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2021 Tax Court Exam for Nonattorneys

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June 3, 2022 by [Guest Blogger](#) [1 Comment](#)

Today we welcome first time guest blogger Sherrill L Trovato to provide detailed information about the examination the Tax Court administers to non-attorneys who practice before it. If you go back almost 100 years now to the beginning of the Board of Tax Appeals both attorneys and CPAs could practice before the Board. That changed in 1942 with other changes at the time it changed its name to Tax Court of the United States. The Tax Court sought to become more court like and CPAs were a casualty of that effort. Now, non-lawyers must take a test to earn the right to practice before the Tax Court. The story can be found in Part IV of Dubroff and Hellwig's [book](#) on the history of the Court. An earlier [post](#) I wrote several years ago on this exam has proved to be one of our most popular posts of all time. Today we have a real expert on the subject to provide information.

Sherrill passed the Tax Court exam over two decades ago and in 2002 set up a program to teach others how to pass the exam. She also offers other skills classes to Tax Court practitioners. She received her Bachelor of Arts (Business Administration, Accounting), Master of Business Administration (Finance), and Master of Science (Taxation) degrees, all from California State University (Fullerton) between 1988 and 1993. She passed the SEE on her first attempt in 1991 and became an enrolled agent in 1992. She is a Fellow of NTPI (National Tax Practice Institute). In addition to providing education for tax professionals, her Southern California firm offers tax compliance and controversy services through the Tax Court. Keith

Late afternoon on May 6, 2022 the U.S. Tax Court emailed results of the November 17, 2021 nonattorney written admission exam to those candidates who sat for the first ever remote exam after the pandemic postponed the November 2020 exam.

Prior to the November 2021 exam, the Tax Court exam was a biannual 4-hour, handwritten exam, offered only in Washington, DC. In 2016 the exam site was moved from the Tax Court building to the Ronald Reagan Building and International Trade Center.

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The exam is difficult for many reasons, including the breadth of information tested. Since 1996 the exam has consisted of 4 parts, each of which must be passed in one sitting with a score of 70% or better:



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- 25% (60 minutes) Tax Court Rules of Practice and Procedure
- 25% (60 minutes) Federal Rules of Evidence
- 40% (96 minutes) Federal Taxation
- 10% (24 minutes) Legal Ethics (based on the Model Rules of Professional Conduct of the American Bar Association)

There is no opportunity to hold any passing score to a subsequent exam year and the requirement to pass the entire exam is one reason the exam is so challenging.

For the handwritten exam, scratch paper was provided and non-programmable calculators could be used for calculations. Answers were recorded manually on what was essentially a bluebook (small bound bundles of paper), although in recent years the cover was color-coded by exam part.

For the handwritten exam, the court provided resources that could be accessed including a printed copy of the Tax Court Rules, the Model Rules, and the two volume CCH Internal Revenue Code. The Federal Rules of Evidence were not available. There is not sufficient time to research answers during the exam, so the partial “open book” nature is not very useful.

Prior to 2020, the fee to take the handwritten exam was \$75 to the Tax Court. With the anticipated 2020 exam, the exam fee payable to the Tax Court increased to \$150. When the exam was offered on a remote basis, each examinee also paid an additional fee of \$100 to ExamSoft, the provider of the exam. The ExamSoft platform has been used to administer bar exams, and offers security to maintain integrity of the answer files, plus auditing information for the exam provider.

The 2021 exam started at 12:10 Eastern Time, and was given in 2 sessions of 110 minutes each, with a 15-minute comfort break in between the sessions. Session One covered Federal Taxation and Legal Ethics and Session Two covered Practice and Procedure and Evidence. Once a session ended, it was closed and could not be accessed again.

For the remote exam the Court provided a PDF version of selected provisions from the Internal Revenue Code, Tax Court Rules of Practice and Procedure, and the ABA Model Rules of Professional conduct. The Federal Rules of Evidence were not available.

There were additional technical requirements with the remote exam which required a laptop or desktop computer with an installed or external webcam and an internet connection. Two mandatory mock examinations had to be completed to be eligible to take the nonattorney exam. The mock exam had to be taken on a specific version of the ExamSoft software, but depending upon the date the software was downloaded, many students found themselves with the wrong software version, which created additional confusion and consternation in the days before the exam.

