

STRENGTHEN TAXPAYER RIGHTS IN JUDICIAL PROCEEDINGS

Legislative Recommendation #47

Expand the Tax Court's Jurisdiction to Hear Refund Cases and Assessable Penalties

PRESENT LAW

IRC § 7442 defines the jurisdiction of the U.S. Tax Court. IRC § 6212 requires the IRS to issue a “notice of deficiency” before assessing certain liabilities. When the IRS issues a notice of deficiency, IRC § 6213 authorizes the taxpayer to petition the U.S. Tax Court within 90 days (or 150 days if the notice is addressed to a person outside the U.S.) to review the IRS determination.

If a taxpayer does not receive a notice of deficiency and seeks judicial review of an adverse IRS determination, the taxpayer must file suit in a U.S. district court or the U.S. Court of Federal Claims. This situation generally arises when the taxpayer is claiming a refund of tax that has been paid. Taxpayers solely seeking refunds cannot litigate their cases in the Tax Court.

REASONS FOR CHANGE

Due to the tax expertise of its judges, the Tax Court is often better equipped to consider tax controversies than other courts. It is also more accessible to less knowledgeable and unrepresented taxpayers than other courts because it uses informal procedures, particularly in disputes that do not exceed \$50,000. Another benefit is that taxpayers are generally offered the option of receiving free legal assistance from a Low Income Taxpayer Clinic or *pro bono* representative. In most instances, the Tax Court is the least expensive and best forum for low-income taxpayers to get their day in court.

Under current law, taxpayers who owe tax, receive a notice of deficiency, and wish to litigate a dispute with the IRS can file a petition in the Tax Court, while taxpayers who have paid their tax and are seeking a refund must sue for a refund in a U.S. district court or the U.S. Court of Federal Claims for a judicial determination. The National Taxpayer Advocate recommends that all taxpayers be given the option to litigate their tax disputes in the Tax Court without regard to the payment or nonpayment of the underlying tax.

Two examples will illustrate the benefits of this approach:

- Assume a taxpayer files a return that reflects additional tax due of \$3,000, but the taxpayer cannot afford to make payment. Shortly after filing his original return, his preparer discovers an error, and the preparer files an amended return for the taxpayer showing a tax liability of \$4,000 less (*i.e.*, eliminating the \$3,000 liability and generating a refund of \$1,000 of withholding taxes paid). The IRS denies the claim. Under current law, the taxpayer could not go to Tax Court because there is no deficiency. To litigate his refund claim, the taxpayer would have to pay the \$3,000 liability to get into a U.S. district court or the U.S. Court of Federal Claims to pursue his \$4,000 refund claim. This taxpayer would be unlikely to file suit because of the greater cost and need to retain an attorney to litigate in the refund courts.
- Assume the IRS imposes assessable penalties of \$20,000. Because no notice of deficiency has been issued, this case, too, could not be brought in the Tax Court under existing law. Again, the taxpayer would have to pay the higher court fees and would probably have to retain an attorney to dispute the assessment. If the taxpayer could bring her case in the Tax Court, a judge with tax expertise would hear the case and the Tax Court's simplified procedures might allow the taxpayer to represent herself. This

may make the difference between the taxpayer having her day in court or agreeing to an assessment simply because the costs of contesting it are too great.

By expanding the Tax Court's jurisdiction, Congress can give all taxpayers a realistic opportunity to obtain judicial review of adverse IRS liability determinations, without regard to their ability to pay.

RECOMMENDATION

- Amend IRC §§ 7442 and 7422 to give the Tax Court jurisdiction to determine liabilities in refund suits to the same extent as the U.S. district courts and the U.S. Court of Federal Claims, without regard to how much of the liability has been paid.¹

¹ For more detail, see Legislative Recommendation: *Repeal Flora and Expand the Tax Court's Jurisdiction, Giving Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can, infra.*