OVERVIEW

IRC § 7803(c)(2)(B)(ii)(XI) requires the National Taxpayer Advocate to identify in her Annual Report to Congress the ten tax issues most litigated in federal courts.[1]

Historically, TAS utilized commercial legal research databases to review published opinions in multiple courts to determine the ten most litigated issues. This year, TAS used a hybrid methodology by reviewing the notices of deficiency of the petitions filed with the U.S. Tax Court (Tax Court) and opinions issued in all federal courts during this time period. A Statutory Notice of Deficiency, also called a notice of deficiency, a 90-day letter, or ticket to Tax Court, is a legal notice in which the IRS Commissioner determines a taxpayer's tax deficiency. The IRC requires the IRS to issue a notice of deficiency before assessing additional income tax, estate tax, gift tax, and certain excise taxes unless the taxpayer agrees to the additional assessment.[2] A notice of deficiency also starts the clock in which the taxpayer can file a petition with the U.S. Tax Court. We started with the prior methodology, a review of opinions issued on the merits of a substantive civil tax issue during the period from June 1 through May 31 by the U.S. District Courts, U.S. Courts of Appeals, U.S. Court of Federal Claims, U.S. Bankruptcy Courts, and the U.S. Supreme Court. To gain a broader view of tax litigation, this year we expanded our review to include the approximately 28,000 taxpayers petitioning Tax Court in fiscal year (FY) 2021.[3] We believe analyzing the issues raised in the notice of deficiency for thousands of Tax Court petitions provides a more accurate view of litigation issues rather than analyzing a few hundred issued opinions.

To determine the ten most litigated issues in Tax Court, TAS obtained a listing of the cases petitioned to Tax Court during FY 2021 and analyzed the issues appearing on the associated notices of deficiency to determine the unagreed audit issues.[4] Our research team extrapolated the data for our analysis using information from the Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History table for FY 2021 and the Examination Operational Automation Database. Unfortunately, we do not have similar electronic access to the underlying detailed data in U.S. District Courts, U.S. Courts of Appeals, U.S. Court of Federal Claims, and U.S. Bankruptcy Courts that our research team can analyze. Until that data is available to us, TAS will rely on the published opinions for the first piece of our analysis. Utilizing the new hybrid methodology and applying the broader universe of petitions filed during the fiscal year resulted in new top ten litigation rankings.[5]

REVISED METHODOLOGY: TOP TEN CATEGORY OF OPINIONS ISSUED AND PETITIONS FILED IN THE TAX COURT

This year, we applied the historical approach and a hybrid methodology. Under the historical approach, we analyzed opinions on the merits of a substantive tax issue to identify the top ten Most Litigated Issues, which yielded a total of 306 court opinions, with the majority of them, 224 opinions, issued by the Tax Court in our reporting period.[6] That is the least number of cases we have identified in our report since 2002.[7] Of the 18,200 cases closed in the Tax Court in FY 2021,[8] about 82 percent were resolved without a ruling on the merits. Only 188 (1.1 percent) cases were tried and decided on the merits by the Tax Court in FY 2021.[9]

Utilizing the new hybrid methodology, we created two lists of the Most Litigated Issues – one focusing on the end of the Tax Court litigation, 224 opinions issued by the Tax Court and the other focusing on the front end of the litigation. We conducted an analysis of nearly 20,000 taxpayers petitioning Tax Court in FY 2021 from data provided by the IRS Independent Office of Appeals.[10] We reviewed 82 opinions issued in courts other than the Tax Court. We will discuss add-on issues such as the accuracy-related penalty under IRC § 6662 and the frivolous issues penalty under IRC § 6673, which typically are associated with an underlying issue being litigated rather than a standalone issue. But we note and recognize there are exceptions.

FIGURE 3.1, Historical Approach Based Upon Tax Court Opinions Issued Between June 1, 2020, and May 31, 2021[11]

Ranking	Issue Category	Tax Court Opinions Discussing Issue
1	Gross Income (IRC § 61 and related Code sections)	66
2	Trade or Business Expenses (IRC § 162(a) and related Code sections)	50
3	Collection Due Process (CDP) Hearings (IRC §§ 6320 and 6330)	35
4	Charitable Contribution Deductions (IRC § 170)	27
5	Schedule A Deductions (IRC §§ 211-224)	27
6	Failure-to-File (FTF) Penalty (IRC § 6651(a)(1)), Failure-to-Pay (FTP) Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)	14
7	Whistleblower Award Determinations (IRC § 7623(b)(1))	12
8	Innocent Spouse Relief (IRC § 6015)	9
9	Family Status Issues (IRC §§ 2, 21, 24, 32, 151, 152, and other related IRC sections)	3
10	Frivolous Tax Submissions (IRC § 6702(a))	3

Tax Court cases involving individual taxpayers outnumbered business taxpayers by a ratio of 133 cases to 91 cases.[12] To supplement the Tax Court analysis of opinions, we also reviewed 82 court opinions from other courts, including from U.S. District Courts, U.S. Courts of Appeals, U.S. Court of Federal Claims, U.S. Bankruptcy Courts, and the U.S. Supreme Court, discussed further below.

REVISED METHODOLOGY: TOP TEN ISSUES PETITIONED TO THE TAX COURT

For the first time, we analyzed the top ten issues petitioned to the Tax Court to compare to the top ten issues that required a court ruling to resolve. Figure 3.2 shows this year's most petitioned issues to the Tax Court in order from most to least.[13]

FIGURE 3.2, Top Ten Issues Petitioned to the Tax Court in FY 2021[14]

Ranking	Issue Category	Total Petitions to the Tax Court
1	Gross Income (IRC § 61 and related Code sections)	13,558
2	Trade or Business Expenses (IRC § 162(a) and related Code sections)	2,255
3	Family Status Issues (IRC §§ 2, 21, 24, 32, 151, and 152) (Includes filing status, Child Tax Credit, Earned Income Tax Credit, and dependency exemptions)	1,838
4	Schedule A Itemized Deductions (IRC §§ 211-224)	1,722
5	CDP Hearings (IRC §§ 6320 and 6330)	1,191
6	Form W-2 or Form 1099 Federal Income Tax Withholding	804
7	Charitable Contribution Deductions (IRC § 170)	736
8	Standard Deduction	308
9	American Opportunity Credit (AOC)	183
10	Delinquency Penalties - FTF Penalty (IRC § 6651(a)(1)) and FTP Penalty (IRC § 6651(a)(2))	173

Analysis of the notice of deficiency data shows that several issue categories appear on this list that have not appeared on our top ten most litigated issues list in years prior based upon reported opinions. For example, this year the sixth most prevalent issue was Forms W-2 or 1099 federal income tax withholding related petitions, the eighth most prevalent issue was standard deduction related petitions, and the ninth most prevalent issue was AOC related petitions.

An underpayment of tax can result for taxpayers who fail to withhold the correct federal income tax from employment or non-employment income. Changes to the calculation of taxable income in the Tax Cuts and Jobs Act (TCJA) may have contributed to this category on Forms W-2 or 1099 federal income tax withholding issues. Significant changes to the standard deduction and the calculation of taxable income in TCJA may have contributed to the standard deduction category. TCJA increased the standard deduction from $6,500 to $12,000 for individual filers, from $12,700 to $24,000 for joint returns, and from $9,350 to $18,000 for heads of household in 2018.[15]

AOC is a credit of up to $2,500 of the cost of tuition, certain required fees, and course materials needed for attendance and paid during the tax year. Up to $1,000 (40 percent) of the credit can be refunded if it is more than the taxpayer owes.[16] When the IRS audits a taxpayer claiming AOC, it can be because the IRS did not receive a Form 1098-T, Tuition Statement, because someone else claimed the taxpayer as a dependent or because the IRS needs additional information to support the credit claimed.

Gross Income (IRC § 61 and Related Code Sections)

As required under IRC § 7803(c)(2)(B)(ii)(XI), TAS has monitored the most litigated tax issues for the last 20 years, and controversies involving what constitutes gross income have been at or near the top of this list since the first report.[17] This year, it was the number one issue among those litigated in the Tax Court with 66 substantive opinions issued. It was also the largest category of cases petitioned to the Tax Court. In FY 2021, taxpayers petitioned the Tax Court in 13,558 cases where gross income was an issue during the examination.[18]

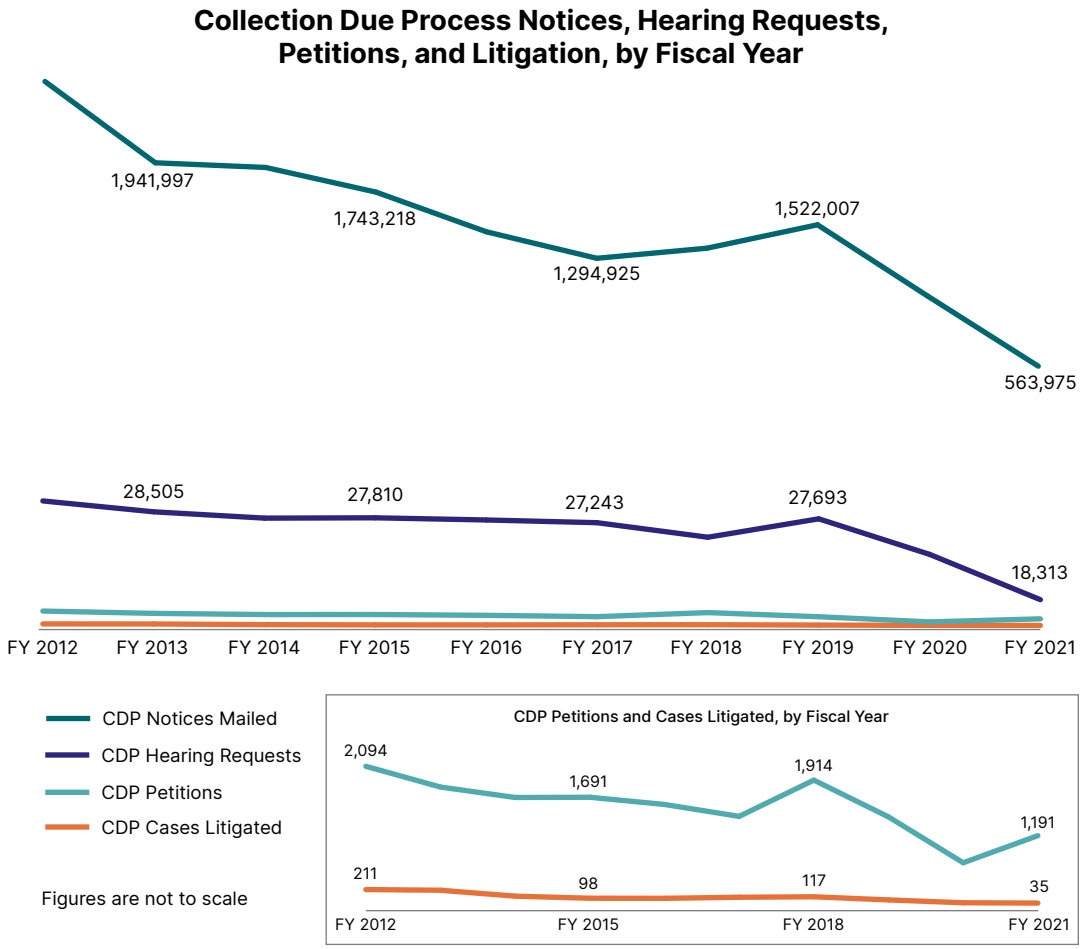
Trade or Business Expenses (IRC § 162(a) and Related Code Sections)

Trade or business deductions have been among the most litigated issues ever since TAS tracked such activity.[19] This litigation typically focuses on applying well-settled legal principles and exhaustively articulated statutes and regulations to taxpayers' particular facts and circumstances. We reviewed 50 opinions where this category of issues was litigated in the Tax Court. Taxpayers petitioned the Tax Court in 2,255 instances where trade or business expenses were an issue during the examination in FY 2021.[20] This category is high on our list as the second most prevalent category of opinions issued at the Tax Court and the second most petitioned issue in the Tax Court.

