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Vital Briefing

Tax Court authority, limitations under consideration by Congress

By Karen Servidea, J.D.

Several changes to the authority and limitations of the Tax Court are being considered by Congress in the form of H.R. 5349. Known as "The Tax Court Improvement Act," the proposed legislation would authorize the use of third-party subpoenas in the Tax Court for documents outside of hearings and expand the types of cases that may be assigned to and decided by special trial judges to include any proceeding upon the consent of the parties. The bill would also empower special trial judges to punish for contempt of court and make existing judicial disqualification standards apply to Tax Court judges and special trial judges. Finally, the draft law would authorize the Tax Court to equitably toll the period for filing a petition for redetermination of a deficiency.

The bill, which was co-sponsored by Representative Nathaniel Moran (R-TX) and Representative Terri A. Sewell (D-AL), was passed by the House of Representatives in December. It is now pending in the Senate, where it has been referred to the Committee on Finance.

The Tax Court's role and perceived inefficiencies. The Tax Court is a federal court established by Congress under Article I of the Constitution. The court adjudicates a variety of types of tax cases, including controversies between taxpayers and the IRS arising out of deficiencies in tax. Unlike other federal courts, the Tax Court is a prepayment forum: A taxpayer may challenge a deficiency in the Tax Court without first paying the contested liability. By contrast, while federal district courts and the United States Court of Federal Claims also have jurisdiction over tax disputes, to invoke those courts' authority, a taxpayer generally must pay the tax first and then sue for a refund.

Key Takeaways

- The Tax Court Improvement Act would:
  - Enable the Tax Court to sign subpoenas to obtain documents from third parties outside of hearings;
  - Empower special trial judges to (1) hear and decide any proceeding upon the consent of the parties and (2) punish for contempt of the court;
  - Subject Tax Court judges and special trial judges to the same disqualification standards that apply to most federal judges; and
  - Provide the Tax Court with jurisdiction to equitably toll the period of limitations for filing a petition for redetermination of a deficiency.

The Tax Court's availability as a prepayment forum, as well as other factors, such as the court's tax expertise, makes it a popular choice for taxpayers seeking judicial resolution of tax disputes. According to the National Taxpayer Advocate, in fiscal year 2024, the Tax Court adjudicated 97% (23,468 of 24,136 cases) of all tax-related litigation (excluding cases on appeal and declaratory judgments).

As its name indicates, the pending legislation reflects the view that there nevertheless is room for improvement at the Tax Court. In that regard, in its report recommending passage of the act, the House Committee on Ways and Means identified various "inefficiencies in the Tax Court structure that lead to the following problems":

- "[l]imited pre-trial discovery powers causing unnecessary delays in resolutions of cases";
- "Tax Court Judges being held to different qualification standards than other Federal judges";
- "[i]n some cases, a special trial judge may not render the Tax Court's decision or be allowed to order punishment for contempt of court, further delaying resolutions of cases"; and
- "the Court may pause the deadline for filing a petition in certain cases," but "it's not clear whether the Tax Court has the authority to pause deadlines in other cases on equitable grounds."

As explained in the House report, the provisions of the bill aim to remedy such problems.

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Authorization of subpoenas before hearings. The bill would amend section 7456(a) of the Internal Revenue Code (IRC), which deals with the administration of oaths and procurement of testimony by the Tax Court. Under the current provision, the Tax Court has the authority to require by subpoena the production of documents and other evidence "at any designated place of hearing." IRC § 7456(a)(1). The Tax Court has interpreted that language to mean that it may sign a subpoena for the production of documents from a third party only at a scheduled hearing or deposition. Thus, the Tax Court rule concerning subpoenas states that "[a]ny command to produce documents . . . must be included in a subpoena commanding attendance at a deposition, hearing, or trial." Tax Court Rule 147(a)(1)(B).

The House report on The Tax Court Improvement Act explains that, due to the foregoing limitation, Tax Court litigants sometimes must request and attend pretrial conferences solely to obtain records and evidence, which may result in trials of cases that might otherwise have settled. The proposed law would remove the limitation, specifically empowering the court to sign subpoenas for the production of documents and other materials for purposes of discovery or for use as evidence without mention of a designated place of hearing.

Authorization of special trial judges to hear additional cases and address contempt. Judges of the Tax Court are appointed by the President with the advice and consent of the Senate. See IRC § 7443. In addition to regular Tax Court judges, however, Congress has authorized the chief judge of the Tax Court to appoint what are called "special trial judges" and to assign to them six specific types of cases – for example, declaratory judgment actions and collection due process cases – as well as "any other proceeding which the chief judge may designate." IRC § 7443A. Currently, the law permits a special trial judge to make the decision of the Tax Court solely in proceedings in the first six categories and not in "any other proceeding" designated by the chief judge. In the latter type of proceeding, a special trial judge may make a recommendation, but it must be adopted by a Tax Court judge to become the decision of the court.

The proposed legislation would add another category of proceeding that may be assigned to a special trial judge – namely, "upon the consent of the parties, and pursuant to rules promulgated by the Tax Court, any proceeding not described [in the first six categories]." The bill would also permit a special trial judge to render the decision of the Tax Court in such a proceeding. As explained in the House report, the goal of the proposal is for special trial judges to share more of the Tax Court's workload, thus increasing the court's productivity and efficiency.

