

**DESCRIPTION OF THE CHAIRMAN'S MARK
OF VARIOUS PROPOSALS RELATING TO ACCESS AND
ADMINISTRATION OF THE U.S. TAX COURT**

Scheduled for Markup
by the
SENATE COMMITTEE ON FINANCE
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Prepared by the Staff
of the
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INTRODUCTION

The Senate Committee on Finance has scheduled a committee markup on February 11, 2015, of proposals concerning access to the U.S. Tax Court and U.S. Tax Court Administration, and a proposal to clarify that the U.S. Tax Court is not an executive agency. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of Various Proposals Relating to Access and Administration of the U.S. Tax Court* (JCX-19-15), February 9, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Access to U.S. Tax Court

1. Filing period for interest abatement cases

Present Law

The Internal Revenue Code of 1986, as amended (“Code”) vests with the United States Tax Court (herein “Tax Court”) jurisdiction over actions brought by a taxpayer for review of a denial of a request for interest abatement if (1) the taxpayer meets certain net worth requirements, and (2) the petition is filed within 180 days of mailing of a final determination by the Secretary not to abate interest.²

The Code does not authorize the filing of a Tax Court petition in the absence of the mailing of a final determination by the Secretary and, accordingly, does not confer jurisdiction on the Tax Court in such circumstances.³ Hence, where the Secretary fails to respond to a taxpayer’s claim for abatement of interest, the taxpayer is unable to seek judicial review of the claim.

Description of Proposal

The proposal amends the Code, relating to review of denials of requests for abatement of interest, to provide that a petition under the section may be filed with the Tax Court upon the expiration of a 180-day period after the filing with the IRS of a claim (in such form as the Secretary may prescribe) for abatement of interest, in instances where the Secretary has failed to issue a final determination within that period.

Effective Date

The proposal is effective for claims filed after the date of enactment.

2. Small tax case election for interest abatement cases

Present Law

The Code provides certain proceedings for small tax cases, generally those that involve disputes of \$50,000 or less.⁴ Under the Code, the Tax Court has exclusive jurisdiction to review a failure by the Secretary to abate interest.⁵ However, the Code presently does not authorize

² Sec. 6404(h).

³ Sec. 6404(h).

⁴ Sec. 7463. These cases are handled under less formal procedures than regular cases. The Tax Court’s decision in a small tax case is final and cannot be appealed to any court by the IRS or by the petitioner. See sec. 7463, Title XVII of the United States Tax Court rules, and http://www.ustaxcourt.gov/forms/Petition_Kit.pdf.

⁵ Sec. 6404(h). *Hinck v. United States*, 127 S.Ct. 2011 (2007).

cases to be conducted using small tax case procedures, unless the issue arises as part of a request for review of collection actions.⁶

Description of Proposal

The proposal amends the Code, relating to additional cases which may be conducted as a small tax case, by adding a new paragraph (3) enumerating petitions brought under section 6404(h), for review of a decision by the Secretary not to abate interest, as a matter which may be conducted under section 7463. The provision extends the small tax case procedures to actions for interest abatement in which the total amount of interest for which abatement is sought does not exceed \$50,000.

Effective Date

The proposal applies to cases pending as of the day after the date of enactment, and cases commencing after such date of enactment.

3. Venue for appeal of spousal relief and collection cases

Present Law

Sections 6015, 6320, and 6330 provide rights for taxpayers, principally through the establishment of administrative procedures and judicial review of administrative actions taken in matters involving spousal relief from joint and several liability and collection of taxes by lien and levy. The Tax Court is vested with jurisdiction to render decisions on the taxpayer's entitlement to relief under these provisions.

Section 7482 provides for appellate review of Tax Court decisions by the U.S. Court of Appeals and subsection (b) of that statute governs venue for such review. In general, section 7482 enumerates types of cases appealable to the U.S. Court of Appeals for the circuit in which is located the taxpayer's legal residence, principal place of business, or principal office or agency and then establishes a default rule for review of all other cases by the U.S. Court of Appeals for the District of Columbia. Sections 6015, 6320, and 6330 are not among those expressly identified as appealable to the circuit of residence or principal business/office. However, routine practice since enactment, on the part of both the litigants and the courts, has been to treat such cases as appealable to the U.S. Court of Appeals for the circuit corresponding to the petitioner's residence or principal business or office.

Description of Proposal

The provision amends section 7482(b) to clarify that Tax Court decisions rendered in cases involving petitions under sections 6015, 6320, or 6330 follow the generally applicable rule for appellate review. That rule provides that the cases are appealable to the U.S. Court of Appeals for the circuit in which is located the petitioner's legal residence in the case of an

⁶ Secs. 7463, 6330.

individual or the petitioner's principal place of business or principal office of agency in the case of an entity other than an individual.

Effective Date

The provision applies to petitions filed after the date of enactment. No inference is intended with respect to the application of section 7482 to petitions filed on or before the date of enactment.

