

STRENGTHEN TAXPAYER RIGHTS IN JUDICIAL PROCEEDINGS

Legislative Recommendation #43

Expand the U.S. Tax Court's Jurisdiction to Hear Refund Cases

SUMMARY

- *Problem:* For most taxpayers, the U.S. Tax Court is the optimal court in which to challenge an adverse IRS decision because payment is not a requirement for jurisdiction, the judges possess specialized tax expertise, and taxpayers can represent themselves more easily than in other federal courts. However, taxpayers generally may litigate their tax liabilities in Tax Court only when the IRS determines a taxpayer owes more tax and issues a notice of deficiency. Taxpayers who are solely seeking refunds because they believe they overpaid their tax are barred from the Tax Court and must litigate their claims in other less user-friendly and more costly federal courts.
- *Solution:* Expand the Tax Court's jurisdiction to determine tax liabilities and refunds in refund cases.

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(a) 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 United States) 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 pay the tax, penalty, or interest and 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, penalty, or interest that has been paid. Taxpayers solely seeking refunds of monies already paid 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 offers simplified and less formal procedures, particularly for disputes that do not exceed \$50,000. Another benefit is that low-income taxpayers representing themselves 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 have their day in court.

Under current law, taxpayers who receive a notice of deficiency and wish to challenge the IRS's proposed adjustment 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 to obtain a judicial determination.

Example: A taxpayer files a return that reflects a tax liability of \$15,000. The taxpayer had \$12,000 of withholding and pays an additional \$3,000 with the return. Shortly after filing the original return, the taxpayer's preparer discovers an error, and the taxpayer files an amended return showing a tax liability of \$11,000 and claiming a refund of \$4,000. The IRS denies the claim. Under current law, the taxpayer cannot go to Tax Court because there is no deficiency (*i.e.*, the IRS has not determined that any additional tax is due). To pursue the \$4,000 refund claim, the taxpayer will have to file a refund suit in a U.S. district court or the U.S. Court of Federal Claims. This law harms taxpayers because a refund suit is a more formal court proceeding that involves greater cost and generally requires representation by an attorney.

The National Taxpayer Advocate recommends that all taxpayers bringing refund suits be given the option to litigate their tax disputes in the Tax Court. By expanding the Tax Court's jurisdiction, Congress can give all taxpayers a better opportunity to obtain judicial review of adverse IRS liability determinations.

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.¹

¹ For a related recommendation that would allow taxpayers to challenge assessable penalties in the Tax Court, see *Provide That Assessable Penalties Are Subject to Deficiency Procedures*, *supra*. Based on existing law and procedures, the IRS Office of Chief Counsel represents the government in Tax Court cases, and the Justice Department's Tax Division represents the government in U.S. district court and the U.S. Court of Federal Claims cases. If the Tax Court's jurisdiction is expanded and some cases shift toward the Tax Court, the number of attorneys representing the government in each agency may require adjustment.