During the exam, examinees had to remain within view of the web camera, and a video file accompanied the exam answers. No scratch paper or external resources could be accessed.

Leslie Book



Professor Book is a Professor of Law at the Villanova University Charles Widger School of Law.

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Keith Fogg



T. Keith Fogg is a Clinical Professor of Law at Harvard Law School where he started a tax clinic in 2015. Prior to joining the faculty at Harvard, he began his academic career at Villanova Law School in 2007 after working for over 30 years with the Office of Chief Counsel, IRS. [Read More...](#)

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Christine Speidel



Christine Speidel is Associate Professor and Director of the Federal Tax Clinic at Villanova University Charles Widger School of Law. Prior to her appointment at Villanova she practiced law at Vermont Legal Aid, Inc. At Vermont Legal Aid Christine directed the Vermont Low-Income Taxpayer Clinic and was a staff attorney for Vermont Legal Aid's Office of the Health Care Advocate. [Read More...](#)

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Stephen Olsen



Stephen J. Olsen's practice includes tax planning and controversy matters for individuals, businesses and exempt entities for the law firm [Gawthrop Greenwood, PC](#).

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Contributors

Nina Olson



Nina E. Olson is the Executive Director of the Center for Taxpayer Rights, a 501(c)(3)

Those who were not successful can obtain a copy of their scores and answers by written request no later than 60 days from the date of the notification. The Tax Court will not reconsider the examination results unless the unsuccessful examinee can demonstrate there is a clerical error in the scoring of the exam; those requests must be received within 90 days of the date of the email. All examination answers are deleted from the Court's records 120 days after the email, unless there is a reconsideration challenge pending, in which case the answers will be deleted 60 days after the Court takes final action on the request, but not earlier than 120 days after the date of the email.

Successful examinees cannot obtain their answers and scores, and there are no official answers published by the Tax Court, which is another reason this exam is so difficult.

On May 16, 2022 the Tax Court began disseminating exam answers and scores sheets to those who requested them. The score sheets indicate that the 2021 remote exam was still a traditional 4-hour exam, 240 minutes long, yet examinees were only given 220 minutes to complete it (two blocks of 110 minutes each). As in prior exams, in the 2021 exam Substantive Tax was allocated 96 minutes, Legal Ethics was allocated 24 minutes, and both Practice and Evidence were allocated 60 minutes each.

Of the roughly 30 exams I've seen to date, it is apparent examinees struggled to achieve passing scores on the Substantive Tax and Legal Ethics (Session One) sections more than Practice and Evidence (Session Two). Many of my students indicated that they ran out of time during Session One and had extra time during Session Two. During the in-person exam an examinee could choose what order to take the exam in, and could move between the parts as needed based on the four hours available; this was not possible during the remote exam.

I know that 15 of my students passed, but as of this writing (5/28/22) the Tax Court has not yet released the total number who passed the 2021 exam.

The pass rate between 2000-2018 ranges from a low of 5.56% in 2004 (4 of 72 examinees) to a high of 18.25% in 2014 (23 out of 126). I took the exam and passed it on my first attempt in 2000, one of 17 who passed that year out of 102 examinees. The Tax Court provides these statistics for 2000-2018 on their website:

https://ustaxcourt.gov/resources/practitioner/NonAttorney_Exam_Statistics.pdf.

Under Tax Court Rule 200(c), those who pass must be sponsored by at least two persons admitted to practice before the Court by a sponsor who can state, according to the email sent to successful examinees, "fully and frankly the extent of the sponsor's acquaintance with you, the sponsor's opinion of your moral character and repute, and the sponsor's opinion of your qualifications to practice before this Court." The successful examinee must also execute the Practitioner's Oath before a Notary Public, which can be emailed to the Tax Court Admissions Office, and pay the \$50 original admission fee simultaneously with the oath.

organization dedicated to advancing taxpayer rights in the US and internationally. She served as the National Taxpayer Advocate from March 2001 through July 2019. [Read More...](#)

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Samantha Galvin



Samantha Galvin is an Associate Professor of the Practice of Taxation and the Director of the

Low Income Taxpayer Clinic (LITC) at the University of Denver. Professor Galvin has been teaching full-time at the University of Denver since October of 2013 and teaches courses in tax controversy representation, individual income tax, and tax research and writing. In the LITC, she teaches, supervises and assists students representing low income taxpayers with controversy and collection issues. [Read More...](#)

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Caleb Smith



Caleb Smith is Associate Clinical Professor and the Director of the Ronald M. Mankoff Tax Clinic at the University of Minnesota Law School.

