

The United States Tax Court: A Court for All Parties

This article seeks to explain the role of the Tax Court both within the system of taxation and the system of tribunals of the United States.

1. Introduction

In 1924, just one decade after passage of a constitutional amendment allowing the income tax, the United States Tax Court (the “Tax Court” or “Court”) came into existence.¹ At the time of its establishment, tax issues were the concern of businesses and wealthy individuals.² Initially, the Board of Tax Appeals (the Tax Court’s prior name) was an administrative law court which served as a dispute resolution agency within the Executive Branch of the federal government.³ The modern Tax Court did not come into existence as an independent court established under Article I of the Constitution until 1969.

This article seeks to explain the role of the Tax Court both within the system of taxation and the system of tribunals of the United States. To provide this explanation, the article will address several specific areas: (1) the mission of the Court; (2) the placement of the Court within the judicial system and the scope of its jurisdiction; (3) the selection of judicial officers of the Court; (4) the internal organization of the Court and its opinions; (5) access to the Court; (6) policy issues facing the Court; and (7) the interaction between the Court and the public outside the courtroom. The article will describe the Tax Court as it exists in 2015 and only briefly touch on historical matters as necessary to understand the current status of the Court. Today, the Tax Court serves all segments of the individual and business population of the United States to efficiently resolve their tax disputes with the Federal Government. While it does not have total judicial control of tax cases, the scope and quantity of its caseload make it the most important judicial forum for tax matters without a peer in the federal system.

2. The Mission of the Tax Court

The mission of the United States Tax Court is to resolve tax cases on a uniform basis as quickly as possible. At the time of its creation in 1924, a significant backlog of cases existed as many individuals and businesses sought to challenge the

scope and application of the new income tax laws.⁴ Congress wanted to address the accumulation of these cases and to provide a court that would give uniform decisions on tax matters.⁵ The Board of Tax Appeals succeeded on both accounts and overcame significant skepticism from the time of its creation to the first significant reforms two years later in 1926. The original mission has continued until the present.

As a court of national jurisdiction but also one based in Washington, D.C., the Tax Court judges travel throughout the United States in order to adjudicate cases in the locality of the individuals with tax disputes.⁶ Despite the difficulties inherent in conducting trials throughout the United States, the Tax Court has a longstanding system of review of its opinions to ensure the mission statement is upheld.⁷

Because of the success of the Tax Court, the scope of its work has changed over the years even if its basic mission has not. When created, the Tax Court considered income tax, jeopardy assessments (cases where the Internal Revenue Service (IRS) makes an assessment before it gives the taxpayer an opportunity to litigate the correctness of the deficiency because of concerns that the taxpayer will dissipate assets before the IRS can collect) and estate tax cases in which the government determined that the taxpayer owed more money.⁸ Initially, its opinions were advisory and did not have res judicata effect.⁹ Congress quickly changed the authority of the Tax Court’s opinions to make them formal opinions with res judicata effect.¹⁰ Over the years, Congress also expanded the scope of the cases the Tax Court could hear.¹¹ Today, it has jurisdiction to hear a broad range of tax issues, although deficiency cases remain primary in its docket. Unlike most European countries, the United States has a self-assessment tax system. The ability of taxpayers to litigate in the Tax Court to dispute a liability before the IRS can assess the liability is consistent with a system that generally relies on taxpayer self-assessment.

The Tax Court provides a uniform body of decisional law for all taxpayers in the United States, and the judges work diligently to provide this consistency.¹² This uniformity not only assists the IRS in administering the tax laws but also aids taxpayers and their representatives with compliance. While Tax Court opinions generally are issued by

* Professor, Villanova School of Law, Visiting Professor of Law, Harvard University Law School (2015-2016). The author gratefully acknowledges the contributions and assistance received from Peter J. Panuthos, Chief Special Trial Judge, United States Tax Court, as well as Judge Panuthos’ Law Clerk, Della Bauserman.