In addition, the bill would amend IRC § 7443A to authorize special trial judges to punish for contempt of the authority of the Tax Court as provided in IRC § 7456(c). While the law currently gives such power to the Tax Court, it does not specifically state that special trial judges may exercise the power. Under the proposal, the sentence imposed by a special trial judge for contempt could not exceed the penalties for a Class C misdemeanor as set forth in 18 U.S.C. §§ 3571(b)(6) and 3581(b)(8).

Disqualification of judge or special trial judge. The proposal would also require Tax Court judges and special trial judges to disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, as well as in five specifically enumerated situations (*e.g.*, where the judge knows of having a financial interest in the subject matter in controversy). The disqualification requirements, and related provisions, are set forth in an existing statute (28 U.S.C. § 455) that applies to justices, judges, and magistrate judges of the United States, which, by definition does not include Tax Court judges. The legislation would add a new provision to the Internal Revenue Code that would specifically apply the statute to judges and special trial judges of the Tax Court.

Clarification of Tax Court jurisdiction to apply equitable tolling in deficiency cases. Finally, the bill would amend IRC § 7451(b) to authorize the Tax Court to toll the time period for filing a petition for redetermination of a deficiency when the court finds "based on the facts and circumstances that equity warrants such tolling." After the IRS sends a taxpayer a notice of deficiency of income tax, estate tax, or certain types of excise taxes, the taxpayer generally has 90 days (150 days if the notice is addressed to a person outside of the United States) to petition the Tax Court to contest the deficiency. There are several statutory exceptions whereby the 90- (or 150-) day period is extended (*e.g.*, where the deadline specified in the notice of deficiency is after the statutory deadline, see IRC § 6213(a), or if the taxpayer is precluded from filing a petition due to a bankruptcy case, see IRC § 6213(f)(1)).

> *"The proposed legislation would . . . explicitly provid[e] the Tax Court with jurisdiction to toll the deadline for filing a deficiency petition when it determines 'based on the facts and circumstances that equity warrants such tolling.'"*

Traditionally, the Tax Court and United States courts of appeal have held that the

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timely filing of a petition is a jurisdictional prerequisite to the Tax Court's jurisdiction in a deficiency proceeding and thus that the deadline is not subject to equitable tolling. In a 2022 decision, however, the Supreme Court held that the deadline for filing a Tax Court petition in a *collection due process case* is not jurisdictional and is subject to equitable tolling. Although the case did not consider the deadline for commencing a *deficiency proceeding*, the Supreme Court's analysis, which focused on whether statutory text clearly mandates a jurisdictional reading, might support a holding that the latter deadline is not jurisdictional.

Since that case was decided, the Tax Court reaffirmed its prior precedent that the deadline for filing a deficiency petition is jurisdictional and not subject to equitable tolling. To the contrary, however, the Courts of Appeals for the Second Circuit, the Third Circuit, and the Sixth Circuit have held that the deadline is not jurisdictional and may be equitably tolled. In general, the Tax Court follows the precedent of the court of appeals to which a case is appealable. Thus, whether equitable tolling of the deadline to file a deficiency petition is available under current law depends on where a taxpayer resides (which, unless the parties stipulate otherwise, dictates the court of appeals to which a case is appealable). The proposed legislation would resolve the foregoing discrepancy, explicitly providing the Tax Court with jurisdiction to toll the deadline for filing a deficiency petition when it determines "based on the facts and circumstances that equity warrants such tolling."

The legislation does not elaborate on when equitable tolling would be appropriate, leaving it to the Tax Court and appellate courts to develop applicable standards through caselaw. Offering some guidance, however, the House report states that "the Committee desires the Tax Court to have jurisdiction over late-filed deficiency petitions if the late filing occurs due to circumstances beyond the petitioner's control and despite the petitioner's reasonable diligence."

What's next. The fate of The Tax Court Improvement Act remains to be seen. As noted above, the bill is currently pending before the Senate Finance Committee. If the law is enacted, practitioners and taxpayers litigating in the Tax Court will need to familiarize themselves with the changes, which, while not revolutionary, will affect proceedings in that forum.

Comparison: Current Rule vs. Changes Proposed in The Tax Court Improvement Act

	Current Rule	Changes Proposed in The Tax Court Improvement Act
Third-party document subpoenas	Tax Court may sign only for production at designated place of hearing	Removes limitation to designated place of hearing
Special trial judges (STJs): assignments and decisions	Six types of proceedings, plus any proceeding designated by chief judge, may be assigned to STJ; STJ may make decision of Tax Court only in the first six types of proceedings	Adds to types of proceedings that may be assigned to, and decided by, STJ any proceeding not described in the first six categories upon the consent of the parties and pursuant to Tax Court rules
Special trial judges (STJs): contempt authority	Tax Court authorized to punish for contempt of court, but power not specifically provided to STJs	Authorizes STJs to punish for contempt of court, limited to Class C misdemeanor penalties
Disqualification of judges and special trial judges (STJs)	Judges and STJs not subject to judicial disqualification rules	Applies existing judicial disqualification rules to judges and STJs
Equitable tolling of period of limitations to file petition to redetermine deficiency	Historically, unavailable, but within past three years three courts of appeals have decided that it is available	Authorizes Tax Court to toll period when equity so warrants

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