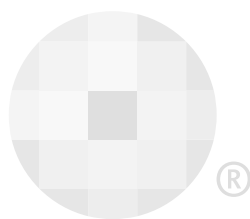


Court Jurisdiction: It's Not Just for Law Professors

By A. Lavar Taylor

Lavar Taylor discusses the statutes governing the jurisdiction of the four key courts that have jurisdiction over almost all civil tax disputes at the trial level (*i.e.*, the Tax Court, District Courts, the U.S. Court of Federal Claims and Bankruptcy Courts) and also examines some of the case law that interprets these jurisdictional provisions.



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I. Introduction

The ability of federal courts to hear tax-related (civil) cases is an important part of our tax compliance system. Federal courts are available to taxpayers and third parties seeking to review various administrative civil actions taken by the IRS whenever those taxpayers and third parties believe the actions taken by the IRS are incorrect. The ability of taxpayers and third parties to seek judicial review of the actions taken by the IRS in front of an independent judge helps prevent the IRS from acting in an improper manner. Human nature being what it is, most persons who know that their decisions can be reviewed by an independent judge will act with more care and consideration than if they know that their decisions cannot be reviewed by an independent judge. Thus, courts are not only important for the cases they decide, but also for acting as a brake on the power of the Executive Branch of the government, in which the IRS is found.

Federal courts are also available to the IRS whenever the IRS determines that it is necessary to take civil enforcement actions against taxpayers and third parties. (Tax-related criminal court proceedings are beyond the scope of this article.)

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There are four key courts which have jurisdiction over almost all civil tax disputes at the trial level: the Tax Court, District Courts, the U.S. Court of Federal Claims, and Bankruptcy Courts. Each of these courts exercises jurisdiction over cases in different ways. But these courts must all have jurisdiction over a matter before they can decide a case on the merits.

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Understanding the circumstances under which courts have jurisdiction is often extremely important to practitioners, even when tax disputes are only being handled at the administrative level. The last thing a practitioner wants to do is to inadvertently deprive their client of the ability to seek judicial review of a matter in the future if it turns out that the client wants to challenge a decision of the IRS in court. Clients also need to understand how the judicial process works so that they can make more informed decisions on how to proceed. Understanding the circumstances under which courts have jurisdiction over tax disputes is the first, and arguably most important, step in the process of understanding how the judicial process works. If a court has no jurisdiction over a matter, it is simply not possible for a court to review the actions taken by the IRS.

This article discusses the statutes governing the jurisdiction of these four key courts and some of the case law which interprets these jurisdictional provisions. An effort has been made to discuss jurisdictional issues which have a practical effect on the every-day practice of all tax practitioners, whether they venture into court or merely handle administrative disputes.

II. The Trial Courts and the Bases for Their Jurisdiction

A. The Tax Court

The U.S. Tax Court hears more tax-related cases than any other court. This Court is an Article I Court, established by Congress in Code Sec. 7441 of the Internal Revenue

Code (“the Code”). Because the Tax Court is established by statute, the jurisdiction of the Tax Court is likewise established by Congress. Whether or not the Tax Court has jurisdiction to hear a particular matter is a matter of statutory construction.¹

1. Types of Cases Over Which the Tax Court Can Have Jurisdiction—A Summary

There are many different sections of the Code which grant jurisdiction to the Tax Court to decide tax disputes. Those Code sections include:

- 6015—Jurisdiction to review denials of claims for relief of joint liability
- 6110(f)—Jurisdiction to decide disputes regarding disclosure under Code Sec. 6110
- 6212/6213—Jurisdiction to review a Notice of Deficiency
- 6226—Jurisdiction to review Notice of Final Partnership Administrative Adjustment under TEFRA
- 6228—Jurisdiction to review denial of Administrative Adjustment Request Under TEFRA
- 6234—Jurisdiction to Issue Declaratory Judgment Regarding Oversheltered Returns
- 6247—Jurisdiction to Review Partnership Adjustment
- 6252—Jurisdiction to Review Failure to Allow Administrative Adjustment Request in Full
- 6330—Jurisdiction to Review Determination Made in Collection Due Process Appeals Brought Under Code Secs. 6320 and 6330
- 6404(h)—Jurisdiction to Review Denial of Claim to Abate Interest under Code Sec. 7404
- 6901—Jurisdiction to Review Transferee Notices of Deficiency
- 7428—Jurisdiction to Issue Declaratory Judgment Regarding Status and Classification of Tax Exempt Organizations Under Code Sec. 501(c)(3), Private Foundations, and Certain Other Organizations
- 7429(b)—Jurisdiction to Review Jeopardy Assessments, *etc.*
- 7430(f)(2)—Jurisdiction to Review Denial of a Request for Administrative Costs
- 7436—Jurisdiction to Review Determinations Regarding Worker Classification Disputes, Including Denials of Code Sec. 530 Relief
- 7476—Jurisdiction to Issue Declaratory Judgments Relating to Qualification of Certain Retirement Plans
- 7477—Jurisdiction to Issue Declaratory Judgments Relating to Value of Certain Gifts
- 7478—Jurisdiction to Issue Declaratory Judgments Relating to Status of Certain Governmental Obligations

- 7479—Jurisdiction to Issue Declaratory Judgments Relating to Eligibility of Estate with Respect to Installment Payments Under Code Sec. 6166
- 7623(b)—Jurisdiction to Review Reduction or Denial of Whistleblower Award

We now discuss in greater detail the various types of jurisdiction exercised by the Tax Court.

2. Deficiency Jurisdiction

The most common type of litigation in the Tax Court is deficiency litigation to determine whether a taxpayer owes a deficiency in income, estate or gift taxes. One of the most important aspects of the Tax Court's deficiency jurisdiction is that payment of taxes which are in dispute is not a prerequisite to litigating in the Tax Court. That fact, along with the informal rules of discovery in Tax Court, helps make the Tax Court the most popular forum for litigating tax disputes.

For the Tax Court to have jurisdiction to review the IRS's determination of a deficiency, the IRS must issue a valid notice of deficiency, and the taxpayer must file a timely petition with the Tax Court, normally within 90 days of the date of the notice of deficiency.² If the notice of deficiency is addressed to a taxpayer outside the United States, the taxpayer has 150 days from the date of the notice of deficiency to file a Tax Court petition.³

If the IRS has failed to issue a valid notice of deficiency, a party may not confer jurisdiction on the Tax Court by merely filing a petition with the Court.⁴ A purported notice of deficiency may not be sufficient to confer jurisdiction on the Tax Court if the purported notice indicates that the IRS failed to "determine" a deficiency.⁵

If a taxpayer fails to comply with the statutory requirements established by Congress for the Court to obtain jurisdiction, such as by filing a petition more than 90 days after the date of the notice of deficiency or by mailing the petition to the wrong address, the Tax Court must dismiss a case for lack of jurisdiction.⁶

While the timely mailing is timely filing rules of Code Sec. 7502 apply to the filing of Tax Court petitions, a taxpayer who fails to obtain proof of mailing by a certified mail receipt runs the risk that their case will be dismissed for lack of jurisdiction.⁷

The Tax Court always has jurisdiction to decide the scope of its own jurisdiction.⁸ In situations where the IRS has issued a purported notice of deficiency which the taxpayer believes was not valid because it was not sent to the taxpayer's "last known address," the taxpayer may file a Tax Court petition seeking to challenge the validity of the notice of deficiency. The Tax Court will then either dismiss the petition for failure to timely file a petition or

on the grounds that the IRS failed to issue a valid notice of deficiency.⁹

The Tax Court owes no deference to the IRS in deciding the scope of its own jurisdiction. Thus, if the IRS has issued regulations or other guidance which purports to define the scope of the Tax Court's jurisdiction, the Tax Court will not defer to the regulations or the IRS guidance in question.¹⁰

Where a petition is filed in response to a notice of deficiency and is filed while the automatic stay imposed by section 362(a) of the Bankruptcy Code is in effect, the petition must be dismissed for lack of jurisdiction, since the stay bars the filing of a Tax Court petition for pre-bankruptcy tax years.¹¹ But Code Sec. 6213(f) suspends the time for filing a petition with the Tax Court while the automatic stay is in effect, plus an additional 60 days.