4. Suspension of running of period for filing petition of spousal relief and collection cases

Present Law

Section 6015(e) addresses procedures by which taxpayers may petition the Tax Court to determine the appropriate relief available to the individual in matters involving spousal relief from joint and several liability and collection of taxes by lien and levy. It also provides for suspension of the running of a period of limitations⁷ on the collection of assessments that may apply, limits on tax court jurisdictions in certain circumstances, and rules for providing adequate notice of proceedings to the other spouse.

Section 6330 disallows levies to be made on property or rights to property unless the Secretary has notified the taxpayer in writing of their right to a hearing before such levy is made. Under subsection (d), once a determination is made, the taxpayer may appeal the determination to the Tax Court within 30 days. Under subsection (e), the levy actions which are the subject of the requested hearing and the running of any relevant period of limitations⁸ are suspended for the period during which such hearing and appeals are pending.

Description of Proposal

The proposal adds to existing rules a suspension of the running of a period of limitations on filing a petition as described in section 6015(e) for a taxpayer who is prohibited from filing such a petition under U.S.C. Title 11. The suspension is for the period during which the taxpayer is prohibited from filing such a petition and for 60 days thereafter.

The proposal also adds to existing rules a suspension of the running of a period of limitations on filing a petition as described in section 6330(e) for a taxpayer who is prohibited from filing such a petition under U.S.C. Title 11. The suspension is for the period during which the taxpayer is prohibited from filing such a petition and for 30 days thereafter.

Effective Date

The proposal applies to petitions filed under section 6015(e) of the Code after the date of enactment and to petitions filed under section 6330 of the Code after the date of enactment.

⁷ Sec. 6502.

⁸ Secs. 6502, 6531, and 6532.

5. Application of federal rules of evidence

Present Law

In general, the Code provides that the proceedings of the Tax Court shall be conducted in accordance with rules of practice and procedure (other than rules of evidence) as prescribed by the Tax Court, and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia.⁹ The Tax Court has interpreted the Code to require the Tax Court to apply the evidentiary precedent of the D.C. Circuit in all cases¹⁰, an exception to the Tax Court's regular practice under *Golsen v. Commissioner*¹¹ of applying the precedent of the circuit court of appeals to which its decision is appealable.

The Federal Rules of Evidence¹² are the applicable rules of evidence for all Federal district courts in all judicial districts, including the District of Columbia. In addition, the United States Code includes specific rules and procedures for evidence.¹³ Rule 143 of the Rules of Practice and Procedure promulgated by the Tax Court, states "those rules include the rules of evidence in the Federal Rules of Civil Procedure and any rules of evidence generally applicable in the Federal courts (including the United States District Court for the District of Columbia)."

Description of Proposal

The proposal amends the Code to provide 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 Federal Rules of Evidence. Thus, the Tax Court will apply the evidentiary precedent of the circuit court of appeals to which its decision is appealable.

Effective Date

The proposal applies to proceedings commenced after the date of enactment, and to the extent that it is just and practicable, to all proceedings pending on such date.

⁹ Sec. 7453.

¹⁰ All cases except those cases in which section 7453 does not apply, *e.g.*, small tax cases..

¹¹ 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

¹² The Federal Rules of Evidence, as amended through 2012, under the authority of 28 U.S.C. sec. 2074, is available at <http://www.uscourts.gov/uscourts/rules/rules-evidence.pdf>. "The Act to Establish Rules of Evidence for Certain Courts and Proceedings," Pub. L. No. 93-595 (January 2, 1975).

¹³ 28 U.S.C. secs. 1731 through 1828.

B. U.S. Tax Court Administration

1. Judicial conduct and disability procedures

Present Law

Under Title 28 of the United States Code, any person is authorized to file a complaint alleging that an Article III Judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts; the law also permits any person to allege conduct reflecting a covered Judge's inability to perform his or her duties because of mental or physical disability.¹⁴ A judicial council exercises specific powers in investigating and taking action with respect to such complaints, including paying certain fees and allowances incurred in conducting hearings and awarding reimbursement of reasonable expenses in appropriate circumstances from appropriated funds.¹⁵ Title 28 directs other Article I courts, including the Court of Federal Claims¹⁶ and the Court of Appeals for Veterans Claims,¹⁷ to prescribe similar rules for the filing of complaints with respect to the conduct or disability of any Judge and for the investigation and resolution of such complaints. However, there is no statutory provision related to complaints regarding the conduct or disability of a Tax Court Judge, Senior Judge, or Special Trial Judge.

Description of Proposal

The proposal authorizes the Tax Court to prescribe procedures for the filing of complaints with respect to the conduct of any judge or magistrate judge of the Tax Court and for the investigation and resolution of such complaints. In investigating and taking action with respect to such a complaint, the proposal authorizes the Tax Court to exercise the powers granted to a judicial council under current law.

Effective Date

The proposal applies to proceedings commenced after the date which is 180 days after the date of enactment, and to the extent that it is just and practicable, to all proceedings pending on such date.

