INTRODUCTION TO TAX COURT

BY SHERRILL TROVATO, EA, USTCP

Inevitably, at some time the practitioner will fail to reach an agreement with Appeals on a deficiency case, collection due process (CDP) hearing, or a request for innocent spouse relief from joint and several liability. While Appeals is the final administrative review within the IRS, it is not the final answer for many of your clients' tax issues. Enrolled agents, CPAs, and attorneys can represent taxpayers before the IRS, even with a docketed case; but only those who are admitted to practice before the United States Tax Court can file petitions and represent clients judicially. Non-attorneys can be admitted to Tax Court practice by passing a difficult biennial examination that tests their knowledge in four areas: Tax Court Practice & Procedure, Federal Rules of Evidence, Legal ethics, and Federal Taxation.

Taxpayers can choose to have their disputes heard in the U.S. District Court, the U.S. Claims Court or Bankruptcy Court, or in the Tax Court. The Tax Court has limited jurisdiction and cannot hear all cases, but there are several advantages to using the Tax Court:

- No prepayment of tax is required.
- No trial by jury is permitted.
- Tax Court judges are experts in tax law.
- Cases are heard throughout the country.
- Discovery is restricted in Tax Court, and generally, the proceedings are less formal and less expensive than those in other court venues.
- Typically, unless referred to the Tax Court by Appeals, all cases docketed to the Tax Court are subject to review by the IRS Appeals Division.
- Small tax cases involving $50,000 or less in income, gift, or estate tax can be heard in an informal setting.

The taxpayer may appear *pro se*, which indicates the taxpayer represents him/herself or can be represented by an individual admitted to practice before the Tax Court. Attorneys from IRS's Office of Chief Counsel represent the government's interest.

Even if you never expect to try a case in the Tax Court, understanding some of the Tax Court's processes and procedures allows you to effectively discuss options with your clients.

Tax Court Jurisdiction

The Tax Court's core authority was to redetermine deficiencies, but now the Tax Court can decide issues relating to CDP under Sections 6620 and 6630, innocent spouse relief under Sec. 6015, employment status, excise tax (if the tax is subject to the deficiency procedures), certain additions to tax (civil tax penalties), IRS refusal to abate interest under Sec. 6404, claims for litigation and administrative costs, redetermination of partnership taxes, and claims for equitable recoupment.

Once the Court has jurisdiction over a matter, it can find an overpayment or underpayment of tax for the year at issue, so it is possible a taxpayer may owe more than anticipated.

Since cases commence differently within the Tax Court depending upon the issue, we'll look at the Tax Court's procedures and processes to begin cases relating to deficiencies, CDP hearings, and refusal to grant relief from joint and several liability (also known as innocent spouse).

Deficiency Cases

A deficiency is the amount by which the correct amount of tax determined by the IRS exceeds the total of the amount of tax shown by the taxpayer on the return plus rebates. It is critical that the taxpayer not eliminate a

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deficiency too soon because without a deficiency, there is no Notice of Deficiency that gives the taxpayer ninety days to petition the Tax Court. Taxpayers can pay the deficiency after the notice is issued under Sec. 6213(b)(4), which stops the accumulation of applicable interest and/or penalties.

The IRS is not obligated to explain how deficiencies are determined. There is no required format for a Notice of Deficiency, and not all demands for money permit a taxpayer to file a petition to the Court. The notice must identify that it is a "Notice of Deficiency," must indicate an amount of tax due, and must identify the taxable period.

A deficiency notice must be mailed before the assessment statute of limitations expires. The notice is valid if it is mailed by the IRS to the taxpayer's last known address on or before that date, even if it is not received by the taxpayer until after that date passes. Generally, the statute of limitations for an income tax return that is timely, completely, and nonfraudulently filed is three years from the date the tax return is due or when it actually was filed (the date received by the IRS). The statute extends to six years if the amount of the gross income omitted or understated exceeds 25 percent. There is no statute if no tax return is filed or if a fraudulent return is filed, regardless of whether the fraudulent intent is committed by the taxpayer or the taxpayer's preparer.

The "timely mailing is timely filing" rules of Sec. 7502 apply to tax returns filed with the IRS, as well as petitions filed with the Tax Court. Under Sec. 7502, if any return or other document required to be filed—or any payment required to be made—is delivered by U.S. mail to the agency or office where the item is required to be filed or paid, the U.S. postmark date is deemed to be the date of delivery or the date of payment. The item must be deposited in the U.S. mail in an appropriate wrapper, properly addressed, with correct postage affixed. Certain designated private delivery services apply as well.

The timely mailed/timely filed rules do not apply in the same way with private postal meters. If an envelope arrives after the time customary for an envelope mailed on the last date required, or the USPS stamps the envelope with a date later than the private postal meter, the private meter date is disregarded. The taxpayer must then use other evidence to establish proof of mailing.