1. H. Dubroff & B.J. Hellwig, *The United States Tax Court: An Historical Analysis*, 1 (Government Publishing Office, 2d ed. 2014); U.S.C.A. Const. amend XVI.
2. *Id.*, at pp. 1-12.
3. *Id.*, at p. 84.

4. *Id.*, at pp. 14-19.
5. *Id.*, at pp. 25-28.
6. US: IRC 7445.
7. Dubroff & Hellwig, *supra* n. 1, at pp. 729-731.
8. *Id.*, at pp. 269-270.
9. *Id.*, at pp. 33, 309.
10. *Id.*, at pp. 122-126, 135.
11. *See generally id.*, at pp. 269-357.
12. *Id.*, at p. 19.

the judge who conducted the trial in the specific case, a very small number of cases each year are decided by the full Court. The opinions in these cases reflect the votes, including concurrences and dissents, of all of the participating active judges, which could be all 19. The Tax Court opinion addresses the facts and law in the case but does not necessarily decide the amount of tax owed. Once the Tax Court renders its opinion in a case, the parties must compute the specific dollar amount of tax owed based on that opinion. When the parties have agreed upon the dollar amount resulting from the opinion, they present to the Court a decision document signed by the parties.¹³ At this point, the presiding judge signs the decision. The IRS may then assess the amount of tax determined by the Court in the decision or, if the Tax Court decides no tax was due, the IRS closes its books on the tax periods covered by the decision.

The Tax Court is a specialty court devoted only to federal tax matters over which Congress has granted it jurisdiction. As will be discussed in more detail below, the Tax Court operates as a trial court.¹⁴ For the past decade, the Tax Court has handled about 30,000 cases per year. Taxpayers have the ability to appeal the decisions of the Tax Court to the applicable federal Circuit Court and then, if accepted, to the Supreme Court of the United States.¹⁵ Less than 5% of the cases filed in the Tax Court are appealed, and only one or two federal tax cases are accepted by the Supreme Court each year. A Court of Appeals may review legal conclusions on a de novo basis giving no deference to the decision of the Tax Court, while the appeal of any factual finding of the Tax Court requires the party appealing to show that the Tax Court's factual finding was clearly erroneous.¹⁶

The Office of Chief Counsel of the IRS represents the government in all cases before the Tax Court.¹⁷ The government, embodied by the IRS Commissioner, is the respondent in every case. Petitioners, either individuals or entities, may represent themselves or be represented by someone licensed to practice before the Tax Court. Except in rare cases, in which the Court agrees with a taxpayer's request to seal part of the record to shield trade secrets or other sensitive matter, documents filed in the Tax Court and the trial of cases are open to the public. Third parties may file briefs in support of a party with leave of the Court; however, Court approval is required and such briefs are filed infrequently. In some cases, the Tax Court determines the outcome without a trial based on a motion for summary judgment or other dispositive motion. When that occurs, the Tax Court issues an order and decision rather than an opinion and decision. The orders issued by the Court may contain important analysis. The tax press,

13. Occasionally, the parties cannot reach agreement on the correct amount of tax resulting from an opinion. When this happens, the parties each submit their computations of the tax and the Court, under Rule 155, makes a determination of the correct amount of tax.
 14. US: IRC 7441 establishes "a court of record to be known as the United States Tax Court..."
 15. US: IRC 7481(b) (authority to appeal to circuit court).
 16. See, e.g. *Gaughf Properties v. Comm'r*, 738 F.3d 415 (D.C. Cir. 2013).
 17. US: IRC 7452.

as well as many blog sites, monitor the Court and report on the daily release of opinions and orders.¹⁸

3. The Placement of the Court within the Judicial System and the Scope of Its Jurisdiction

For the first 45 years of its existence, the Tax Court was an administrative agency of the Executive Branch of the Federal Government.¹⁹ The headquarters of the Court were physically located for much of that time in the main office of the IRS.²⁰ In 1969, Congress changed the nature of the Court by making it a court authorized under Article I of the Constitution.²¹ The United States Supreme Court has held that the Tax Court remains independent of the executive and legislative branches.²²