Collection Due Process Hearings (IRC §§ 6320 and 6330)

Our review of litigated issues for the period between June 1, 2020, and May 31, 2021, found 35 substantive opinions issued on CDP cases in the Tax Court. Each year, only a small fraction of taxpayers exercise their right to request an administrative hearing or petition for judicial review. Figure 3.3 depicts the filing trends for CDP cases over the last ten years. The number of individual taxpayers requesting CDP hearings decreased from 1,037,861 in FY 2020 to 563,975 in FY 2021.[21] Although with 1,191 petitions, there was an increase in FY 2021 from the 838 petitions in FY 2020.[22] *Pro se* taxpayers continue to make up a majority of the total cases, with 858 of 1,191 cases having unrepresented taxpayers compared to 333 represented taxpayers in FY 2021.[23] This trend is also true of the ten-year average, where 1,065 cases were *pro se* compared to 507 represented taxpayers over a ten-year period from FY 2012 to FY 2021.[24]

FIGURE 3.3[25]



In FY 2021, 563,975 individual taxpayers received a CDP notice, a decline from the 1,037,861 individual taxpayers receiving a CDP notice in FY 2020.[26] There were also 107,359 business taxpayers that received a CDP notice in FY 2021.[27] In FY 2021, only 35 cases were tried and decided, compared to 39 in FY 2020 and 76 in FY 2019.[28] Twenty-seven of those 35 in FY 2021 involved *pro se* taxpayers.[29] Despite the decreases, CDP hearings continue to play a vital role in overall tax administration by allowing taxpayers to contest a lien or levy before (or soon after) the IRS takes the action. Even though there were only 1,191 CDP petitions filed, there were a total of 28,400 petitions (including all categories of issues) filed with the Tax Court.[30] Based upon the IRS's interpretation of "prior opportunity" in the regulations and taxpayers' facts and circumstances, many taxpayers are not able to have a judicial review of the underlying merits of the lien or levy, which may be one reason for the small number of CDP appeals to Tax Court.[31]

Charitable Contribution Deductions (IRC § 170)

We identified 27 opinions issued between June 1, 2020, and May 31, 2021, on the deductibility of charitable contributions under IRC § 170. In last year's report, most of these cases arose due to the increased IRS focus on curtailing abuse in the syndicated conservation easement arena, including the designation of syndicated conservation easements as a listed transaction and aggressively auditing taxpayers.[32] In FY 2021, taxpayers petitioned the Tax Court in 736 cases where charitable contributions were an issue during the examination.[33]

Schedule A Deductions (IRC §§ 211-224)

Itemized deductions reported on Schedule A of IRS Form 1040 were among the ten most litigated issues for the fifth time since the National Taxpayer Advocate's 2000 Annual Report to Congress.[34] Between June 1, 2020, and May 31, 2021, we identified 27 decisions in which itemized deductions were litigated in the Tax Court.[35] Additionally, in FY 2021, taxpayers petitioned the Tax Court in 1,722 cases where itemized deductions were an issue during the examination, making it the fourth highest issue petitioned to the Tax Court in FY 2021.[36]

Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)

We reviewed 14 opinions contesting the imposition of penalties on taxpayers when they fail to timely file a tax return, fail to pay an amount shown as tax on a return, or underpay installments of estimated taxes. There were 53 estimated tax penalty cases and 173 delinquency penalty cases (imposed due to failure-to-pay and failure-to-file under IRC § 6651) petitioned to the Tax Court in FY 2021.[37]

Whistleblower Award Determinations (IRC § 7623(b)(1))

One category appearing for the first time on this list is whistleblower award determinations under IRC § 7623(b)(1). We identified 12 opinions issued in the Tax Court where taxpayers challenged an IRS determination on issuing whistleblower awards between June 1, 2020, and May 31, 2021. The IRS Whistleblower Office pays monetary awards to eligible individuals if the IRS uses information from the whistleblower to take judicial or administrative action – an audit or investigation resulting in the collection of proceeds.[38] Final determinations of the IRS Whistleblower Office regarding awards under IRC § 7623(b) may, within 30 days of such determination, be appealed to the Tax Court.[39] In FY 2020, the Whistleblower Office made 169 awards to whistleblowers totaling over $86 million, which includes 30 awards under IRC § 7623(b).[40]

Innocent Spouse Relief (IRC § 6015)

We identified nine opinions issued in Tax Court where taxpayers challenged an IRS determination on innocent spouse relief under IRC § 6015 between June 1, 2020, and May 31, 2021. A taxpayer may seek relief from liability arising from a joint return if the taxpayer can prove the taxpayer's spouse or former spouse should be held solely liable under IRC § 6015. IRC § 6015 provides three ways for a taxpayer to obtain partial or full relief from an IRS debt resulting from a return filed jointly with a spouse or ex-spouse. Section 6015(b) provides complete relief for deficiencies arising from a jointly filed return. Section 6015(c) provides limited relief from a joint liability for spouses who are divorced, separated, widowed, or not living together by allocating the liability between the spouses. If relief is unavailable under IRC § 6015(b) or (c), subsection (f) provides a third opportunity for "equitable" relief from both deficiencies and underpayments.

Family Status Issues (Under IRC §§ 2, 21, 24, 32, 151, 152, and Other Related IRC Sections)

We identified three opinions on family status issues between June 1, 2020, and May 31, 2021. In FY 2021, there were 1,838 cases petitioned to the Tax Court related to family status issues.[41] Figure 3.4 shows a further breakdown of this category. The highest category was filing status related issues with 1,425 cases petitioned to the Tax Court.

FIGURE 3.4, Breakdown of Family Status Related Issues Petitioned to the Tax Court in FY 2021[42]

Subcategory of Family Status Related Issue	Total Petitions to the Tax Court
Filing Status	1,425
Earned Income Tax Credit	1,143
Child Tax Credit	1,095
Exemptions for Self or Spouse	477
Dependent Children – Lives With Taxpayer	169
Child or Dependent Care Credit	77
Additional Child Tax Credit	31
Dependent – Other	23
Dependent Children – Does Not Live With Taxpayer	7
Dependent – Parents	3

Frivolous Tax Submissions (IRC § 6702(a))

We identified three opinions issued over frivolous return filings under IRC § 6702 between June 1, 2020, and May 31, 2021. This is another new category on our list, appearing for the first time due to our new methodology. This litigation involves penalties for filing a tax return that adopts a position that the IRS has identified as frivolous or reflecting a desire to delay or impede the administration of federal tax laws.[43] Further requirements for application of the frivolous return penalty are that a taxpayer has filed what purports to be a tax return that does not contain information on which the substantial correctness of the self-assessment may be judged or that contains information that indicates the self-assessment is substantially incorrect.[44] The frivolous return penalty can also be asserted by the IRS in response to filing specified frivolous submissions, which include CDP appeals, requests for installment agreements, proposed offers in compromise, and Taxpayer Assistance Orders.[45]

Add-On Categories

This year, we reviewed issues in other federal courts apart from the Tax Court and separately discuss issues such as the accuracy-related penalty under IRC § 6662 and the frivolous issues penalty under IRC § 6673. Usually, these penalties are not standalone issues, so we did not include these two "add-on" categories in the top ten list of Most Litigated Issues.

Accuracy-Related Penalty (IRC § 6662(b)(1)-(2))[46]

We identified 72 opinions issued in the Tax Court between June 1, 2020, and May 31, 2021, where taxpayers litigated the negligence or substantial understatement components of the accuracy-related penalty. In FY 2021, taxpayers petitioned the Tax Court in 875 cases where the accuracy-related penalty for negligence or substantial understatement of tax was an issue during the examination.[47]

Frivolous Issues Penalty (IRC § 6673)

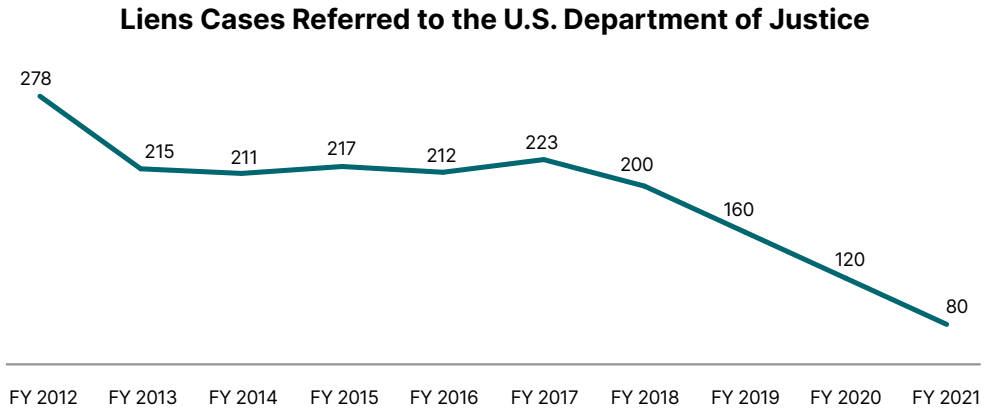
From June 1, 2020, through May 31, 2021, the Tax Court decided four cases involving the IRC § 6673 "frivolous issues" penalty. This penalty is for maintaining a case primarily for delay, raising arguments deemed frivolous by the courts, unreasonably failing to pursue administrative remedies, or filing a frivolous appeal.[48] Occasionally, when the IRS has not requested the penalty, and the facts are appropriate, the court has nonetheless raised the issue *sua sponte*.[49] The IRS imposed a total of $26,000 in frivolous issues penalties for individual taxpayers and $200 for business taxpayers in FY 2021.[50]

TOP ISSUES IN OTHER COURTS

Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax (IRC §§ 7403 and 6321)

During the reporting period from June 1, 2020, to May 31, 2021, we identified 30 opinions that involved civil actions to enforce liens under IRC §§ 7403 and 6321. This is a 58 percent decrease from the 71 opinions reported last year due to the pandemic-related shutdown and court delays.[51] In FY 2021, 80 federal tax lien cases were referred to the Department of Justice (DOJ) for enforcement and foreclosure, down 33 percent from the 120 referred in FY 2020.[52] This further continues a downward trend in referrals to DOJ over the past four years, as shown in Figure 3.5.

FIGURE 3.5[53]



Historically, lien enforcement cases were a frequent source of litigation, often having a significant impact on the financial well-being of affected taxpayers and third parties. For instance, the seizure of a taxpayer's principal residence may have a devastating impact on the taxpayer and his or her family, especially if the taxpayer is at risk of economic hardship. Foreclosing on a home when a taxpayer is experiencing economic hardship runs contrary to a taxpayer's *right to a fair and just tax system*.[54] The IRS has written procedures into its Internal Revenue Manual (IRM) that provide substantial taxpayer protections before a case may be referred to DOJ for filing a lien foreclosure suit, but the National Taxpayer Advocate requests Congress codify these IRM provisions to better protect taxpayers.[55]

Summons Enforcement (IRC §§ 7602(a), 7604(a), and 7609(a))

At the end of FY 2021, at least 233 summons cases were in the Office of Chief Counsel's inventory and 39 cases were referred to DOJ in FY 2021.[56] DOJ handles motions to quash summons (the United States is listed as a defendant), and the U.S. Attorneys' Offices handle suits to enforce the summons (the United States is listed as a plaintiff).

