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## IMPROVE ACCESS AND ADMINISTRATION OF THE UNITED STATES TAX COURT

APRIL 14, 2015.—Ordered to be printed

Mr. HATCH, from the Committee on Finance,  
submitted the following

### R E P O R T

[To accompany S. 903]

The Committee on Finance, having considered an original bill, S. 903, to amend the Internal Revenue Code of 1986 to improve access and administration of the United States Tax Court, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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## I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered S. 903, a bill to amend the Internal Revenue Code of 1986 to improve access and administration of the United States Tax Court, reports favorably thereon without amendment and recommends that the bill do pass.

### *Background and need for legislative action*

*Background.*—Based on a proposal recommended by Chairman Hatch and Ranking Member Wyden, the Committee on Finance marked up original legislation (a bill to amend the Internal Revenue Code of 1986 to improve access and administration of the U.S. Tax Court) on February 11, 2015, and, with a majority present, ordered the bill favorably reported, without amendments, on that date. This report describes the provisions of the bill.

*Need for legislative action.*—Changes to the provisions limiting access to the U.S. Tax Court are needed to assure access to a prepayment forum for persons claiming spousal relief, challenging the propriety of certain collection actions or requesting interest abatement and to conform the treatment of bankrupt taxpayers seeking such relief with those seeking redetermination of other types of administrative action. In addition, the perceived independence of the U.S. Tax Court would be enhanced by greater autonomy in its administration of fees it collects, as well as clarification that it is not part of the Executive Branch.

## II. EXPLANATION OF THE BILL

### A. ACCESS TO THE UNITED STATES TAX COURT

1. Filing period for interest abatement cases (sec. 101 of the bill and sec. 6404 of the Code)

#### PRESENT LAW

The Internal Revenue Code of 1986, as amended vests with the United States Tax Court (herein the “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.<sup>1</sup> In the absence of the mailing of a final determination by the Secretary, the Code does not authorize the filing of a Tax Court petition and, accordingly, does not confer jurisdiction on the Tax Court in such circumstances.<sup>2</sup> 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.

<sup>1</sup>Sec. 6404(h). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

<sup>2</sup>Sec. 6404(h).

## REASONS FOR CHANGE

Claims for abatement of interest generally, in whole or in part, raise questions of administrative error, inaction or abuse of discretion as a basis for suspending accrual of interest on underpayments of tax. The only prepayment forum in which such claims can be addressed is the U.S. Tax Court. The Committee believes that inaction by the government after a reasonable time in which to consider the claim for abatement should not deprive taxpayers' access to judicial review of claims that may implicate administrative error, inaction or abuse of discretion.

## EXPLANATION OF PROVISION

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

2. Small tax case election for interest abatement cases (sec. 102 of the bill and secs. 6404 and 7463 of the Code)

## PRESENT LAW

The Code provides certain proceedings for small tax cases, generally those that involve disputes of \$50,000 or less.<sup>3</sup> Under the Code, the Tax Court has exclusive jurisdiction to review a failure by the Secretary to abate interest.<sup>4</sup> However, the Code presently does not authorize cases to be conducted using small tax case procedures, unless the issue arises as part of a request for review of collection actions.<sup>5</sup>

## REASONS FOR CHANGE

At present, a petition to the Tax Court to review a determination denying interest abatement is permitted, but election to apply the small tax case procedures is generally not available. Small tax case procedures permit many taxpayers with relatively small or uncomplicated issues to seek speedy resolution in a less formal proceeding in which they can represent themselves, without assistance of counsel. The Committee believes that access to simplified court procedures is appropriate in small claims for interest abatement, regardless of whether the issue is raised as part of a request for review of collection actions taken by the IRS.

<sup>3</sup> 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](http://www.ustaxcourt.gov/forms/Petition_Kit.pdf).

<sup>4</sup> Sec. 6404(h). *Hinck v. United States*, 127 S.Ct. 2011 (2007).

<sup>5</sup> Secs. 7463, 6330.