The timely mailed/timely filed provisions do not apply to petitions postmarked outside the United States. If an item is mailed outside U.S. borders, it must be received by the Tax Court on or before the last day for filing the petition.

The Notice of Deficiency must state the last day for filing a Tax Court petition; but the notice is valid even if the date is missing or wrong. The taxpayer always has ninety days (or 150 if the taxpayer is out of the country) to file a petition, and may rely upon the date shown on the Notice of Deficiency if it is longer than the ninety-day filing period.

The petition does not need to be on a specific form, but it must comply with Tax Court Rule 34. The Tax Court provides a simplified petition form at ustaxcourt.gov (Form 2). The petition cannot be faxed or electronically transmitted. A petition that does not satisfy the applicable requirements may be dismissed without giving the taxpayer an opportunity to correct any defect. The filing period is statutory and there are no extensions of time granted. A $60 filing fee must accompany the petition, although the fee may be waived if the taxpayer is unable to pay it.

CDP Cases

The Tax Court has jurisdiction over all CDP hearings. A lien arises automatically when there has been a proper assessment, notice and demand for payment, and a failure to pay. Once it arises, the lien attaches to all property and rights to property (real or personal) owned by the taxpayer then and property acquired after the lien arises. A levy generally can be issued thirty days after notice and demand to seize property to collect assessed taxes. The levy can be made immediately in the case of jeopardy.

The notice of deficiency must state the last day for filing a Tax Court petition, but the notice is valid even if the date is missing or wrong.

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Taxpayers who receive a notice of lien or levy can request a hearing from the IRS Office of Appeals to challenge the collection action proposed in the notice. At this hearing the taxpayer can raise innocent spouse issues, dispute whether the action is appropriate or not, and make offers of collection alternatives. The taxpayer can challenge the existence of the amount of tax if the taxpayer either did not receive a Notice of Deficiency or did not have any other opportunity to dispute the tax liability.

If the underlying tax liability is not an issue, the Tax Court reviews the determination for an abuse of discretion: The taxpayer must show the Commissioner exercised his discretion "… arbitrarily, capriciously, or without sound basis in fact or law."

If an untimely CDP hearing is requested, upon request within one year, Appeals will give the taxpayer an equivalent hearing. There is no judicial review on an equivalent hearing.

A petition that does not satisfy the applicable requirements may be dismissed without giving the taxpayer an opportunity to correct any defect.

Joint/Several Liability Cases

The 1998 IRS Restructuring Act expanded innocent spouse relief under Sec. 6015, making this status easier to obtain than it had been under Sec. 6013. To the extent a spouse is found to be innocent, he or she is relieved of tax, interest, and penalties. The innocent spouse still remains liable for any taxes, interest, and penalties that do not qualify for relief.

Under Sec. 6015(e), the Court has jurisdiction to review a denial of, or a failure to rule on, a request for relief from joint and several liability. The petition must be filed within ninety days of the date beginning when IRS mails, by certified/registered mail, a notice denying relief. If the IRS fails to rule on a request, the taxpayer can file six months after filing Form 8857 (Request for Innocent Spouse Relief).

Sec. 6015 cases are stand-alone proceedings and are independent of any deficiency proceeding.

The nonrequesting spouse has the right to intervene in the Tax Court proceeding and is called the intervenor. The intervenor has the right to support or contest the requesting spouse's claim.

Relief may be available under Sec. 6015(b), (c), or (f). All requests require that a joint return was filed, and that there is an understatement of tax attributable to an erroneous item by the other spouse.

Under Sec. 6015(b), the taxpayer must not have known, or had reason to know, of the understatement, and it must be inequitable to hold the taxpayer liable. The taxpayer must file Form 8857 no later than two years after the date the IRS began collection activities on the taxpayer. Refunds are possible.

The taxpayer can elect to separate the liability under Sec. 6015(c). A taxpayer is eligible to make the separate liability election only if: (1) at the time the election is filed, the taxpayer is no longer married to, or is legally separated from, the spouse with whom the joint return to which the election relates was filed; or (2) the taxpayer was not a member of the same household as the spouse with whom the joint return was filed at any time during the twelve-month period ending on the date the election is filed. This request cannot generate a refund, and relief must be requested no later than two years after IRS begins collection activities.

Equitable relief can be granted under Sec. 6015(f) if under the facts and circumstances, it is simply unfair to hold the taxpayer liable for any unpaid tax or deficiency. The requesting spouse must not be eligible for relief under Sec. 6015(b) or Sec. 6015(c). There is no requirement that this request be made within two years after IRS begins collection activities.

After the Petition Is Filed …

Once the petition is filed, each case proceeds in the same manner, with the judge evaluating the appropriate criteria to decide the issue.

If you're interested in learning more about the U.S. Tax Court, attend the "Intro to Tax Court" class offered at the National Tax Practice Institute in Las Vegas. EA

About the Authors:

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