Caleb has worked at Low-Income Taxpayer Clinics on both coasts and the Midwest, most recently completing a fellowship at Harvard Law School's Federal Tax Clinic. Prior to law school Caleb was the Tax Program Manager at Minnesota's largest Volunteer Income Tax Assistance organization, where he continues to remain engaged as an instructor and volunteer today. [Read More...](#)

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In 2013, 2017 and 2019, Tax Court judges personally swore in nonattorneys who were successful on this difficult exam. When I spoke with her May 12, 2022 about the possibility of also recognizing those who passed the 2021 exam, Jennifer Siegel of the Tax Court Public Affairs office said, "Although the Court is holding in-person trial sessions, the main courthouse building is not open for outside visitors, and a group swearing-in ceremony may not be possible.

Anyone who passed the 2021 exam who is interested in being sworn in by a Tax Court judge at a local trial calendar can contact Jennifer Siegel, Public Affairs, at 202.521.3355 (or PublicAffairs@ustaxcourt.gov), to discuss that opportunity."

It is not yet known whether the next exam will be given remotely or return to an in-person model. This should be specified in the press release required under Tax Court Rule 200(a)(3) when the Tax Court announces the date and time of the exam, approximately six months before the exam is held.

Filed Under: [Tax Court](#) Tagged With: [Sherrill Trovato](#)

Comments

Amber Gray-Fenner says

[June 6, 2022 at 9:08 am](#)



I consider myself a pretty good test taker and, with a reasonable amount of preparation passed the SEE to become an EA with ease. I felt overprepared. I took this test during the 2018 test cycle and I call it "The Beast." I passed on my first attempt (thanks to Sherrill's excellent prep class and a TON of study time that included giving up many hours of billable work). If you're planning on taking this test do not underestimate the difficulty. I am not sure I would have passed if I had not been able to "harvest time". The inability to flex time from one section to another as well as the missing 20 minutes had to have reduced an already low passing rate to something ridiculously low. Kudos to all those who took the remote test and passed!

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[IRS Practice and Procedure](#) (The Thomson Reuters preeminent treatise on tax procedure, originally authored by Michael Saltzman, with Les now the lead successor author and Keith and Stephen contributing chapter authors and all three updating the treatise).

[Effectively Representing Your Client](#) (ABA's book on practice before the Service, which is edited by Christine).

[Leslie Book's SSRN Page](#) (Les' other scholarly work).

[Keith Fogg's SSRN Page](#) (Keith's other scholarly work).

[Christine Speidel's SSRN Page](#) (Christine's other scholarly work).

[NTA Blog](#) (National Taxpayer Advocate's tax analysis blog).

[Tax Prof Blog](#) (Prof. Paul Caron's blog on all things tax).

[Federaltaxcrimes.blogspot.com/](#) (Great criminal tax blog by Jack Townsend).

[Federal Tax Procedure Blogspot](#) (Jack Townsend's excellent tax procedure blog).

[Appellatetax.com/](#) (Good appellate tax blog by the law firm Miller and Chevalier).

[Gawthrop Greenwood, PC](#) (Stephen's law firm, which handles various types of tax matters).

[Tax Litigation Survey](#) (Articles regarding tax litigation decisions by Prof. Timothy Todd).

[Internal Revenue Manual Online](#)

[Internal Revenue Code](#) (Legal Information Institute's frequently updated Internal Revenue Code online).

[Treasury Regulations](#) (Legal Information Institute's frequently updated Treasury Regulations).

[Mauledagain](#) (Tax and other musings by the venerable Professor James Maule).

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