Most Litigated Issues – National Taxpayer Advocate Recommendations to Mitigate Disputes

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7403 to preclude IRS employees from requesting that the DOJ file a civil action in U.S. District Court seeking to enforce a tax lien and foreclose on a taxpayer's principal residence, except where the employee has determined that (1) the taxpayer's other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings,

and (2) the foreclosure and sale of the residence would not create an economic hardship due to the financial condition of the taxpayer.[57]

2. Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.
3. Amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the penalty for "negligence or disregard of rules or regulations" under IRC § 6662(b)(1).
4. Amend IRC § 7602(c) to clarify that the IRS must tell the taxpayer in a third-party contact (TPC) notice what information it needs and allow the taxpayer a reasonable opportunity to provide the information before contacting a third party, unless doing so would be pointless (*e.g.*, because the taxpayer does not have the information the IRS needs) or an exception applies.[58]

TAX LITIGATION OVERVIEW

A variety of courts share concurrent jurisdiction over federal tax litigation. They include Article I (*i.e.*, special courts created by Congress) and Article III (*i.e.*, constitutional) courts. Litigation generally includes an automatic right of appeal to the U.S. Courts of Appeals,[59] although some taxpayers elect to give up their appeal rights and pursue binding but less formal proceedings, pursuant to court rules.[60] The taxpayer's choice of judicial forum depends on many factors, including whether the taxpayer is required to pre-pay the tax prior to litigation, the court's procedures, the burden of proof, and the controlling precedent. Tax litigation takes place in:

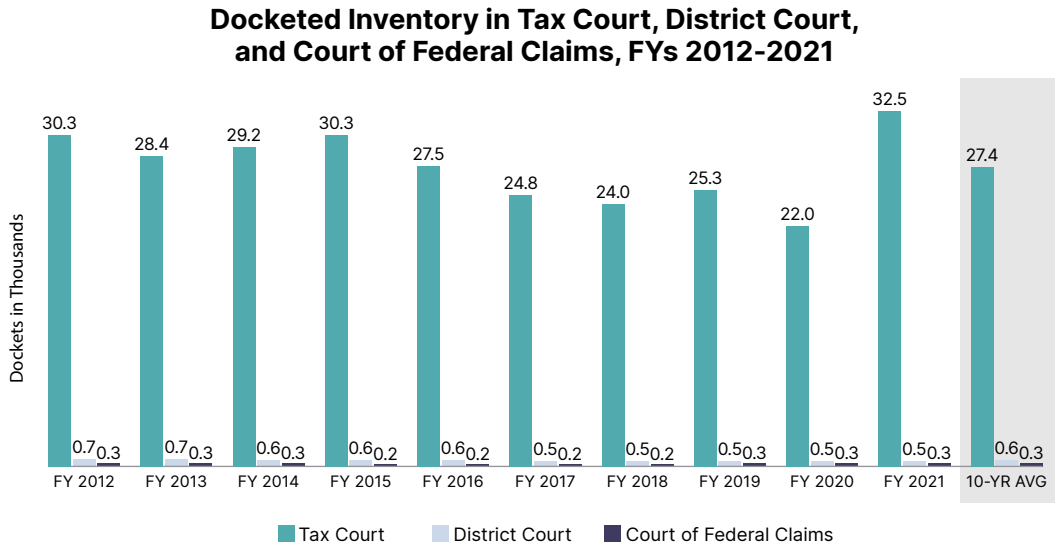
- U.S. Tax Court;
- U.S. District Courts;
- U.S. Courts of Appeals;
- U.S. Court of Federal Claims;
- U.S. Bankruptcy Courts; and
- U.S. Supreme Court.

The U.S. District Courts and the U.S. Court of Federal Claims have concurrent jurisdiction over tax matters in which (1) the tax has been assessed and paid in full[61] and (2) the taxpayer has filed an administrative claim for refund.[62] The U.S. District Courts, along with the bankruptcy courts in very limited circumstances, provide the only fora in which a taxpayer can request a jury trial.[63] Bankruptcy courts can adjudicate tax matters not adjudicated prior to the initiation of a bankruptcy case.[64]

Congress created the Tax Court as a forum where taxpayers can bring suit to contest IRS proposed assessments and determinations without prepayment.[65] It has jurisdiction over a variety of issues, including deficiencies, certain declaratory judgment actions, appeals from administrative hearings, relief from joint and several liability, and determination of employment status.[66] The Tax Court is a "prepayment" forum, which is one major advantage for taxpayers as they can adjudicate the merits without paying the disputed tax in advance.[67] In FY 2021, about 98 percent of all tax-related litigation was adjudicated in the Tax Court.[68]

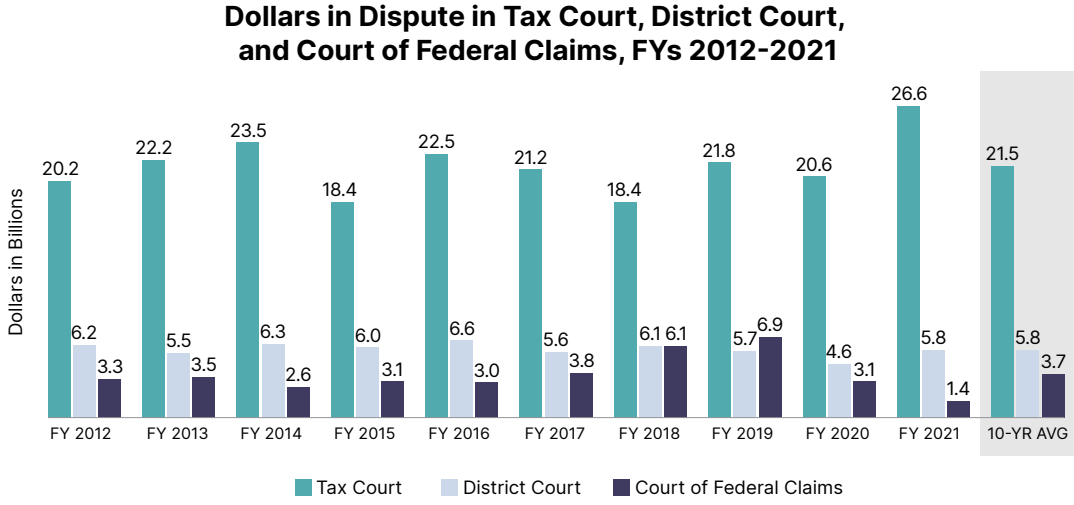
Comparing the number of dockets amongst the courts in which taxpayers may pursue litigation (*i.e.,* petitions filed), the Tax Court received at least 65 times as many cases as district courts and 108 times as many cases as the Court of Federal Claims in FY 2021, as illustrated in Figure 3.6. Figure 3.6 compares the number of docketed cases in inventory in the Tax Court, the Court of Federal Claims, and the district courts at the end of the past ten fiscal years and calculates a ten-year average.

FIGURE 3.6[69]



While the Tax Court docket has the majority of cases, there is more money at stake per litigated case in tax litigation in the district courts and the Court of Federal Claims. Comparing the dollars in dispute, Tax Court cases compare about 4:1 to district courts and about 6:1 to the Court of Federal Claims based on the ten-year average.[70] Figure 3.7 shows the dollars in dispute for the docketed case inventory in these courts over the past ten fiscal years.

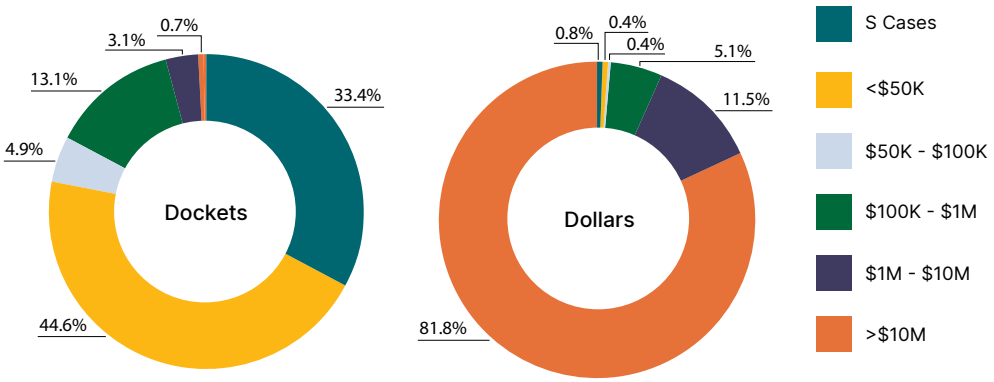
FIGURE 3.7[71]



Excluding "S" cases, looking more closely at the Tax Court cases during FY 2021, in nearly 45 percent of the cases, there was less than $50,000 at stake.[72] Less than one percent of the total dockets are cases with more than $10 million in dispute, but that represents nearly 82 percent of all dollars in dispute in the Tax Court. Figure 3.8 shows the breakdown of FY 2021 Tax Court cases by dollars in dispute.

FIGURE 3.8[73]

Portion of Total Dockets and Dollars in Dispute by Amount Category, FY 2021



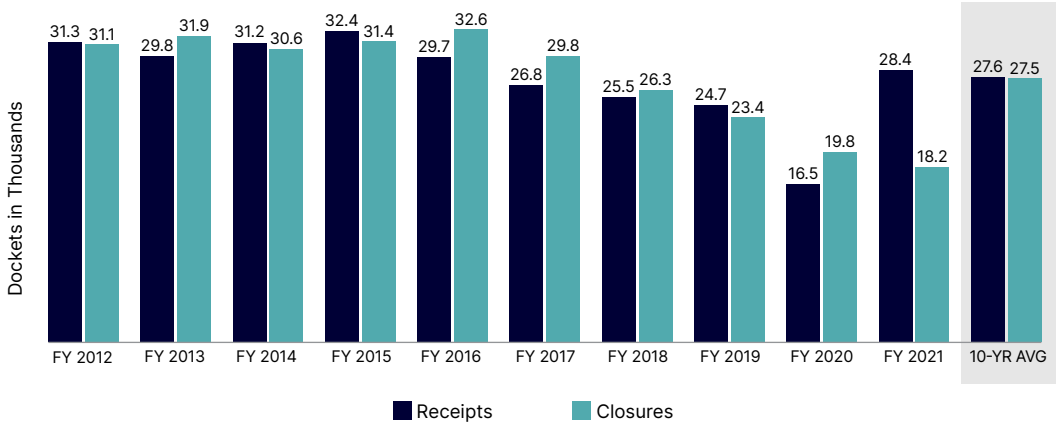
According to U.S. Courts' 2020 Federal Judicial Caseload Statistics, civil tax cases in U.S. District Courts declined from 788 to 673 (a decrease of 14.6 percent) between 2019 and 2020,[74] and only 0.8 percent of civil tax cases in district courts in 2020 were resolved through trial.[75] A portion of this decline may be attributable to COVID-19-related disruptions. For example, many U.S. District Courts shut down for several months during the spring of 2020.[76]

TAX COURT OPERATIONS DURING THE COVID-19 PANDEMIC

The Tax Court began canceling trial sessions on March 11, 2020,[77] and remained closed until switching to remote proceedings on May 29, 2020.[78] Figure 3.9 shows how the closing impacted the number of incoming Tax Court petitions in FY 2020.

FIGURE 3.9[79]

Tax Court Receipts and Closures



On December 28, 2020, the Tax Court implemented its new Docket Access Within a Secure Online Network (DAWSON) electronic filing and case management system, at the same time the IRS was struggling to overcome difficulties associated with COVID-19-related closures, inventory backlogs, and U.S. mail delays.[80]

As part of the People First Initiative, the IRS suspended collection action from March 25 to July 15, 2020.[81] The IRS resumed issuing notices of deficiency in the summer of 2020, which led to the increase in the volume of petitions received by the Tax Court in the summer and early fall, resulting in significant processing delays and backlogs.[82] Due to a lag in processing, the IRS was not notified of the filed petitions and followed its internal procedures to close and assess the unagreed examination deficiencies. This resulted in increased premature assessments and the onset of collection activity. The IRC prohibits assessments or collection of a tax deficiency when a taxpayer has filed a timely petition with the Tax Court.[83] However, some petitioning taxpayers received bills or experienced collection action as a product of these erroneous premature assessments.