While serving the unique function of a specialty court, the Tax Court operates within the federal system of courts as a trial level court. Like decisions from the US district courts, the courts of general jurisdiction, decisions of the Tax Court are directly appealed to one of the twelve federal circuit courts.²³ Most appeals from the Tax Court are heard by the circuit court where the taxpayer resided at the time of filing the Tax Court petition.²⁴ Some appeals from the Tax Court go to the District of Columbia Circuit Court, which serves as the default circuit if venue is not otherwise specified.²⁵

As mentioned above, the scope of the Tax Court's jurisdiction has grown over time. Initially, virtually all cases coming before the Tax Court were situations where the IRS has determined that the taxpayer owes additional taxes (known as a deficiency) and the taxpayer sought to litigate that determination before the IRS obtained an assessment.²⁶ In the United States, assessment marks the beginning of the collection process.²⁷ The Tax Court serves as a pre-assessment forum, meaning that the taxpayer has the opportunity to contest additional taxes at the proposed stage before the IRS begins collection activity. The vast majority of taxpayers seeking to litigate the correctness of their tax liability prefer to do so prior to assessment.²⁸ These cases comprise the Tax Court's deficiency jurisdiction.

To appreciate all of the ways in which the Tax Court can obtain jurisdiction of a case, the authors of *The United*

18. See, e.g. the tax libraries of the commercial reporters, such as Westlaw, Lexis, Bloomberg and Tax Analyst. These reporting systems, and many others, provide detailed information and analyses of the Tax Court's decisions. In recent years, several blog sites also closely follow the Tax Court, such as [federaltaxprocedureblogspot](#), [procedurallytaxing](#), [Law 360](#), [taxprofblog](#), [TaxGirl](#) and many others.
 19. See generally Dubroff & Hellwig, *supra* n. 1, at pp. 175-228.
 20. *Id.*, at p. 225.
 21. US: IRC 7441.
 22. *Freytag v. Commissioner*, 501 U.S. 868 (1991); *Kuretski v. Commissioner*, 755 F.3d 929 (D.C. Cir. 2014), cert. denied 135 S. Ct. 2309 (2015).
 23. US: IRC 7481(b). The Court of Appeals for the First through Eleventh Circuits and the D.C. Circuit.
 24. *Id.*
 25. *Id.*
 26. Dubroff & Hellwig, *supra* n. 1, at pp. 269-270.
 27. American Bar Association, *Effectively Representing Your Client before the IRS*, Chapter 11, p. 1 (6th ed. 2015).
 28. See Table 27, Chief Counsel Workload: Tax Litigation Cases, by Type of Case, Fiscal Year 2014 and preceding years setting out the numbers and types of cases brought in Tax Court versus the district courts.

States Tax Court: An Historical Analysis devoted three chapters to the subject. Some of the matters over which the Court has jurisdiction are minor and engender very few cases each year; however, some of the areas in which the Court has jurisdiction deserve special attention because of the volume or the high visibility of those matters.²⁹ In 1971, Congress created the innocent spouse provisions to allow one spouse who filed a joint return to seek relief from the joint and several liability resulting from filing a tax return with a spouse.³⁰ In 1998, Congress expanded the circumstances for relief and created the opportunity for the taxpayer to bring a case solely contesting innocent spouse status.³¹ A part of this expansion allows the Tax Court to determine relief based on equitable factors.

Also in 1998, Congress significantly expanded the scope of the Tax Court's jurisdiction with the creation of Collection Due Process Procedures.³² Through these procedures, taxpayers can contest certain collection activities that the IRS proposes such as the filing of a federal tax lien or levy action. Prior to this expansion of jurisdiction, the Tax Court did not review collection determinations. These cases can also raise equitable issues as the Court grapples with the collection decisions the IRS has made and whether they meet the standards set out by Congress with the creation of this area of jurisdiction.³³