## EXPLANATION OF PROVISION

The provision 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 provision 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 (sec. 103 of the bill and sec. 7482 of the Code)

## 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.

## REASONS FOR CHANGE

The Committee has learned that the failure to identify spousal relief cases and certain collection due process cases as cases in which venue for appeal should be determined by legal residence, place of business or principal office has led to questions about whether the default rule for venue for appeal should apply. Under the default rule, venue would lie with the U.S. Court of Appeals for the District of Columbia, rather than the circuit in which the taxpayer's residence or business is located. The Committee believes that application of the default rule would unnecessarily complicate access to appellate review. Rather than relying on continuation of the ability of the litigants to agree on a mutually acceptable venue for appeal, the Committee believes it is preferable to correct the

venue statutes to ensure access to the venue that corresponds to residence or principal business or office.

#### EXPLANATION OF PROVISION

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 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 (sec. 104 of the bill and secs. 6015 and 6330 of the Code)

#### 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 limitations<sup>6</sup> 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 limitations<sup>7</sup> are suspended for the period during which such hearing and appeals are pending.

Neither section 6015 or 6330 includes a rule similar to the coordination rule found in the general provisions regarding filing a petition with the Tax Court for taxpayers in bankruptcy.<sup>8</sup> Under that rule, the period of the automatic stay in bankruptcy is disregarded, and the taxpayer may file its petition with the Tax Court within 60 days after the stay is lifted.

#### REASONS FOR CHANGE

To ensure that taxpayers seeking spousal relief or collection due process have rights similar to those of other litigants in the Tax Court, the Committee believes it is appropriate to extend the gen-

<sup>6</sup>Sec. 6502.

<sup>7</sup>Secs. 6502, 6531, and 6532.

<sup>8</sup>Sec. 6213(f).

eral rule of section 6213(f) and conform the automatic stay of the Bankruptcy Code with the limitations period for petitions to the Tax Court for spousal relief and collection due process cases.

#### EXPLANATION OF PROVISION

The provision 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 provision 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 provision 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.

5. Application of federal rules of evidence (sec. 105 of the bill and sec. 7453 of the Code)

#### 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.<sup>9</sup> The Tax Court has interpreted the Code to require the Tax Court to apply the evidentiary precedent of the D.C. Circuit in all cases,<sup>10</sup> an exception to the Tax Court's regular practice under *Golsen v. Commissioner*<sup>11</sup> of applying the precedent of the circuit court of appeals to which its decision is appealable.

The Federal Rules of Evidence<sup>12</sup> 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.<sup>13</sup> 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)."

<sup>9</sup>Sec. 7453.

<sup>10</sup>All cases except those cases in which section 7453 does not apply, e.g., small tax cases..

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

<sup>12</sup>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).

<sup>13</sup>28 U.S.C. secs. 1731 through 1828.

## REASONS FOR CHANGE

The Committee believes that present law has led to confusion about how the Federal Rules of Evidence are to be applied in a Tax Court proceeding, in some instances unnecessarily complicating consideration of cases.

## EXPLANATION OF PROVISION

The provision 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 provision 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.

## B. U.S. TAX COURT ADMINISTRATION

1. Judicial conduct and disability procedures (sec. 201 of the bill and new sec. 7466 of the Code)

## 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.<sup>14</sup> 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.<sup>15</sup> Title 28 directs other Article I courts, including the Court of Federal Claims<sup>16</sup> and the Court of Appeals for Veterans Claims,<sup>17</sup> 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.

Unlike the prescriptions of Title 28 for Article III courts and other Article I courts, there is no statutory provision related to complaints regarding the conduct or disability of a Tax Court Judge, Senior Judge, or Special Trial Judge, although they voluntarily agree to follow the rules contained in the Code of Conduct for U.S. Judges.<sup>18</sup>

<sup>14</sup>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.

<sup>15</sup>28 U.S.C. chapter 16.

<sup>16</sup>28 U.S.C. sec. 363.

<sup>17</sup>38 U.S.C. sec. 7253(g).

<sup>18</sup>Available at <http://www.uscourts.gov/uscourts/RulesAndPolicies/conduct/vol02a-ch02.pdf>.

## REASONS FOR CHANGE

To ensure the integrity of the Tax Court as well as the public's perception of integrity of the Tax Court, the Committee believes that the Tax Court needs a process to permit investigation and resolution of complaints about judges. Apparently the failure to promulgate such rules is due to concerns that the Tax Court lacks statutory authority to do so. Accordingly, the Committee wishes to add explicit statutory authority to promulgate rules governing the conduct of all judges of the Tax Court.