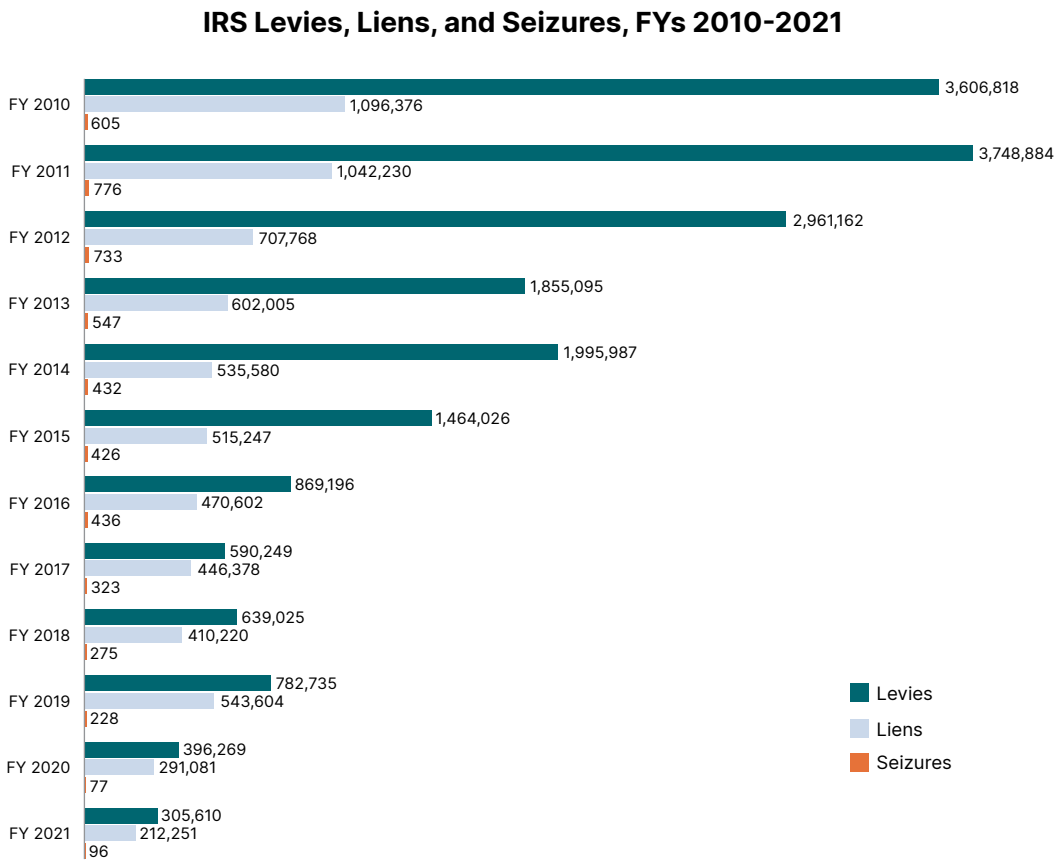
Recognizing the need for immediate action, the National Taxpayer Advocate in collaboration with the IRS Office of Chief Counsel, the IRS, the Tax Court, the American Bar Association (ABA), and tax practitioners discussed temporary procedures to prevent premature assessments for docketed cases. The Tax Court initiated a process to provide the IRS with data to identify petitioned cases quickly and systemically to prevent future premature assessments and reverse those that had taken place. This process, initiated in August 2021, is to remain in effect until the Tax Court's backlog has been resolved and perhaps thereafter. Based upon the success of preventing premature assessments, the National Taxpayer Advocate recommends the procedure continue even after the court catches up on its backlog of cases, thereby preventing future premature assessments and unnecessary harm to taxpayers.[84]

In the wake of the COVID-19 pandemic, the Tax Court made numerous procedural changes, including permitting taxpayers and their representatives to file petitions electronically. The Tax Court also amended pretrial procedures for remote trials to encourage settlement discussions between petitioners and the IRS.[85] For example, the Court changed its standing pretrial order for remote trials. Under the new rules, the Court changed the submission deadline from 14 days to 21 days before trial for a pretrial memorandum, which provides the parties an opportunity to clarify where they agree and which issues the Court must decide.[86] The deadline for parties to submit a stipulation of facts was pushed back from the date of trial to 14 days before the trial.[87] The Tax Court made greater efforts to emphasize to petitioners that failing to participate in the pretrial and trial procedures could lead to dismissal of their case.[88] The Tax Court also added procedures to identify barriers in language or technology that would hinder taxpayer participation to address them ahead of trial. On August 27, 2021, the Tax Court announced that the Court expects to offer both in-person and where appropriate, remote proceedings, during the Winter 2022 Term.[89] Reasons for needing to hold a virtual hearing can include COVID-19 concerns, weather issues, or the availability of a courtroom at the trial location.

Tax Court cases begin with a taxpayer filing a petition to the Court.[90] However, in a U.S. district court, both taxpayers and the IRS, or DOJ acting on behalf of the IRS, can initiate proceedings as part of enforcement actions.

The DOJ, on behalf of the United States, files suit for actions for the IRS including summons enforcement actions to produce books, papers, records, or other data or to give testimony as required by the summons.[91] DOJ may bring a civil action to enforce a federal tax lien and to foreclose on taxpayer property, including a personal residence, to satisfy an outstanding tax liability.[92] If the United States proves the lien is valid, the court will typically issue an order of sale that (1) authorizes the United States to foreclose on the taxpayer's subject property and (2) describes how the proceeds of sale should be distributed. Taxpayers can initiate a suit in a U.S. District Court to oppose those enforcement actions or to sue for a refund. The number of U.S. district court cases has declined on par with the number of Tax Court cases during the last ten years, following a similar decline in IRS collection enforcement actions. Figure 3.10 shows the number of levies, liens, and seizures during the past ten fiscal years.

FIGURE 3.10[93]



ANALYSIS OF *PRO SE* LITIGATION

When a taxpayer appears before the court without a representative, it's called *pro se*.[94] In FY 2021, about 86 percent of cases petitioned to the Tax Court were *pro se* taxpayers and about 14 percent of the cases were represented.[95] Over the past ten years, an average of 82 percent of taxpayers appearing in Tax Court were not represented by counsel.[96] Self-represented taxpayers are disadvantaged in tax litigation as they are unfamiliar with the Tax Court's Rules of Practice and Procedure, Federal Rules of Evidence, and the nuances of negotiating with the IRS. The dollars at issue, along with the taxpayer's income level, are two key determinants of whether a taxpayer obtains representation to navigate the litigation process. Hiring a representative can be expensive. And even if a taxpayer has the means to do so, the amount at issue may not justify the cost. To provide more support to unrepresented petitioners, in 1998 Congress enacted IRC § 7526 to provide grants up to $100,000 for eligible low-income taxpayer clinics.[97] And nearly 25 years ago, the Tax Court instituted Tax Clinics and Bar-Sponsored Calendar Call programs that provide advice and assistance to many low-income, self-represented taxpayers.[98]

The Tax Clinics and Bar Sponsored Calendar Call Program enables eligible taxpayers to seek legal advice and representation at a trial session. Low Income Taxpayer Clinics (LITCs) provide free or low-cost representation to qualifying taxpayers,[99] and LITCs are present at nearly all Tax Court calendar calls offering on-site consultations with unrepresented petitioners; however, only a fraction of eligible taxpayers avail themselves of those services.[100] In 2020, over eight percent of all LITC cases worked involved litigation, with the majority (1,389) in the Tax Court.[101] Figure 3.11 compares the ratio of Tax Court cases where taxpayers proceeded *pro se* to the cases where taxpayers appeared with a representative over the past ten fiscal years.

FIGURE 3.11[102]

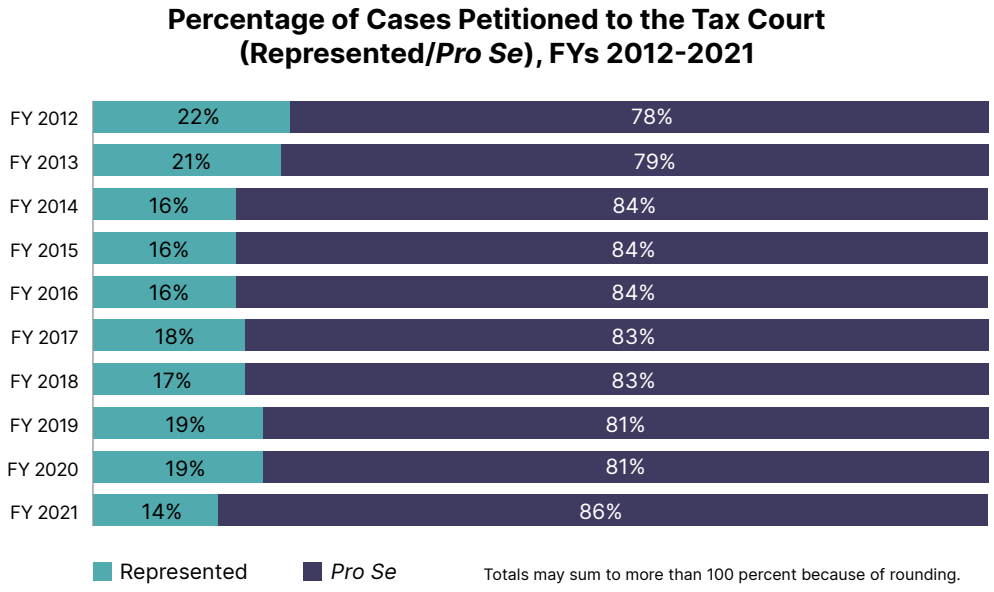
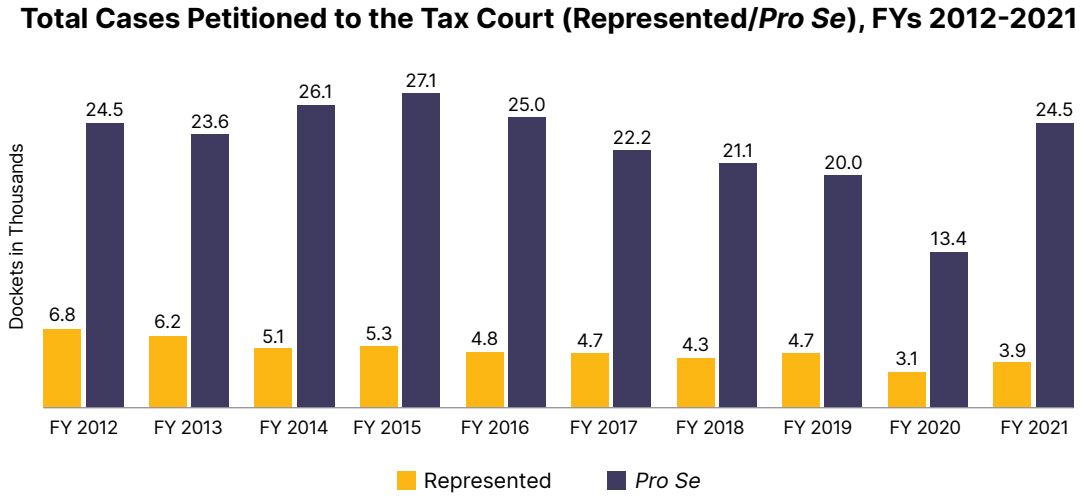


Figure 3.12 shows the number of Tax Court petitions over the past ten fiscal years, broken down by whether the taxpayers proceeded *pro se* or with a representative.