¹⁴ Judicial Conduct and Disability Act of 1980, 28 U.S.C. sections 351-364. On March 11, 2008, the Judicial Conference of the United States promulgated rules governing such proceedings.

¹⁵ 28 U.S.C. chapter 16.

¹⁶ 28 U.S.C. section 363.

¹⁷ 38 U.S.C. section 7253(g).

2. Administration, judicial conference, and fees

Present Law

Congress established the Tax Court as a court of law under Article I with its governing provisions in the Code. However, provisions governing most Federal courts are codified in Title 28 of the United States Code. Congress has, from time to time, amended the governing laws of other Federal courts and the laws that apply to the Administrative Office of the United States Courts relating to administering certain authorities of the judiciary.¹⁸

Federal courts, including Article I courts such as the Court of Appeals for Veterans Claims, have express statutory authority to conduct an annual judicial conference.¹⁹ The Tax Court has conducted periodic judicial conferences in order to consider the business of the Tax Court and to discuss means of improving the administration of justice within the Tax Court's jurisdiction. The Tax Court's judicial conferences have been attended by persons admitted to practice before the Tax Court, including representatives of the Internal Revenue Service, the Department of Justice, private practitioners, low-income taxpayer clinics, and by other persons active in the legal profession.

Federal courts are authorized to deposit certain court fees into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts.²⁰ The Tax Court's filing fees are statutorily set at "not in excess of \$60" and are covered into the Treasury as miscellaneous receipts.²¹

Description of Proposal

The proposal amends the Code to provide the Tax Court with the same general management, administrative, and expenditure authorities that are available to Article III courts and the Court of Appeals for Veterans Claims.

The proposal amends the Code to provide the Tax Court with express authority to conduct an annual judicial conference and charge a reasonable registration fee.

The proposal amends the Code to authorize the Tax Court to deposit certain fees into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the Tax Court.

¹⁸ These authorities are available to Article III courts either directly or through the laws enacted for the Administrative Office of the United States Courts (AOUSC) under U.S.C. title 28 (see, e.g., 28 U.S.C. secs. 601, et seq.) and to other Article I courts such as the U.S. Court of Appeals for Veterans Claims under 38 U.S.C. sec. 7287.

¹⁹ 38 U.S.C. sec. 7286.

²⁰ 28 U.S.C. secs. 1941(A) and 1931.

²¹ Sec. 7473.

Effective Date

The proposal is effective on the date of enactment.

C. Clarification that the U.S. Tax Court is Not an Executive Agency

Present Law

The Tax Court was created in 1969 as a court of record established under Article I of the U.S. Constitution with jurisdiction over tax matters as conferred upon it under the Code.²² It superseded an independent agency of the Executive Branch known as the Tax Court of the United States, which itself superseded the Board of Tax Appeals.²³

As judges of an Article I court, Tax Court judges do not have lifetime tenure nor do they enjoy the salary protection afforded judges in Article III courts. They are subject to removal only for cause, by the President.²⁴ The authority to remove a judge for cause was the basis for a recent unsuccessful challenge to an order of the Tax Court, in which the taxpayer claimed that the removal authority was an unconstitutional interference of the executive branch with the exercise of judicial powers. In rejecting that challenge, the Court of Appeals for the District of Columbia held that the Tax Court is not part of the Article III Judicial Branch and is an independent Executive Branch agency,²⁵ while acknowledging that the Tax Court is a “court of law” for purposes of the Appointments Clause.²⁶

Description of Proposal

The proposal clarifies that the Tax Court is not within the Executive Branch.

Effective Date

The provision is effective upon the date of enactment.

²² Sec. 7441.

²³ The Board of Tax Appeals was created in 1924 to review deficiency determinations. In 1942, it was renamed the Tax Court of the United States.

²⁴ Sec. 7443(f) permits the President to remove a Tax Court judge for inefficiency, neglect of duty, or malfeasance in office, after notice and opportunity for a public hearing.

²⁵ *Kuretski v. Commissioner*, 755 F.3d 929 (D.C. Cir. 2014), *petition for cert. filed* (U.S. Nov. 26, 2014) (No. 14-622), available at <http://www.procedurallytaxing.com/wp-content/uploads/2014/12/Kuretski-Supreme-Court-Petition.pdf>. For an explanation of the status of Article I courts in comparison to the Article III judiciary, see, Nolan, Andrew and Thompson, Richard M., Congressional Research Service, *Congressional Power to Create Federal Courts: A Legal Overview* (Report No. R43746), October 1, 2014, available at <http://www.fas.org/sgp/crs/misc/R43746.pdf>.

²⁶ *Kuretski v. Commissioner*, p. 932, distinguishing *Freytag v. Commissioner*, 501 U.S. 868 (1991).

D. Estimated Revenue Effects

The proposals are estimated to reduce Federal fiscal year budget receipts by less than \$500,000 for the period 2015-2025.