## EXPLANATION OF PROVISION

The provision authorizes the Tax Court to prescribe procedures for the filing of complaints with respect to the conduct of any judge or special trial 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 provision authorizes the Tax Court to exercise the powers granted to a judicial council under Title 28.

## EFFECTIVE DATE

The provision 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.

2. Administration, judicial conference, and fees (sec. 202 of the bill; Code sec. 7473; and new secs. 7470 and 7470A of the Code)

## 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.<sup>19</sup>

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.<sup>20</sup> 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 appro-

<sup>19</sup>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.

<sup>20</sup>38 U.S.C. sec. 7286.

priated for the operation and maintenance of the courts.<sup>21</sup> The Tax Court's filing fees are statutorily set at "not in excess of \$60" and are covered into the Treasury as miscellaneous receipts.<sup>22</sup>

#### REASONS FOR CHANGE

The Committee believes that it would enhance the perceived independence of the Tax Court if fees collected by the Tax Court were deposited in a special fund for use to offset costs of administration of the Tax Court, as other Article I courts and all Article III courts do.

#### EXPLANATION OF PROVISION

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

The provision 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.

#### EFFECTIVE DATE

The provision is effective on the date of enactment.

#### C. CLARIFICATION RELATING TO THE UNITED STATES TAX COURT (SEC. 301 OF THE BILL AND SEC. 7441 OF THE CODE)

##### 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.<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup> 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 invoked the separation of powers doctrine to argue that the removal authority is an unconstitutional interference of the executive branch with the exercise of judicial powers. In rejecting that challenge, the Court of Appeals for the Dis-

<sup>21</sup> 28 U.S.C. secs. 1941(A) and 1931.

<sup>22</sup> Sec. 7473.

<sup>23</sup> Sec. 7441.

<sup>24</sup> 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.

<sup>25</sup> 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.

trict of Columbia held in *Kuretski v. Commissioner*<sup>26</sup> that the Tax Court is not part of the Article III Judicial Branch and is an independent Executive Branch agency, while acknowledging that the Tax Court is a “Court of Law” for purposes of the Appointments Clause.<sup>27</sup>

#### REASONS FOR CHANGE

The Committee is concerned that statements in *Kuretski v. Commissioner* may lead the public to question the independence of the Tax Court, especially in relation to the Department of Treasury or the Internal Revenue Service. The Committee wishes to remove any uncertainty caused by *Kuretski v. Commissioner*, and to ensure that there is no appearance of institutional bias.

#### EXPLANATION OF PROVISION

The provision clarifies that the Tax Court is not an agency of, and shall be independent of, the Executive Branch.

#### EFFECTIVE DATE

The provision is effective upon the date of enactment.

### III. BUDGET EFFECTS OF THE BILL

#### A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the revenue provisions of a bill to amend the Internal Revenue Code of 1986 to improve access and administration of the United States Tax Court, as reported.

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

#### B. BUDGET AUTHORITY AND TAX EXPENDITURES

##### *Budget authority*

In compliance with section 308(a)(1) of the Budget Act, the Committee states that no provisions of the bill as reported involve new or increased budget authority.

##### *Tax expenditures*

In compliance with section 308(a)(2) of the Budget Act, the Committee states that there are no provisions that affect the levels of tax expenditures.

#### C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a

<sup>26</sup> *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>.

<sup>27</sup> *Kuretski v. Commissioner*, p. 932, distinguishing *Freytag v. Commissioner*, 501 U.S. 868 (1991).

statement on the bill. The letter from the Congressional Budget Office will be provided separately.

#### **IV. VOTES OF THE COMMITTEE**

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, a bill to amend the Internal Revenue Code of 1986 to improve access and administration of the United States Tax Court, was ordered favorably reported by voice vote on February 11, 2015.

#### **V. REGULATORY IMPACT AND OTHER MATTERS**

##### **A. REGULATORY IMPACT**

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

##### *Impact on individuals and businesses, personal privacy and paperwork*

The bill includes various provisions that improve access and administration of the U.S. Tax Court. The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses.

The provisions of the bill do not impact personal privacy.

##### **B. UNFUNDED MANDATES STATEMENT**

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the tax provisions of the reported bill do not contain Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104-4, the Unfunded Mandates Reform Act of 1995.

##### **C. TAX COMPLEXITY ANALYSIS**

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that there are no provisions that are of widespread applicability to individuals or small businesses.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS  
REPORTED**

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