FIGURE 3.12[103]



The Tax Clinics and Bar Sponsored Tax Court Calendar Call Program provides an opportunity for unrepresented petitioners to consult with a neutral tax professional at no cost prior to appearing before the Tax Court, which can help petitioners frame a realistic expectation of the strength of their case. But the consultation may not occur under ideal circumstances: the petitioner may be speaking to a professional for the first time mere minutes before entering the courtroom, and matters of complexity may require more robust discussions between the parties. The Tax Court changed its rules in 2019, adopting a new procedure that allows for an attorney-client relationship falling between a brief hallway consultation and a full representation

agreement: a limited entry of appearance.[104] An entry of appearance is not limited and stays in effect until the proceedings at the Tax Court end or the Tax Court by order permits counsel to withdraw. A limited entry of appearance:

- Indicates that a practitioner is limiting his or her appearance to a specific date or activity listed on the Limited Entry of Appearance form relating to a scheduled Trial Session;
- Cannot be filed before the Notice Setting Case for Trial is issued or after adjournment of a scheduled Trial Session, except that a limited entry of appearance may be filed regarding cases for those trial sessions that were canceled due to COVID-19; and
- Requires filing a Notice of Completion when the date or activity has ended.[105]

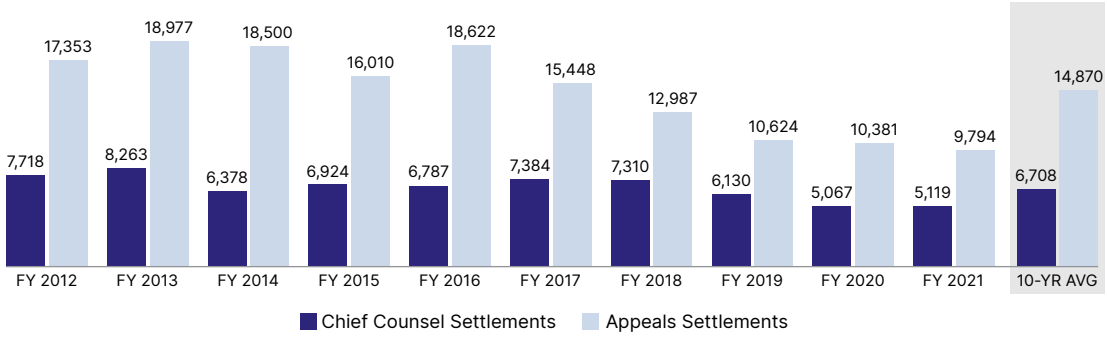
In Figures 3.11 and 3.12, petitioners who proceeded *pro se* but received assistance with a limited entry of appearance are usually not distinguished from other *pro se* petitioners. The Calendar Call Program and Limited Entry of Appearance procedures support the Tax Court's mission to provide a national forum for the expeditious resolution of disputes between taxpayers and the IRS, for careful consideration of the merits of each case, and for ensuring a uniform interpretation of the IRC.[106]

SETTLEMENTS OF CASES PETITIONED TO THE TAX COURT

The parties settled about 82 percent of cases petitioned to Tax Court in FY 2021.[107] On behalf of the respondent (the Commissioner of Internal Revenue), the petitioned cases are settled by the IRS Office of Chief Counsel or the IRS Independent Office of Appeals. Figure 3.13 shows the number of Tax Court cases settled by Appeals and the number settled by IRS Counsel during the last ten fiscal years.

FIGURE 3.13[108]

Tax Court Cases Settled by Appeals and IRS Chief Counsel, FYs 2012-2021



Outcomes of Tax Court Petitions, 10-Year Average, FYs 2012-2021

To provide unrepresented petitioners with opportunities to settle their cases before Calendar Call,[109] the IRS Office of Chief Counsel coordinates events with LITCs, ABA volunteer attorneys, and other *pro bono* organizations called "Settlement Days." Following recommendations from our 2018 Annual Report to Congress,[110] the IRS expanded Settlement Day events and incorporated TAS participation to assist taxpayers with tax issues attributable to non-docketed years. Local Taxpayer Advocates and their staff can work

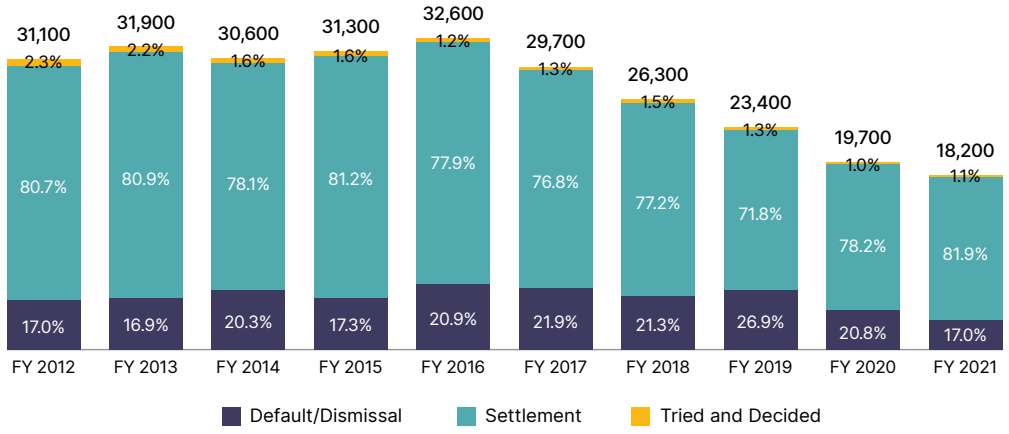
with and inform taxpayers about how TAS may assist with other unresolved tax matters or provide further assistance after the Tax Court matter is concluded. TAS can also assist with requesting collection alternatives.

In May 2020, the IRS offered Virtual Settlement Day[111] events to continue the benefits of Settlement Days during the pandemic. According to the IRS, more than 260 taxpayers resolved their Tax Court cases during a Virtual Settlement Days event, avoiding the need for trials.[112] The IRS held the first National Virtual Settlement Month in March 2021.[113] During the Office of Chief Counsel's National Virtual Settlement Month, Virtual Settlement Days events were held in all 50 states and the District of Columbia. Many were held in cities that had not recently hosted a Settlement Days event. Nearly 240 taxpayers met with Chief Counsel employees and *pro bono* organizations, leading to settlements in 148 Tax Court cases.[114] Those taxpayers whose cases were not resolved had the opportunity to obtain free legal advice from *pro bono* volunteers or LITCs and were in a better position to understand their cases and the process of litigating in Tax Court.[115]

As Figure 3.14 illustrates, the vast majority of cases at the Tax Court (about 82 percent) in FY 2021 settled outside of court, with about 14,900 cases settled.

FIGURE 3.14[116]

Cases Dismissed, Settled, and Tried in the Tax Court, FYs 2012-2021



CRIMINAL TAX VIOLATIONS

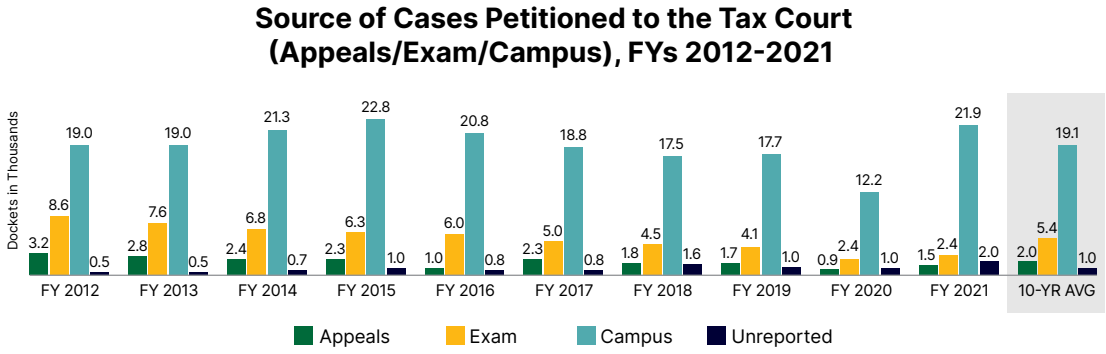
The IRS Criminal Investigation (CI) Division is the main entity investigating criminal tax violations and other related financial crimes. CI recommends cases for prosecution to DOJ. These include criminal tax issues such as general tax fraud, refund fraud, abusive tax schemes, and employment tax fraud.[117] In FY 2021, CI initiated 1,372 criminal tax cases and recommended 850 cases for prosecution; 633 cases of those recommended for prosecution by CI were sentenced.[118] In FY 2021, CI identified $10 billion from fraud and related financial crimes, including $2.2 billion from tax fraud.[119]

According to U.S. Courts' 2020 Federal Judicial Caseload Statistics, there were 367 criminal tax fraud cases commenced in U.S. District Courts in 2020,[120] and 374 of 390 (95.9 percent) of criminal tax fraud defendants were convicted or sentenced while only three were acquitted in U.S. District Courts in 2020.[121]

SOURCES OF CASES PETITIONED TO THE TAX COURT

Depending on the taxpayer's actions after receiving a notice from the IRS, an IRS Service Center (Campus), Exam, or Appeals may issue a notice of deficiency. The notice of deficiency is the typical "ticket to Tax Court" and the document that starts the procedural clock for timely filing a petition. In a CDP case, taxpayers file a petition based upon a notice of determination from a CDP hearing. The notice of determination, like the notice of deficiency, starts the period in which a taxpayer must file a petition with the Tax Court.[122] Figure 3.15 shows Tax Court petition filings over the last ten fiscal years based on the IRS function that issued the notice attached to each petition.

FIGURE 3.15[123]



About 19,100, or 69 percent, of petitions in the Tax Court, an average of a ten-year period, resulted from a notice of deficiency being issued from the Campuses, bypassing Appeals, as shown in Figure 3.15.[124] There are a variety of reasons that can trigger the issuance of the notice of deficiency at a Campus – a taxpayer may not have understood the IRS correspondence or may not have provided timely or sufficient documentation, or the IRS needed to issue the notice of deficiency to protect the assessment period of limitations.

When the case originates at a Campus, a taxpayer may not have spoken with an IRS employee prior to filing a Tax Court petition.[125] Taxpayers may have had difficulty reaching an IRS employee who could assist, or the IRS may not have contacted the taxpayer. Many of those taxpayers may miss an opportunity for achieving a resolution at the administrative level before seeking Tax Court review.

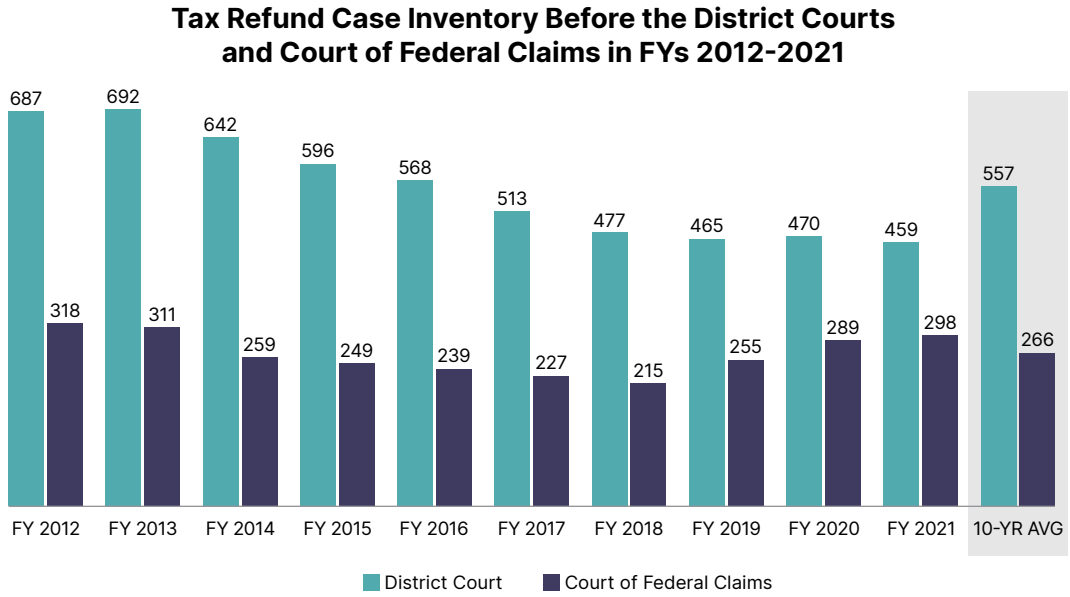
REFUND LITIGATION

The IRC permits taxpayers to file claims for refund. IRC § 7422(a) requires that taxpayers file a claim with the IRS before filing a suit for refund.[126] Taxpayers have the right to file a refund suit if a timely filed claim for refund is disallowed in full or part, or if the IRS does not act on a claim for refund within six months after the claim is filed.[127] When IRS findings result in claim disallowance, the taxpayer is generally afforded an opportunity to appeal administratively. If an agreement is not reached during the examination or the appeals process (if protested), a statutory notice of claim disallowance (claim disallowance) is issued explaining the taxpayer's right to file a refund suit.[128] IRC § 6532 imposes a general two-year time limit for filing a refund suit, which can be extended upon written agreement between the taxpayer and the IRS. The mailing date of the claim disallowance begins this two-year period.[129] A taxpayer may sue in a U.S. district court or the U.S. Court of Federal Claims under 28 U.S.C. § 1346(a)(1) to recover "any sum" that the taxpayer believes has been erroneously assessed or collected. In *Flora v. United States*,[130] however, the U.S. Supreme Court held that, with limited exceptions, a taxpayer must have "fully paid" the assessment (called the "full payment rule") before suing in these courts. The full payment rule impacts whether a taxpayer has the financial means to file suit and/or hire an attorney to represent him or her. Equal access to justice should allow taxpayers who

cannot pay what the IRS says they owe to challenge an adverse determination and have the same opportunities as wealthier taxpayers who can pay.[131]