In 2006, Congress provided the Tax Court jurisdiction to review a determination of the IRS to pay awards to whistleblowers that come to the IRS with information about others who have not paid their taxes.³⁴ Prior to 2006, the IRS had a program for paying awards to persons who came forward with valuable information. This program was administered internally and the IRS had complete control over whether an award should be made and how much to award whistleblowers. The new provision codified the granting of awards in certain cases and allowed the whistleblower to seek judicial review of the determination to grant an award and the amount of the award granted. This jurisdiction causes the Court to analyze the value of information provided by the whistleblower to the IRS rather than to just make determinations regarding the amount of tax a taxpayer owes.³⁵ To date, the Court has issued a number of opinions on whistleblower awards, mostly relating to procedural issues, such as requests by whistleblowers that their name remain anonymous for fear of physical, emotional or economic harm. The Court has granted a number of motions to permit a whistleblower to proceed anonymously. The Court has also issued a number of orders and opinions granting motions for protective orders, prohibiting the parties (whistleblower and IRS) from revealing taxpayer information and also sealing the record or portions

of the record so that confidential taxpayer information is not revealed to the general public.

4. Selection of Judicial Officers of the Court

Tax Court judges are appointed by the President of the United States and confirmed by the Senate.³⁶ Much debate about the number, compensation, period of service and all matters regarding their appointment went into the initial selection of the judges of the Board of Tax Appeals.³⁷ These questions were settled primarily in the 1926 legislation, although some changes have occurred in the subsequent nine decades, and debate has continued over the tenure and status of the judges.³⁸ While not required by statute, Tax Court judges have the basic qualification of being lawyers. Usually, the President appoints a lawyer with many years of practice in the tax area, although no specific amount or area of experience is necessary.

Judges of the Tax Court are nominated by the President and confirmed by the Senate in a manner similar to the federal district court judges, the federal circuit court judges and the justices of the Supreme Court.³⁹ At full strength, the Tax Court has 19 presidentially appointed judges on its bench.⁴⁰ Each judge constitutes a separate division of the Tax Court.⁴¹ The judges are appointed to serve for 15-year terms and may be reappointed. While Tax Court judges bear similarity in their backgrounds from the perspective that they have a legal education and many years of tax practice, they vary significantly in other aspects. They come from diverse geographic regions of the United States and a variety of practice areas and backgrounds. Some have worked primarily in private practice advising large corporations, while some have experience in private practice as litigators. Some have worked primarily for the government as trial attorneys and administrators for the Treasury or Justice Departments and some as attorneys with Congress. This variety of backgrounds within tax practice enables the Tax Court to understand the many facets of tax law that it faces.

5. The Internal Organization of the Court and Its Opinions

The presidentially appointed judges elect a Chief Judge who serves for a two-year term.⁴² The Chief Judge has responsibilities of supervising the administrative functions needed for the court to operate, assigning judges to the various trial locations around the country and reviewing the opinions of the judges to insure consistency. The Chief Judge also appoints a Clerk of Court who administers the clerk's office handling all of the petitions, case admin-

29. Dubroff & Hellwig, *supra* n. 1, at p. 909.

30. *Id.*, at pp. 456-466.

31. *Id.*

32. *Id.*, at pp. 483-490.

33. *Id.*, at pp. 357-386; *see, e.g. Bill v. U.S.*, 295 U.S. 247 (1935); *Woods v. Comm'r*, 92 T.C. 776 (1989); *Estate of Mueller v. Comm'r*, 101 T.C. 551 (1993).

34. IRM 25.2.2.1, "Overview: Authority and Policy" (7 Aug. 2015).

35. D. Ventry, *Whistleblowers and Qui Tam for Tax*, 61 Tax Law 357 (2008).

36. US: IRC 7443(b).

37. Dubroff & Hellwig, *supra* n. 1, at pp. 86-93.

38. *Id.*, at pp. 140-159.

39. Just as the statutes governing the Tax Court reside in the Internal Revenue Code rather than the general statutes governing federal judges, the nomination of Tax Court judges goes through the Senate Finance Committee (the committee with jurisdiction over tax matters), while the nominations of Article III judges go through the Judiciary Committee.

