



SUCCESSFUL

JOURNEY TO

TAX COURT

PRACTICE

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“This was the most physically and intellectually demanding exam I have ever taken,” reports Amber Gray-Fenner, EA, USTCP, who passed the November 8, 2018, Tax Court exam on her first attempt. She took it because it seemed “like all the people I admired on the Facebook forums for their expertise and the thoroughness of their answers had the letters USTCP behind their names.” She added, “Once I knew I was going to focus on representation in addition to preparation...I knew this was the next logical step after becoming an EA and an NTPI Fellow.” She studied using a professional exam preparation course that provided webinars and other content and she read Tax Court cases during her lunch hours. She concentrated her study efforts daily from July through October 2018.

Circular 230 practitioners know you cannot always resolve tax controversies in the Internal Revenue Service administrative processes within the Examination, Collection, and Appeals divisions, but our representation rights are limited by our license. In 1924, the Board of Tax Appeals, now known as the U.S. Tax Court, was created as a taxpayer-friendly opportunity for the taxpayer to have a controversy heard without having to prepay the amount of tax due.

Before 1942, the Tax Court freely admitted both attorneys and certified public accountants (CPAs) to practice, but began to restrict those admitted to practice when the Tax Court transitioned to court status.ⁱ Internal Revenue Code §7452 expressly gives nonattorneys the right to represent in the Tax Court by stating, “No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling.”ⁱⁱ

Tax Court Rule 200(a)(3) describes the admission process for nonattorneys who satisfy the requirement to prove they are qualified. The candidate must “as a condition of being admitted to practice, satisfy the Court, by means of a written examination given by the Court, that the applicant possesses the requisite qualifications to provide competent representation before the Court.”

The Tax Court exam is given only in Washington, DC, in even years. The date and time of the November 2020 exam will be announced by a press release on their website approximately six months before the exam. The four-hour handwritten exam covers four sections, each of which must be passed with a score of 70 percent or better, at the same time. The questions include short answer and essay questions, and may ask you for calculations. Topics tested include: practice and procedure (25 percent or 60 minutes), evidence (25 percent or 60 minutes), legal ethics (10 percent or 24 minutes), and federal tax (40 percent or 96 minutes). The exam is written and graded by a panel of three law professors who are selected based on their specialized knowledge of the subjects to be tested and experience testing legal knowledge.ⁱⁱⁱ The Tax Court does not publish suggested answers, and knowing how and what to study is part of the challenge.

If you are not successful, you can receive your score sheets and answers, as long as you request them in writing not more than 120 days after results are known; otherwise exam answers are destroyed. If you are unsuccessful, you may sit for this exam as many times as you wish, but no part carries forward – you start fresh each attempt and must score 70 percent or better on each topic.

If you pass, you cannot receive your exam answers. You must be sponsored by two members of the Tax Court bar, as described in Tax Court Rule 200(c); subscribe an oath (200(d)); and pay a fee to be admitted to practice. You will be given a unique bar number that identifies you when you file petitions or other pleadings before the Tax Court.

The exam is challenging with a pass rate that varies from a low of 5.56 percent (2004) to a high of 18.25 percent (2014) (see below for the statistics available at ustaxcourt.gov on exams from 2000–2016 found at https://ustaxcourt.gov/NonAttorney_Exam_Statistics.pdf).

Year	Number of Examinees	Number Who Passed the Exam	Pass Rate
2000	102	17	16.67%
2002	47	7	14.89%
2004	72	4	5.56%
2006	58	6	10.34%
2008	54	8	14.81%
2010	83	8	9.64%
2012	77	11	14.29%
2014	126	23	18.25%
2016	119	16	13.45%
2018	143	22	15.38%

When results of the November 2018 exam became available in early April 2019, we learned that ten members of NAEA were successful, including: Diane Bishop, EA (NY); Keith Christoff, EA (WI); Tom Figgatt, EA (CT); Susan Gallagher-Smith, EA (OR); Amber Gray-Fenner, EA (NM); Cindy Petersen, EA (ID); Sandra Robb, EA (WA); David Tudor, EA (MT); Ruben Valdes, EA (TX); and Josh Webskowsky, EA (MN). Let us hear some of their stories about how and why they were able to achieve success on this difficult exam.