As shown in Figure 3.16, in FY 2021, 757 refund cases remained in inventory. The U.S. District Courts fielded 459 of these cases, while 298 went before the U.S. Court of Federal Claims.[132]

FIGURE 3.16[133]



SIGNIFICANT CASES

This section describes cases that generally highlight important issues relevant to federal tax administration.[134] These decisions are summarized below.

The Supreme Court agreed to rule on the jurisdiction requirement of IRC § 6330(d)(1) in *Boechler v. Commissioner.*[135]

The Supreme Court has agreed to hear an appeal from the Eighth Circuit, in *Boechler v. Commissioner,*[136] and will ultimately decide whether the time limit in IRC § 6330(d)(1) is a jurisdictional requirement or merely a claim processing rule that can be subject to equitable tolling. The Eighth Circuit had determined earlier that the deadline to file a petition is jurisdictional and therefore it cannot be waived, including equitable reasons. This will be significant because if the Court reverses the Eighth Circuit's decision, taxpayers will have the ability to make their cases for potential equitable tolling of the filing deadline for CDP petitions to the Tax Court, as was the case here with the petitioner who missed the deadline by one day. Due to the potential practical implications, the tax practitioner community will be eagerly awaiting the outcome.[137] Arguments are scheduled to be heard on January 12, 2022.

In *CIC Services v. IRS,*[138] the Supreme Court allowed taxpayers to bring pre-enforcement challenges to IRS notices and other agency actions that impose tax rules and associated penalties.

The question before the Supreme Court in *CIC Services v. IRS*[139] was whether the Anti-Injunction Act (AIA) barred a challenge to the validity of IRS Notice 2016-66, which informs taxpayers of information reporting requirements and associated penalties. AIA generally blocks prospective lawsuits brought "for purposes of

restraining the assessment or collection of tax," meaning taxpayers must first comply with or violate IRS rules backed by penalties to bring a suit in court.[140] The taxpayer alleged that Notice 2016-66 violated the Administrative Procedure Act, independent of any compliance or violations.[141] The district court and Sixth Circuit held that the suit was barred by AIA because it sought to limit the IRS's ability to assess and collect civil penalties.[142] The Supreme Court reversed, holding that the suit was not barred by AIA because the suit challenged the reporting requirements, which were deemed sufficiently separate from the penalties. Although AIA still generally bars pre-enforcement lawsuits that challenge judicial review of taxes and tax penalties, the Supreme Court allows taxpayers to bring pre-enforcement challenges to IRS notices and other agency actions that impose tax rules and associated penalties.[143] With high compliance costs, taxpayers may not have the time or resources to comply or violate rules and then bring a suit. This case highlights the continuing importance of the National Taxpayer Advocate's legislative recommendation to allow judicial review of penalties without first requiring taxpayers to pay them in full.[144] Such legislation would strengthen a taxpayer's *right to appeal an IRS decision in an independent forum* and leads to a fair and just tax system.[145]

In *Grajales v. Commissioner*, the Tax Court clarified that an early withdrawal from a retirement account leads to a tax and not a penalty; therefore, there is no requirement for supervisory approval under IRC § 6751(b)(1).[146]

IRC § 72(t) imposes a ten percent additional tax on early distributions taken from qualified retirement plans. The Tax Court considered whether an early withdrawal from a retirement account is a "tax" or a "penalty" requiring supervisory approval under IRC § 6751(b)(1). The taxpayer had been assessed the additional tax under IRC § 72 but argued this was a "penalty" for the early withdrawal and thus required supervisory approval under IRC § 6751(b)(1) prior to assessment. The Tax Court disagreed, holding it has historically established in precedents that IRC § 72(t) is a tax that would not require supervisory approval. This case demonstrates there is still taxpayer confusion as to the differences between a tax and a penalty. Taxpayers rarely know when the IRS must obtain supervisory approval under IRC § 6751(b). The National Taxpayer Advocate has recommended that the penalty be approved in writing by the immediate supervisor of the individual making such determination.[147] Additional clarity and recommendations would protect taxpayers' *rights to be informed* and *to a fair and just tax system*.[148]

The Tax Court upholds the constitutionally of the passport certification procedure in *Rowen v. Commissioner*.[149]

The taxpayer in *Rowen v. Commissioner*[150] challenged the constitutionality of IRC § 7345, which authorizes the Secretary of Treasury to submit certification regarding "seriously delinquent tax debt" to the Secretary of State for actions of denial, revocation, or limitation of an individual's passport.[151] The Tax Court rejected the taxpayer's argument that IRC § 7345 prohibited international travel, finding that the section merely authorized the certification procedure while leaving the ultimate authority and determination to prohibit international travel to the Secretary of State; this led to the finding that the decision did not violate the taxpayer's right to international travel under the Fifth Amendment's Due Process Clause.[152]

In *Beland v. Commissioner*, the Tax Court clarifies what constitutes an initial determination under IRC § 6751(b)(1) for imposing a fraud penalty upon taxpayers.[153]

Clarity was needed as to what constitutes a "consequential moment" in the IRS making an "initial determination" regarding imposing a fraud penalty upon taxpayers under IRC § 6751(b)(1).[154] That section does not clearly define what document establishes the existence of an initial determination to impose the penalty. Here, the Tax Court scrutinized the procedure the IRS followed regarding securing supervisory approval to impose the penalty; regarding how the IRS presented information to the taxpayers; and most importantly, regarding how and what the IRS *actually communicated* to the taxpayers during the administrative proceedings and how the taxpayer would perceive that communication.[155] The Tax Court's careful review and consideration of the taxpayers' perspective was important to reinforce the importance and protection

of taxpayer rights as well as to hold the IRS accountable for the context surrounding its presentations of information in communications with taxpayers. This case impacts taxpayers' *rights to be informed* and *to a fair and just tax system*,[156] as it focuses on the importance of the context of IRS communications with taxpayers and reinforces accountability in adhering to established procedures.

In *Fowler v. Commissioner*, the Tax Court clarifies signature authentication requirements in determining that a taxpayer's e-filed submission without an Identity Protection Personal Identification Number (IP PIN) constituted a valid tax return.[157]

Neither IRC § 6501(a) nor the regulations expand on the definition of what constitutes a valid tax return. Given the lack of clarity, the Tax Court relies on the *Beard* test to determine the validity of a tax return.[158] The taxpayer e-filed a tax return through his or her appointed representative, but the return did not include an IP PIN, and under the IRM provision in effect at the time, the e-filed return was rejected.[159] The Tax Court thoroughly analyzed the *Beard* test and came to a taxpayer-favorable conclusion, holding that the taxpayer was trying to conform to what can reasonably be believed to qualify as a valid signature; therefore, this was a properly filed tax return. The Tax Court referenced, among many items, the actual Form 1040 instructions in holding that the taxpayer's e-filed tax return (which included a Practitioner PIN) constituted a valid tax return even though the IP PIN was omitted.[160]

Endnotes

1 Federal tax cases are tried in the U.S. Tax Court, U.S. District Courts, U.S. Court of Federal Claims, U.S. Bankruptcy Courts, U.S. Courts of Appeals, and U.S. Supreme Court.
2 IRC § 6212.
3 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711. TAS leveraged the issue codes reflected on the notices of deficiency from the IRS's internal data. TAS's conclusions were based upon the issues listed on the notice of deficiency, but TAS did not read each of the approximately 28,000 petitions filed during this period. Data from the IRS Office of Appeals was only available for about 20,000 of the approximately 28,000 taxpayers petitioning the Tax Court in FY 2021. We acknowledge that in a percentage of cases the taxpayer may have conceded an issue or raised a new issue at the time of filing the petition or on a subsequent motion. However, our data and conclusions do not take those issues or concessions into account for purposes of our analysis.
4 IRS response to TAS information request (Oct. 21, 2021) (showing cases petitioned to Tax Court during FY 2021). TAS matched this data to the cases identified by examination as recorded in the Examination Operational Automation Database on the IRS Compliance Data Warehouse (CDW) (Dec. 2021). The petition data was provided by the IRS Independent Office of Appeals (Appeals) and the IRS Office of Chief Counsel. Data from the IRS Office of Chief Counsel included cumulative data on litigation in all jurisdictions of the United States. Data from Appeals only included data from petitions filed with the Tax Court.
5 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711.
6 These opinions were issued from June 1, 2020, through May 31, 2021, consistent with the reporting period for prior reports.
7 The Most Litigated Issues section in the first two National Taxpayer Advocate Annual Reports to Congress (2000 and 2001) reviewed cases by sampling. In the 2002 report, we reviewed 136 cases litigated in the federal court system between June 1, 2001, and May 31, 2002. National Taxpayer Advocate 2002 Annual Report to Congress 259 (*The Most Litigated Tax Issues*).
8 A fiscal year runs from October 1 to September 30 of the following calendar year and is different than our traditional reporting period used for the ten Most Litigated Issues in the Tax Court in this report – June 1, 2020, through May 31, 2021.
9 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2021. Does not include cases on appeal and declaratory judgments. Note that all figures, unless otherwise noted, cover fiscal years (October 1-September 30) while the published opinions reviewed in this report cover the period June 1-May 31. Many cases are resolved before the court issues an opinion. Some taxpayers reach a settlement with the IRS before trial, while the courts dismiss other taxpayers' cases for a variety of reasons, including lack of jurisdiction and lack of prosecution. Courts can issue less formal "bench opinions," which are not published or precedential. We did not include bench orders and summary judgments in this report.
10 IRS response to TAS information request (Oct. 21, 2021) (showing cases petitioned to Tax Court during FY 2021).
11 Some opinions resolved multiple substantive tax issues in the same opinion. We also removed accuracy-related penalties from this list and separately discuss the accuracy-related penalty and frivolous issues penalty below.
12 Individuals filing Schedules C, E, or F are deemed business taxpayers for purposes of this discussion even if items reported on such schedules were not the subject of litigation.
13 Our approach was calculated using IRS Standard Audit Index Number codes designed to consistently track issues for tax administration.
14 IRS, Counsel Automated Tracking System; IRS, CDW, IMF Transaction History table (FYs 2010-2021); IRS response to TAS information request (Oct. 21, 2021). TAS matched this data to information from CDW, IMF Transaction History table for FY 2021, and the Examination Operational Automation Database (Nov. 2021). Petitions to Tax Court can include multiple substantive tax issues; therefore, there will be overlap as multiple issues on the same petition are counted in this figure. Furthermore, we only included petitions with substantive tax issues contested as opposed to procedural tax issues. Issues not based on a specific IRC section

were not included in the top ten as follows: Statutory Adjustment: 4,947 petitions; Impact of *De Minimus* Issues: 1,425 petitions; and Frozen Refunds: 943 petitions. Consistent with our approach with the opinions issued categories, an add-on category removed from this list was accuracy-related penalty (IRC § 6662(b)(1) and (2)) with 875 petitions.