40. US: IRC 7443(a).

41. US: IRC 7444(c); Dubroff & Hellwig, *supra* n. 1, at p. 735.

42. US: IRC 7444(b).

istration and case disposition. Court security is another issue the Chief Judge must address. Starting in 2008, the United States Marshall's Service took control of security at the Tax Court.⁴³ The Tax Court also has its own courtroom space in 37 cities in the United States. The Chief Judge administers this space, working with the General Services Administration, and coordinates the acquisition of space in the remaining cities where the Court sits.

At the conclusion of a term of office, a Tax Court judge may be reappointed for another term depending on age. If not reappointed, a judge may retire. If retirement pay is elected, the Chief Judge may recall the retired judge to perform judicial duties on a full- or part-time basis.⁴⁴ Serving in senior status on recall allows the judge to continue hearing cases.⁴⁵ The senior judges play an important role in assisting the Court in handling its caseload. The senior judges expand the number of judges available to hear cases because they serve in addition to the 19 regular judges on the Court. In recent years, approximately 14 senior judges have generally been available to hear Tax Court cases.

In addition to the presidentially appointed judges, the Tax Court appoints special trial judges to assist with case resolution.⁴⁶ In recent years, approximately four special trial judges have been available to hear Tax Court cases. Initially, special trial judges (called commissioners prior to 1975) assisted with large cases, but over the years they have continued to receive more authority.⁴⁷ Today, special trial judges still occasionally hear large cases in order to relieve the burden on presidentially appointed judges. One important function is to hear and resolve Small Tax Cases,⁴⁸ which constitute about one-half of the Tax Court's docket.⁴⁹ The special trial judges also play an important role in assisting the Chief Judge in the management of general docketed cases (those cases that have not been calendared or otherwise assigned to a judge). Motions that are filed in this large number of general docket cases are routinely considered by the special trial judges.

The Chief Judge, in consultation with the judicial officers, appoints judges and special trial judges to serve on committees. Some of the Court's committees are the Rules Committee, the Legislative Committee and the Human Resources Committee. Committees serve in an advisory capacity to the Chief Judge and serve at his pleasure.

The Tax Court renders several types of opinions when deciding a case after trial: Court Reviewed Opinions, Divi-

sion Opinions, Memorandum Opinions, Summary Opinions and Bench (oral) Opinions.⁵⁰ Because the opinion of the Court results in a decision stating the precise dollar amount owed by the taxpayer, the opinion and decision create a binding determination on the amount of tax owed by the taxpayer for the periods in dispute absent a successful appeal to a higher court. Court Reviewed Opinions result from a vote of all participating presidentially appointed judges of the court. These cases receive this heightened form of review and opinion because they address a challenge to a regulation, a novel issue of importance or some other similar reason making review by the entire court beneficial. The opinions in these cases display the votes of the judges and include any concurring or dissenting opinions.⁵¹ The Court generally renders less than ten Court Reviewed Opinions each year.

Every opinion written by a presidentially appointed judge, referred to as a report by the statute, is submitted to the Chief Judge for review.⁵² When the Chief Judge concludes that an opinion addresses a novel legal issue, the opinion is designated as a "division opinion," which constitutes precedential authority.⁵³ The Court generally renders less than 50 of these opinions each year.

Opinions issued by judges and not designated by the Chief Judge for court conference or for publication as a division opinion receive the designation Memorandum Opinion.⁵⁴ These opinions generally involve cases in which the court previously has ruled on the legal principles.⁵⁵ Sometimes, a Memorandum Opinion will be the only opinion on a narrow point. So, even though these opinions generally do not have precedential authority, they regularly are cited by courts and other parties.⁵⁶ The Court generally renders 300 of these opinions each year.

Opinions issued in Small Tax Cases are called Summary Opinions. In 2001, the Court made Summary Opinions available on its website along with other opinions. Because the dollar amount for qualification as a Small Tax Case had increased dramatically since 1969 and some types of cases are almost exclusively litigated using this procedure, the Court began publishing Summary Opinions; however, these opinions do not carry the weight of precedent.⁵⁷ The Court generally renders 150 of these opinions each year.