Success Stories

Sandra Robb’s, EA, USTCP, story is especially inspiring because she was badly injured in 2011 when she was a pedestrian who was hit by a van. She suffered traumatic brain injury that caused short-term memory loss and auditory problems and made her even question continuing in her tax practice, because she found it so difficult to do her job. Sandra passed the exam on her first attempt by “prayer, hard work, patience, and the will to never quit.” She memorized word definitions, practiced handwriting answers, and listened to Federal Rules of Evidence lectures while driving or doing household chores. Sandra considers herself blessed to pass on the first try, but she has “great respect for those who keep studying and don’t quit no matter how many times it takes to pass the exam.”

It’s easy to become complacent – especially as one gets older. But having goals and striving for them helps to **keep you focused.**



Cindy Petersen, EA, USTCP, passed on her second attempt. She took it because of her “desire to go the extra mile in helping my clients resolve their issues with IRS.” Cindy found the study process and taking the exam “...were both challenging and rewarding.” She studied on her own and with a group using posters, flash cards, and notes.

Keith Christoff, EA, USTCP, studied very little until the end of the April 2018 tax season, when he began to study on a regular basis. He passed on his first attempt, and mused, “It was one of the toughest exams I’ve ever taken. I’m still stunned I passed and am still expecting a letter rescinding my acceptance.” Keith studied with a professional exam preparation course, and throughout that journey alternated between thinking, “There was no way” and then thinking, “It’s possible (though not likely).” He thinks this is a worthy goal for other members because “It’s easy to become complacent – especially as one gets older. But having goals and striving for them helps to keep you focused. And it sets you apart from your colleagues who are just satisfied ‘treading water’ as tax professionals.” He used a baseball analogy, “We need to keep ‘swinging for the fences.’ We won’t always succeed. But sometimes we’ll surprise ourselves. Like when we pass a test that we thought was impossible.”

Ruben Valdes, EA, USTCP, passed on his first attempt. “I love the challenge and I wanted to expand my knowledge in taxation. I make 60 percent of my revenue in representation, so this exam was a MUST.” He made a commitment to study daily from 5:30 A.M.–8:30 A.M., and working with each exam topic areas separately.

David Tudor, EA, USTCP, enjoys tax representation and helping taxpayers solve their issues both with IRS and state taxing authorities. He passed on his first attempt following a study guide spreadsheet developed by a previous study group where all participants passed on their first attempt. He made his own outlines of each subject and did a final review of the material the last two weeks prior to the exam. “This is the hardest exam one will take,” he says, and “When you walk out of the exam, you think to yourself, ‘I should have studied more. There is no way I passed.’”

After twelve years of preparing taxes, Josh Webskowsky, EA, USTCP, was confronted with the notion that this was as good as it gets, “Unless you become a tax attorney.” He met another U.S. Tax Court practitioner at the National Tax Practice Institute™ (NTPI®) Level 2 program, who spoke about the Tax Court exam, and when he saw her article in this publication about her successful journey, he contacted her for guidance. Josh made his first attempt at the exam in 2016 and passed three sections of the exam, barely missing the fourth. For the 2018 exam, he worked with a study group and created his own flashcards, outlines, wall posters, and flowcharts. He also



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FOR YOUR REVIEW

1. The Tax Court exam
 - A. Is given in various locations across the country in odd years.
 - B. Is only given in Washington, DC in even years.
 - C. Is an easy exam for EAs to pass.
 - D. Is given every October.
2. What is not true about the Tax Court exam?
 - A. If you pass you cannot get your answers.
 - B. The exam is a four-hour handwritten exam written by a panel of three law professors.
 - C. The exam must be passed with a score of 70% overall.
 - D. The exam tests on four parts: Practice and procedure, evidence, legal ethics, and federal tax.

**See page 58 for the answers.*

made audio podcasts where he recited information at a slow speed, so he could listen to the material while running, driving, and even mowing the lawn. He even generated sufficient material during his studies that he delivered a six-hour and a four-hour continuing education course from information he learned.

“It is a worthy goal for anybody that wants to see their client’s case all the way through to the end result,” says Webskowsky, who adds, “It is a great responsibility as well as a great honor to carry this designation.”

ⁱ *The United States Tax Court, An Historical Analysis* Harold Dubroff & Brant J. Hellwig, 2nd Edition, P.97

ⁱⁱ *Internal Revenue Code §7452*

ⁱⁱⁱ *As explained at ustaxcourt.gov in Examinations Procedures that can be found at https://ustaxcourt.gov/NonAttorney_Exam_Procedures.pdf.*