15 The amounts are indexed annually for inflation. TCJA, Pub. L. No. 115-97, 131 Stat. 2054 (2017).
16 *Id.*
17 *See*, *e.g.*, National Taxpayer Advocate 2000 Annual Report to Congress 65, 69, 152.
18 IRS response to TAS information request (Oct. 21, 2021); IRS, CDW, IMF Transaction History table for FY 2021, and the Examination Operational Automation Database (Nov. 2021).
19 *See*, *e.g.*, National Taxpayer Advocate 2000 Annual Report to Congress 70.
20 IRS response to TAS information request (Oct. 21, 2021); IRS, CDW, IMF Transaction History table for FY 2021, and the Examination Operational Automation Database (Nov. 2021).
21 Additionally, we identified 4,553 business taxpayers requesting a CDP hearing in FY 2021. IRS, CDW, Business Master File (BMF) Transaction History table (FY 2021). The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, Subtype DU. Inventory pending as of September 30, 2021. Does not include cases on appeal.
22 IRS, CDW, IMF Transaction History table (FYs 2010-2021). The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, Subtype DU. Inventory pending as of September 30, 2021. Does not include cases on appeal.
23 Additionally, we identified 107,359 BMF CDP business taxpayers requesting a CDP hearing in FY 2021. IRS, CDW, BMF Transaction History table for FY 2021. The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, Subtype DU. Inventory pending as of September 30, 2021. Does not include cases on appeal.
24 *Id.*
25 IRS, Counsel Automated Tracking System; IRS, CDW, IMF Transaction History table (FYs 2010-2021).
26 IRS, Counsel Automated Tracking System.
27 IRS, Counsel Automated Tracking System; IRS, CDW, IMF Transaction History table (FYs 2010-2021).
28 Data compiled by IRS Chief Counsel. IRS, Counsel Automated Tracking System, Subtype DU, as of September 30, 2021. These figures do not include cases on appeal.
29 *Id.*
30 *Id.*
31 In a CDP hearing, a taxpayer may raise a variety of issues, such as collection alternatives or spousal defenses, but may only dispute the underlying liability if the taxpayer did not actually receive a notice of deficiency or *did not otherwise have an opportunity to dispute such liability*. IRC §§ 6320(c), 6330(c)(2)(B) (emphasis added). The opportunity to dispute a tax liability includes the opportunity to challenge the liability in an administrative hearing before the IRS Independent Office of Appeals or in a judicial proceeding. Treas. Reg. §§ 301.6320-1(e)(3), Q&A-E2; 301.6330-1(e)(3)Q&A-E2. For a more detailed discussion on this issue, see Most Serious Problem: *Collection*: *IRS Collection Policies and Procedures Negatively Impact Low-Income Taxpayers*, *supra*.
32 *See* IRS Notice 2017-10, 2017-4 I.R.B. 544, Syndicated Conservation Easement Transactions.
33 IRS response to TAS information request (Oct. 21, 2021); IRS, CDW, IMF Transaction History table for FY 2021, and the Examination Operational Automation Database (Nov. 2021).
34 This year and in previous years, charitable contribution deductions have been classified separately as a Most Litigated Issue category.
35 We excluded cases involving unreimbursed employee expenses and charitable deductions, as they are counted under other categories. Unreimbursed employee expenses are counted under *Trade or Business Expenses Under IRC § 162 and Related Sections*, *supra*. Cases involving charitable deductions are counted under *Charitable Contribution Deductions Under IRC § 170*, *supra*.
36 IRS response to TAS information request (Oct. 21, 2021); IRS, IMF Transaction History table for FY 2021, and the Examination Operational Automation Database (Nov. 2021).
37 *Id.*
38 *See* IRS, Whistleblower Office, https://www.irs.gov/compliance/whistleblower-office (last visited Dec. 10, 2021).
39 *See* IRS, What Happens to a Claim for an Informant Award (Whistleblower), https://www.irs.gov/compliance/what-happens-to-a-claim-for-an-informant-award-whistleblower (last visited Dec. 10, 2021).
40 *See* IRS, Pub. 5241, Fiscal Year 2020 Annual Report IRS Whistleblower Office (Dec. 2020).
41 IRS response to TAS information request (Oct. 21, 2021); IRS, CDW, IMF Transaction History table for FY 2021, and the Examination Operational Automation Database (Nov. 2021).
42 *Id.* Petitions to the Tax Court can include multiple substantive tax issues; therefore, there will be overlap as multiple issues on the same petition are counted in this figure. In total, there were 1,838 petitions to the Tax Court in FY 2021 that involved family status issues in the petition.
43 IRC § 6702(a)(2).
44 IRC § 6702(a)(1).
45 IRC § 6702(b).
46 IRC § 6662 also includes (b)(3) through (8), but because those types of accuracy-related penalties were not heavily litigated; we have analyzed only subsections (b)(1) and (2).
47 IRS response to TAS information request (Oct. 21, 2021); IRS, CDW, IMF Transaction History table for FY 2021 and the Examination Operational Automation Database (Nov. 2021).
48 The Tax Court generally imposes the penalty under IRC § 6673(a)(1). Other courts may impose the penalty under IRC § 6673(b)(1). U.S. Courts of Appeals are authorized to impose sanctions under IRC § 7482(c)(4) or Rule 38 of the Federal Rules of Appellate Procedure, although some appellate-level penalties may be imposed under other authorities.
49 "*Sua sponte*" means without prompting or suggestion; on its own motion. Black's Law Dictionary (11th ed. 2019). For conduct that it finds particularly offensive, the Tax Court can choose to impose a penalty under IRC § 6673 even if the IRS has not requested the penalty. *See*, *e.g.*, *Wells v. Comm'r*, T.C. Memo. 2019-134.
50 IRS response to TAS information request (Oct. 21, 2021); IRS, CDW, IMF Transaction History table for FY 2021, and the Examination Operational Automation Database (Nov. 2021).

51 National Taxpayer Advocate 2020 Annual Report to Congress 162, 183 (*Most Litigated Issues*).
52 Based on data provided by DOJ to the IRS Office of Chief Counsel (Oct. 21, 2021).
53 *Id.*
54 National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 52-53 (*Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence*).
55 *See*, *e.g.*, IRM 5.17.4.8.2.5, Lien Foreclosure on a Principal Residence (May 23, 2019); IRM 5.17.12.20.2.2.4, Additional Items for Lien Foreclosure of Taxpayer's Principal Residence (May 24, 2019); IRM 25.3.2.4.5.2(3), Actions Involving the Principal Residence of the Taxpayer (May 29, 2019).
56 Data provided by DOJ to the IRS Office of Chief Counsel (Oct. 22, 2020). The Tax Division generally only has a record of summons enforcement cases if IRS Chief Counsel refers the matter to the Tax Division. Under the Justice Manual, the vast majority of summons enforcement cases are referred directly to U.S. Attorney Offices, and the Tax Division does not have a record of those matters. Similarly, DOJ generally only tracks proceedings to quash a summons filed with taxpayers or third parties if the DOJ Tax Division's attorneys will be appearing in the case. Thus, the information does not reflect the total number of summons enforcement cases filed in FY 2021 but only those for which the DOJ Tax Division opened a matter.
57 For legislative language generally consistent with this recommendation, see Small Business Taxpayer Bill of Rights Act, H.R. 1828, 114th Cong. § 16 (2015); Small Business Taxpayer Bill of Rights Act, S. 949, 114th Cong. § 16 (2015); and Eliminating Improper and Abusive IRS Audits Act, S. 2215, 113th Cong. § 8 (2014).
58 For further discussion, see National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 133-134 (*Require the IRS to Specify the Information Needed in Third-Party Contact Notices*).
59 *See* IRC § 7482, which provides that the U.S. Courts of Appeals (other than the U.S. Court of Appeals for the Federal Circuit) have jurisdiction to review the decisions of the Tax Court. There are exceptions to this general rule. *See* 28 U.S.C. § 1294 (appeals from a U.S. district court are to the appropriate U.S. Court of Appeals); 28 U.S.C. § 1295 (appeals from the U.S. Court of Federal Claims are heard in the U.S. Court of Appeals for the Federal Circuit); 28 U.S.C. § 1254 (appeals from the U.S. Courts of Appeals may be reviewed by the U.S. Supreme Court).
60 For example, IRC § 7463 provides special procedures for small Tax Court cases (where the amount of deficiency or claimed overpayment totals $50,000 or less) for which appellate review is not available.
61 28 U.S.C. § 1346(a)(1). *See Flora v. United States*, 362 U.S. 145 (1960), *reh'g denied*, 362 U.S. 972 (1960). *See* National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 96-98 (*Repeal* Flora: *Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*); National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 94-95 (*Expand the Tax Court's Jurisdiction to Hear Refund Cases and Assessable Penalties*).
62 IRC § 7422(a).
63 The bankruptcy court may only conduct a jury trial if the right to a trial by jury applies, all parties expressly consent, and the district court specifically designates the bankruptcy judge to exercise such jurisdiction. 28 U.S.C. § 157(e).
64 *See* 11 U.S.C. §§ 505(a)(1) and (a)(2)(A).
65 *See* IRC § 7441.
66 IRC §§ 6214, 7476-7479, 6330(d), 6015(e), and 7436.
67 IRC § 6213(a). For example, a taxpayer who wishes to contest the validity of a notice of deficiency generally has the opportunity to do so in the Tax Court without needing to pay the disputed tax first; the taxpayer could also pay the tax and file suit for refund in another forum, such as a U.S. district court.
68 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711 and TL-712. Does not include cases on appeal and declaratory judgments.
69 *Id.*
70 *Id.*
71 *Id.* These dollar amounts may be affected greatly from year to year by frivolous, high-dollar lawsuits. Does not include cases on appeal and declaratory judgments.
72 Disputes involving $50,000 or less can be selected for special, less formal proceedings under IRC § 7463. These are referred to as "small tax" or "S" cases. The Tax Court's decision in a small tax case is nonreviewable and becomes final 90 days from the date the decision is entered. The Tax Court may remove the S case designation on its own motion or on the motion of any party in the case at any time before the commencement of trial.
73 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2021. Does not include cases on appeal or declaratory judgements. Totals may not add up to 100 percent because of rounding.
74 United States Courts' 2020 Federal Judicial Caseload Statistics, Table C-2. U.S. District Courts – Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit. Data is from the 12-month period between March 31, 2019, and March 31, 2020.
75 United States Courts' 2020 Federal Judicial Caseload Statistics, Table C-4. U.S. District Courts – Civil Cases Terminated, by Nature of Suit and Action Taken. Data is from the 12-month period between March 31, 2019, and March 31, 2020.
76 *See* U.S. Courts, Court Orders and Updates During COVID-19 Pandemic, https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic#district (last visited Dec. 5, 2021).
77 U.S. Tax Court, *Press Release* (Mar. 11, 2020), https://www.ustaxcourt.gov/resources/press/03112020.pdf.
78 Administrative Order 2020-02 (U.S. Tax Court, May 29, 2020). On March 23, 2020, the Tax Court temporarily closed and ceased receiving mail and telephone calls. *See* U.S. Tax Court, *Press Release* (March 23, 2020), https://www.ustaxcourt.gov/resources/press/03232020.pdf.
79 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2021. Does not include cases on appeal or declaratory judgments.
80 For more information about DAWSON, see U.S. Tax Court, Frequently Asked Questions About DAWSON, https://www.ustaxcourt.gov/dawson_faqs_basics.html (last visited Nov. 14, 2021).
81 *See* IRS, People First Initiative FAQs: General Information, https://www.irs.gov/newsroom/people-first-initiative-faqs-general-information (last visited Dec. 5, 2021).