The Court may also issue a Bench Opinion, which is described as an Oral Finding of Fact or Opinion in its Rules. The judge, after trial and before the close of the Court session, might render an oral opinion from the bench. The judge will orally state findings of fact and conclusions, which will be recorded in the transcript of the proceedings and served upon the parties.⁵⁸ These opinions can be issued by any judge of the Tax Court who hears the

43. 28 U.S.C. §566.

44. US: IRC 7447.

45. Dubroff & Hellwig, *supra* n. 1, at p. 761.

46. *Id.*, at p. 824, fn. 8; US: IRC 7443A(a).

47. *Id.*, at pp. 824, 829, fn. 42; see US: IRC 7442A(b) for a list of duties.

48. US: IRC 7436(c)(1) establishes the right of petitioners whose cases involve less than USD 50,000 at issue per year to make an election to proceed under the Small Tax Case procedure. Congress created this procedure in 1969 and initially set the dollar amount for qualifying cases at USD 1,000. Dubroff & Hellwig, *supra* n. 1, at pp. 883-889. As the popularity and efficiency of this procedure grew, Congress gradually raised the dollar amount to its present amount to allow more cases to proceed under this provision. The dominant features of these cases are the relaxed presentation procedures and the inability of the parties to appeal the decision of the Tax Court. *Id.*, at pp. 883-886.

49. See generally *id.*, at pp. 823-882. See A. Grewal and also M.A. Cohen, *infra* n. 50, for a discussion on small tax cases.

50. A. Grewal, *The Un-Precedented Tax Court*, 101 Law Rev. 5 (2016); M.A. Cohen, *How to Read Tax Court Opinions*, 1 Hous. Bus. & Tax L. J. 1 (2001).

51. Dubroff & Hellwig, *supra* n. 1, at p. 760.

52. *Id.*, at p.735.

53. Grewal, *supra* n. 50; US: IRC 7460(b).

54. Grewal; Cohen, *supra* n. 50.

55. Grewal, *supra* n. 50.

56. *Id.*

57. *Id.*; Dubroff & Hellwig, *supra* n. 1, at pp. 883-886.

58. See US: I.R.C. 7459(b) and Tax Court Rule 152.

trial of the case. The Court generally issues about 100 of these opinions each year.

Most often, the Court will consider issuance of a Bench Opinion in a situation where legal arguments have been raised which have repeatedly been rejected in the past or where factual issues arise, such as substantiation of business expenses or itemized deductions. Bench opinions may not be relied upon as precedent.⁵⁹

With respect to the remainder of the Court’s docket, most cases are settled by the parties before a trial without any opinion being rendered by the Court. When the parties settle, they execute an agreed decision, referred to as a stipulated decision, which is entered as part of the record in the case. Also, there are many cases where dispositive motions are filed. Some of the motions are jurisdictional, and some seek summary judgment among other things. In such cases, the Court often resolves the motion by an order and decision, which brings the case to a conclusion. Whether by opinion, agreed decision or order and decision, the Court is generally able to resolve each year approximately the same number of a cases that are filed.

6. Access to the Court

The docket of the Tax Court reflects individual taxpayers disputing small tax liabilities as well as the largest corporations with billions of dollars at stake. Each of these taxpayers may come to the Tax Court seeking relief from proposed tax liabilities. The number of docketed cases as well as the kind of cases depends in large measure on the number and kinds of taxpayers against which the IRS pursues a deficiency or determines collection action. Accordingly, the Court’s docket has risen and fallen over the years based on the actions of the IRS. With the changes in docket demands, the Tax Court has grown or reduced its size and its procedures in order to accommodate the volume of cases. The United States Congress determines the annual funding appropriation of the Court. If the volume of cases rises, as it did significantly during the 1980s, the Court’s caseload can increase. The Tax Court will not turn away petitioners. Accordingly, the Court continues its work of deciding cases even when there are budget cuts.

