Answer contains these affirmative allegations of fact, then the taxpayer must file a Reply within 45 days from the date of the Answer either admitting or denying the affirmative allegations of fact. Rule 37. If no Reply is filed, then the IRS could ask the Court to assume that the affirmative allegations of fact are deemed admitted. Rule 37(c).

Subsequently, the case will usually be referred to the IRS's Appeals Division to consider settlement. Rev. Proc. 87-24, 1987-1 C.B. 720.

Conclusion

In order to properly advise a client who has received a notice of deficiency or a notice of determination, an understanding of the Court's rules and procedures is essential, including an understanding of how to prepare a petition. The Court's rules for preparing a petition are rather well defined, uncomplicated, and available electronically from the Court's website.

It cannot be emphasized strongly enough that the petition—even if it is imperfect—should be filed with the Tax Court by the deadline, because not meeting this deadline is one of the surest ways to get clients upset—and may result in malpractice claims.

David M. Fogel, EA, CPA, is a tax advisor for the Sacramento law firm of McDonough, Holland & Allen. He assists in resolving clients' tax disputes (including analyzing issues and arguing cases before the various tax agencies) and providing tax research support for transactional planning. David spent more than 26 years working for the IRS as a tax auditor, revenue agent and appeals officer. He became an Enrolled Agent in 2001, and just recently, was licensed as a CPA in California. David is also admitted to practice before the United States Tax Court, having passed the Court's examination for non-attorneys. He can be reached at dfogel@mhalaw.com. 

<u>UNITED STATES TAX COURT</u>		
JOHN A. AND MARY B. TAXPAYER,)	
	Petitioners,	
v.)	Docket No.
COMMISSIONER OF INTERNAL REVENUE,)	
	Respondent.	
<u>PETITION</u>		
<p>The petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in the Commissioner's notice of deficiency dated August 2, 2002, and as the basis for the petitioners' case, allege as follows:</p>		
<ol style="list-style-type: none"> 1. The petitioners are individuals with mailing address now at 234 Market Street, Sacramento, California 95825 and with legal residence now at the same address. The petitioners' taxpayer identification numbers are 123-45-6789 and 987-65-4321. The return for the period here involved was filed with the Office of the Internal Revenue Service at Ogden, Utah. 2. The notice of deficiency (a copy of which, including so much of the statement and schedules accompanying the notice as is material, is attached and marked Exhibit A) was mailed to the petitioners on August 2, 2002, and was issued by the Office of Internal Revenue at Oakland, California. 3. The deficiency as determined by the Commissioner is in income tax for the calendar year 1999, in the amount of \$10,000.00, together with a penalty under the provisions of I.R.C. § 6662(a) in the amount of \$2,000.00, all of which is in dispute. 4. The determination of the tax set forth in the said notice of deficiency is based upon the following errors: <ol style="list-style-type: none"> a. The Commissioner erred in determining for 1999 that petitioners omitted \$36,000.00 in Schedule C income. b. The Commissioner erred in determining for 1999 that the petitioners are not entitled to deduct \$4,000.00 charitable contributions. c. The Commissioner erred in determining for 1999 that petitioners are liable for a penalty under the provisions of I.R.C. §6662(a) in the amount of \$2,000.00. 5. The facts upon which the petitioners rely, as the basis of the petitioners' case, are as follows: <ol style="list-style-type: none"> a. Petitioners did not omit any Schedule C income from their 1999 return. b. During 1999, petitioners had \$4,000.00 in charitable contributions. c. Petitioners are not liable for the penalty under the provisions of I.R.C. §6662(a). 		
<p>WHEREFORE, petitioners pray that the Court determine that there is no deficiency in income tax and no penalty due from the petitioners for the taxable year 1999, and give such further relief as the Court may deem fit and proper.</p>		
John A. Taxpayer, Petitioner		Date: _____
Mary B. Taxpayer, Petitioner 234 Market Street Sacramento, CA 95825 Tel. (916) 555-1212		Date: _____