82 On July 8, 2020, the IRS reminded taxpayers who took advantage of the People First Initiative tax relief and did not make previously owed tax payments between March 25 to July 15, 2020, that they need to restart their payments. *See* IRS, IR-2020-142, Taxpayers Need to Resume Payments by July 15 (July 8, 2020), https://www.irs.gov/newsroom/taxpayers-need-to-resume-payments-by-july-15.
83 *See* IRC § 6213; IRC § 6503.
84 For more information on the issue of premature assessments, see Most Serious Problem: *Collection*: *IRS Collection Policies and Procedures Negatively Impact Low-Income Taxpayers*, *supra*.
85 Administrative Order 2020-02 (U.S. Tax Court, May 29, 2020).
86 *Id.*
87 *Id.*
88 *Id.* Tax Court Administrative Order 2020-02 warned petitioners: "If you do not follow the provisions of this Order, the Judge may dismiss your case and enter a Decision against you."
89 Administrative Order 2021-01 (U.S. Tax Court, Aug. 27, 2021). During this term, some cities have remote sessions available while other cities do not. *See* U.S. Tax Court, Trial Sessions Winter 2022 Term, https://www.ustaxcourt.gov/resources/court_schedules/Winter_2022.pdf (last visited Dec. 10, 2021).
90 IRC § 6213(a), (c).
91 IRC § 7604(b) (providing that if any taxpayer or third party is summoned to appear, testify, or produce records, the U.S. District Court for the district in which the taxpayer resides or is found has jurisdiction to compel the taxpayer or third party to appear, testify, or produce the records).
92 IRC § 7403.
93 IRS Data Book FY 2010 through IRS Data Book FY 2020 (Table 25 Delinquent Collection Activities, Fiscal Years); IRS, Activity Report 5000-24 (Oct. 13, 2021); IRS, Activity Report 5000-25 (Nov. 8, 2021).
94 "*Pro se*" means "for oneself; on one's own behalf; without a lawyer." Black's Law Dictionary (11th ed. 2019).
95 Counsel Automated Tracking System, TL-708A.
96 *Id.*
97 TAS administers and oversees the grant program through its LITC Program Office.
98 *See* U.S. Tax Court, Clinics & *Pro Bono* Programs https://www.ustaxcourt.gov/clinics.html (last visited Nov. 16, 2021). The Tax Court continues to invite academic and non-academic tax clinics and bar-sponsored programs to consider participating and representing *pro se* taxpayers.
99 *See* IRC § 7526.
100 IRS, Pub. 5066, Low Income Taxpayer Clinic Program Report (Rev. 11-2021).
101 Pub. 5066, Low Income Taxpayer Clinic Program Report 24 (Nov. 2021)
102 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-708A. Inventory pending as of September 30, 2021. Does not include cases on appeal or declaratory judgments. Totals may not add up to 100 percent due to rounding.
103 *Id.*
104 Administrative Order 2019-01 (U.S. Tax Court, May 10, 2019).
105 A practitioner who is admitted to practice before the Court and in good standing can enter an appearance in a case by signing and filing a petition or by filing an entry of appearance form. *See* Rule 24, Tax Court Rules of Practice and Procedure, https://www.ustaxcourt.gov/resources/practitioner/lea_faq.pdf.
106 *See* Administrative Order 2020-03 (U.S. Tax Court, June 19, 2020).
107 IRS, Counsel Automated Tracking System, TL-711.
108 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-708D, TL-709. Inventory pending as of September 30, 2021. Does not include cases on appeal or declaratory judgments.
109 On the first morning of the trial session, a Tax Court employee, the trial clerk, will announce the name of (call) each case that has not been settled. This process is known as a calendar call.
110 *See* National Taxpayer Advocate 2018 Annual Report to Congress 295-306 (Most Serious Problem: *Pre-Trial Settlements in the U.S. Tax Court*: *Insufficient Access to Available* Pro Bono *Assistance Resources Impedes Unrepresented Taxpayers From Reaching a Pre-Trial Settlement and Achieving a Favorable Outcome*).
111 *See* IRS, IR-2020-87, IRS Retools Settlement Days Program in Response to COVID-19 Pandemic; Allows Unrepresented Taxpayers to Settle Their Cases Virtually and Reach Finality (May 5, 2020), https://www.irs.gov/newsroom/irs-retools-settlement-days-program-in-response-to-covid-19-pandemic-allows-unrepresented-taxpayers-to-settle-their-cases-virtually-and-reach-finality.
112 IRS, IR-2021-93, IRS Office of Chief Counsel's First National Virtual Settlement Month Successful in Resolving Almost 150 Tax Court Cases (Apr. 26, 2021), https://www.irs.gov/newsroom/irs-office-of-chief-counsels-first-national-virtual-settlement-month-successful-in-resolving-almost-150-tax-court-cases.
113 *See* IRS, IR-2021-61, IRS Office of Chief Counsel Unveils National Virtual Settlement Days Effort This Year to Reach More Taxpayers in More Parts of the Nation (Mar. 18, 2021), https://www.irs.gov/newsroom/irs-office-of-chief-counsel-unveils-national-virtual-settlement-days-effort-this-year-to-reach-more-taxpayers-in-more-parts-of-the-nation. *See also* Erin Collins, March Is IRS's National Settlement Month for Unrepresented Taxpayers With a Tax Court Docketed Case, National Taxpayer Advocate Blog (Feb. 5, 2021), https://www.taxpayeradvocate.irs.gov/news/nta-blog-march-is-irss-national-settlement-month-for-unrepresented-taxpayers-with-a-tax-court-docketed-case/.
114 *See* IRS, IR-2021-93, IRS Office of Chief Counsel's First National Virtual Settlement Month Successful in Resolving Almost 150 Tax Court Cases (Apr. 26, 2021), https://www.irs.gov/newsroom/irs-office-of-chief-counsels-first-national-virtual-settlement-month-successful-in-resolving-almost-150-tax-court-cases.
115 *Id.*
116 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2021. Does not include cases on appeal and declaratory judgments.
117 IRS, Pub. 3583, IRS: CI Annual Report 2021 (Rev. 11-2021), at 5-6, https://www.irs.gov/pub/irs-pdf/p3583.pdf.
118 *Id.*
119 *Id.* at 4.
120 United States Courts' 2020 Federal Judicial Caseload Statistics, Table D-2, U.S. District Courts – Criminal Defendants Commenced (Excluding Transfers), by Offense. Data is from the 12-month period between March 31, 2019, and March 31, 2020.

121 United States Courts' 2020 Federal Judicial Caseload Statistics, Table D-4, U.S. District Courts–Criminal Defendants Disposed of, by Type of Disposition and Offense. Data is from the 12-month period between March 31, 2019, and March 31, 2020.
122 If a taxpayer receives a notice of deficiency and wishes to have the Tax Court hear the case, he or she must file a petition with the Tax Court within 90 days of the date that the notice of deficiency was mailed (or 150 days if the notice of deficiency is addressed to a person outside the United States). *See* IRC § 6213. Note that if the last day of the 90 days (or 150 days) falls on a Saturday, Sunday, or legal holiday, the petition will be timely if filed on the next day which is not a Saturday, Sunday, or legal holiday. *See* IRC § 7503. See also IRC §§ 6320 and 6330 for the timeframes in which to petition the Tax Court for review of a CDP notice of determination.
123 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-708B. This includes declaratory judgments. The unreported category includes cases where no statutory notice was attached to the petition.
124 *Id.*
125 *See* Most Serious Problem: *Correspondence Audits*: *Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences for Taxpayers, the IRS, TAS, and the Tax Court*, *supra*.
126 *See generally* IRC § 7422(a).
127 IRM 4.10.11.2(1), Claims for Refund (Sept. 4, 2020).
128 IRM 4.10.11.2.16(1), Claims for Refund – Post Examination Appeal Rights (Sept. 4, 2020).
129 *Id.* IRM 4.10.11.2.16(2), Claims for Refund – Post Examination Appeal Rights (Sept. 4, 2020). For a discussion of the refund jurisdiction of the district courts and the U.S. Court of Federal Claims, see Chief Counsel Directives Manual (CCDM) 34.1.1, Jurisdiction of the District Courts (Apr. 22, 2021), and CCDM 34.2.1, Jurisdiction of the Court of Federal Claims (Aug. 11, 2004).
130 *Flora v. United States*, 362 U.S. 145 (1960).
131 *See Flora v. United States*, 362 U.S. 145 (1960), *reh'g denied*, 362 U.S. 972 (1960). *See* National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 96-98 (*Repeal* Flora: *Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*); National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 94-95 (*Expand the Tax Court's Jurisdiction to Hear Refund Cases and Assessable Penalties*).
132 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-712. This includes declaratory judgments.
133 *Id.*
134 When identifying the ten most litigated issues, TAS analyzed federal decisions issued during the period beginning on June 1, 2020, and ending on May 31, 2021. For purposes of this section, we generally used the same period. However, we included one case currently at the Supreme Court that we think will be significant when decided.
135 *Boechler P.C. v. Comm'r*, 967 F.3d 760 (8th Cir. 2020), *cert. granted* (No. 2020-1472) (Sept. 30, 2021).
136 *Id.*
137 At least six *amicus curiae* briefs have been filed by interested parties in *Boechler*. *See Boechler, P.C. v. Comm'r of Internal Revenue*, SCOTUSBLOG, https://www.scotusblog.com/case-files/cases/boechler-p-c-v-commissioner-of-internal-revenue/ (last visited Dec. 10, 2021).
138 *CIC Services v. IRS*, 141 S. Ct. 1582 (U.S. May 17, 2021), https://www.supremecourt.gov/opinions/20pdf/19-930_d1o3.pdf.
139 *Id.*
140 IRC § 7421(a).
141 *CIC Services v. IRS*, 141 S. Ct. 1582, 1588 (U.S. May 17, 2021).
142 *CIC Services v. IRS*, 2017 U.S. Dist. WL 5015510 (E.D. Tenn., Nov. 2, 2017), *aff'd*, 925 F.3d 247 (6th Cir. 2019).
143 *CIC Services v. IRS*, 141 S. Ct. 1582, 1592 (U.S. May 17, 2021).
144 National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 96-98 (*Repeal* Flora*: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*).
145 *See* Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in TBOR are also codified in the IRC. *See* IRC § 7803(a)(3).
146 *Grajales v. Comm'r*, 156 T.C. 55 (Jan. 25, 2021), *appeal docketed*, No. 21-01420 (2d Cir. June 4, 2021).
147 National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 73-74 (*Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*).
148 *See* TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in TBOR are also codified in the IRC. *See* IRC § 7803(a)(3).
149 *Rowen v. Comm'r*, 2021 WL 1197663 (Mar. 30, 2021).
150 *Id.*
151 IRC § 7345.
152 *Rowen v. Comm'r*, 2021 WL 1197663 (Mar. 30, 2021).
153 *Beland v. Comm'r*, 2021 WL 777184 (T.C. Mar. 1, 2021).
154 IRC § 6751(b)(1).
155 *Beland v. Comm'r*, 2021 WL 777184, at 2-5 (T.C. Mar. 1, 2021).
156 *See* TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in TBOR are also codified in the IRC. *See* IRC § 7803(a)(3).
157 *Fowler v. Comm'r*, 155 T.C. 106 (Sept. 9, 2020).
158 *See Beard v. Comm'r*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986).
159 *Fowler v. Comm'r*, 155 T.C. 106, 114 (Sept. 9, 2020).
160 *Fowler v. Comm'r*, 155 T.C. 106, 113-116 (Sept. 9, 2020).