The combination of the efforts of the Court, Congress and the Tax Section of the American Bar Association has created the most taxpayer friendly court environment in the federal system. The Court has worked hard to provide low income taxpayers with the opportunity to litigate their tax disputes in a forum that seeks to find the right answer even when the litigant is self-represented and lacks an understanding of the process.⁶⁰ For example, the Court’s website has explanatory material which provides substantial guidance to low income taxpayers.⁶¹ The American Bar Association has worked together with the Court to send attorneys to attend the trial calendars of the Court to assist

unrepresented petitioners. In addition, Congress created the Small Tax Case procedures (to make the process simpler) and established grant funds to establish clinics to assist low income taxpayers through the process.⁶²

The Tax Court also facilitates access to justice for taxpayers. The judges travel to 74 cities in the United States to hear tax disputes. This ensures that no taxpayer must travel too far in order to have his day in Court.⁶³ The Court’s process for docketing cases also plays a role in access issues for parties seeking its jurisdiction. The Court has adopted a somewhat liberal method of accepting petitions which some courts might reject, to allow taxpayers to obtain the jurisdiction of the Tax Court within the statutory time frame imposed by Congress. The Court’s website also provides electronic access to petitioners to all of the documents filed in their case at no cost, unlike other federal courts, which tend to impose a charge for each page viewed electronically.⁶⁴

Each matter before the Court requires an actual controversy between the parties.⁶⁵ Therefore, a case is commenced when a taxpayer seeks to challenge the position taken by the IRS with respect to a transaction reported on his return. The parties, through their pleadings and subsequent motions, define the dispute. Generally, the parties guide the legal grounds relevant for deciding the dispute; however, the Tax Court can decide a dispute on different legal grounds than those presented by the parties if it determines that other legal grounds control the matter.⁶⁶ The Tax Court relies on the parties to present the facts through its stipulation process and through evidence admitted during the trial. While judges of the Tax Court have the ability to examine witnesses brought to the Court by the parties, the Court does not engage in fact investigation outside of the courtroom or call witnesses to testify independent of the parties. The Court does not render advice or opinions outside this context.

7. Interaction by the Court and the Public Outside of the Courtroom

Tax Court judges in the United States do not engage in public debate concerning tax issues or other issues of public interest. Like essentially all judicial officers in the United States, Tax Court judges focus on court matters, and the views of the Court are expressed in its opinions resolving disputes between parties. However, judges do play an important role in the education of the public and the bar on tax issues in a manner and form that does not involve debate about the correct interpretation of tax laws or tax policy. Tax Court judges regularly speak and participate in panels at the American Bar Association meetings, at local bar association meetings and in other setting where they discuss Court procedure. Like many other courts in the United States, the Tax Court has borrowed the English tradition of an Inn of Court, and it uses the Inn as a basis

59. Dubroff & Hellwig, *supra* n. 1, at p. 789.
 60. Dubroff & Hellwig, *supra* n. 1, at pp. 897-899; K. Fogg, *Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, 67 Tax Law 3 (2013).
 61. See <http://ustaxcourt.gov/about.htm>.

62. US: IRC 7526.
 63. Dubroff & Hellwig, *supra* n. 1, p. 673.
 64. See http://ustaxcourt.gov/taxpayer_info_intro.htm.
 65. US: IRC 7436(a)(2); see, e.g. *American Airlines v. Comm’r*, 144 T.C. No. 2 (2015).
 66. See, e.g. *Estate of McCord*, 120 T.C. 358 (2003).

for bringing together members of the private bar, the IRS Office of Chief Counsel and the Department of Justice to engage in education and discussion.

Some Tax Court judges teach in law schools as adjunct professors. However, judges do not hold full-time teaching positions, and very few judges are appointed to the Court from positions as professors. Tax Court judges often work with tax professors to teach students on an ad hoc basis and are sought after as speakers at law schools and in continuing legal education settings.

Very few formal publications are written by Tax Court judges. One of the most influential publications written by a Tax Court judge explained the process of the Court, particularly with respect to the determination of which decisions go to Court conference and which decisions get published as Division Opinions.⁶⁷

Tax Court judges almost never speak on television or comment in newspapers. While politicians in the United States frequently engage in discussions and debates about taxes, the role of the Tax Court is one of deciding how to apply the laws passed by Congress in the cases that come before the Court. Any engagement by Tax Court judges in public debate about tax issues would detract from the role of the Court as a neutral arbiter of tax issues. While Tax Court judges are nominated by the President and confirmed by the Senate in a process that has a partisan flavor in the context of some other federal judicial appointments, Tax Court judges are not considered to be individuals deciding cases based on political party affiliation. The lack of engagement with the political process significantly enhances the reputation of the Court as a fair and impartial decider of the issues coming before it.

8. Miscellaneous Issues

The invitation to contribute to the special comparative issue of the *Bulletin for International Taxation* suggested a number of subtopics to be discussed. Based on the limitations on length as well as the fact that some of the suggested topics are not common to the United States Tax Court, the author has grouped the discussion as miscellaneous issues.

Alternative Dispute Resolution

The Court has had occasion to consider the effect of an arbitration award. The Tax Court has treated an arbitration award the same as a decision of a court for purposes of collateral estoppel and res judicata.⁶⁸ Also, the Tax Court, pursuant to Rule 124, will consider alternative dispute resolution (e.g. mediation or arbitration) as an alternative to trial.

Stare Decisis

Stare decisis generally requires that the Tax Court will follow the holding of a previously decided case, unless there is specific justification to overrule established precedent.⁶⁹ A party bears a heavy burden to persuade the Tax Court to overrule established precedent.⁷⁰ The entire Tax Court of active presidentially appointed judges may meet in conference to decide whether to overrule established precedent.

67. M.A. Cohen, *supra* n. 50.
68. See, e.g. *Estate of Sommers v. Commissioner*, T.C. Memo, 2013-8.

69. A party bears a heavy burden to persuade the Tax Court to overrule established precedent.⁷⁰ The entire Tax Court of active presidentially appointed judges may meet in conference to decide whether to overrule established precedent.

Foreign Law

The Tax Court may need to consider the tax law of other countries to resolve questions that arise under the tax laws of the United States. Tax Court Rule 146 provides that the Court, in determining foreign laws, may consider any relevant material or source. For instance, where there is a question of whether the payments to the government of another country constitute a creditable tax, the judge may review another country’s statutes, case law and legislative history.⁷¹

Expert Witnesses

The parties to a trial will often present expert witnesses. Federal Rules of Evidence 701-706 provide guidelines for opinion testimony. The Tax Court has specific rules for expert testimony and expert reports.⁷² Generally speaking, and if the Court concludes that scientific, technical or other specialized knowledge will assist the trier of fact to understand evidence or determine a fact in issue, a witness qualified as an expert may testify and provide a written report in the form of opinion.⁷³

Tax Accounting

The general rule is that taxable income is computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books.⁷⁴ However, taxable income must be computed using a method that clearly reflects income in the opinion of the Commissioner.⁷⁵ This exception generally swallows the rule. The Commissioner’s interpretation of “clearly reflects income” is not interfered with unless clearly unlawful.⁷⁶

9. Conclusion

As the United States Tax Court begins its tenth decade of operation, it continues to evolve to meet the needs of the people as a body of judges thoroughly knowledgeable about a specific, and particularly difficult, area of the law. Since its creation, it has built a solid reputation as a court open to parties large and small where tax disputes are resolved fairly.

69. *AHG Investments, LLC v. Commissioner*, 140 T.C. 73, 83 (2013).
70. *Id.*
71. *Eshel v. Commissioner*, 142 T.C. 197 (2014); *PPL Corp. v. Commissioner*, 133 S. Ct. 1897 (2013). See TC Rule 146.
72. TC Rule 143(g).
73. FRE 702(a).
74. US: IRC sec. 446(a).
75. US: IRC sec. 446(b).
76. *Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 532 (1979).