If a corporation files a petition and, as of the date of the petition, the corporate powers were suspended by the state of incorporation, the Tax Court lacks jurisdiction over the petition. That is so even if the corporation is reinstated after the petition is filed.¹²

3. TEFRA Jurisdiction

The Tax Court has jurisdiction over petitions filed in response to the issuance of a Notice of a Final Partnership Administrative Adjustment ("FPAA") by the IRS.¹³ During the 90 period after the issuance of an FPAA, only a Tax Matters Partner may file a Tax Court petition. If the Tax Matters Partner fails to file a Tax Court Petition within this 90-day period, any other partner who is a "notice partner" may file a Tax Court petition within 150 days after the date of the FPAA. Failure to timely file a petition means that the Court lacks jurisdiction over the case.¹⁴

The scope of the Tax Court's jurisdiction in TEFRA partnership cases is limited to determining "partnership items." Determining the scope of the Tax Court's jurisdiction in TEFRA cases, including what is a partnership item and what is an "affected item"—which can only be addressed by the Court when the IRS issues a regular notice of deficiency to a partner after the conclusion of a TEFRA partnership proceeding—can be very difficult.¹⁵ The various jurisdictional issues that arise in TEFRA partnership proceedings in Tax Court require careful research and are not likely to be resolved any time soon.

The Tax Court also has jurisdiction over petitions filed to review denials of Administrative Adjustment Requests (AAR) or where the IRS has failed to act on an AAR.¹⁶ Such a petition must be filed not less than six months after the AAR is submitted to the IRS and not more than two years after the AAR is submitted to the IRS.

4. Collection Due Process Jurisdiction

In order for the Tax Court to have jurisdiction in a Collection Due Process case, the IRS must have issued a “determination” under Code Sec. 6330 and the taxpayer must have filed a petition in Tax Court within 30 days of the date of the determination.¹⁷ In order for there to be a valid “determination” which triggers the right to file a Tax Court petition, the taxpayer must have requested on a timely basis a hearing in response to either a Notice of Filing of Federal Tax Lien Notice issued under Code Sec. 6320 or a Notice of Intent to Levy under Code Sec. 6330.¹⁸

The deadline for filing a request for hearing with the IRS in response to a notice issued under Code Sec. 6330 is 30 days after the date on which the Notice of Intent to Levy is sent to the taxpayer’s last known address.¹⁹ The deadline for filing a request for hearing with the IRS in response to a Notice of Filing of Federal Tax Lien Notice is more complicated. It is 30 days after the close of the deadline for the IRS to send the Notice of Filing of Federal Tax Lien Notice under Code Sec. 6320(a)(2). That deadline is five business days after the day of the filing of the lien notice.

In practice, the notice sent to taxpayers under Code Sec. 6320(a) contains a date by which the IRS will consider the request for a hearing to be timely. Requests for a hearing made on or before the date in the notice are considered timely by the IRS. In theory, it is possible that the deadline for requesting a hearing could be later than the date stated on the notice sent by the IRS to the taxpayer. That is because the actual filing date of the lien notice might be delayed by various events, including possible delays in actual filing by the office in which the lien notice is filed. In practice, filing a request for hearing with the IRS under Code Sec. 6320(a) should be done no later than the date set forth in the notice. Failure to request a hearing by that date runs the risk that the Tax Court will lack jurisdiction to review the decision by the Office of Appeals.

Taxpayers should raise in the administrative Collection Due Process appeal all issues which the taxpayer wishes the Office of Appeals to consider. Failure to raise a particular issue during the administrative appeal normally will preclude the Tax Court from addressing that particular issue if the issue is raised for the first time in Tax Court. In the case of issues relating to collection alternatives, the Tax Court has indicated that there might be some limited circumstances under which the Court might consider a new issue not raised at that administrative level.²⁰ But that will be the exception, not the rule.²¹

With respect to raising the merits of the underlying liability, a failure to raise the merits of the underlying liability during the administrative appeal means that the

Tax Court will lack jurisdiction to consider the merits of the underlying liability.²² Even if the taxpayer raises the merits of the underlying liability in the administrative Collection Due Process appeal, the taxpayer may not be allowed to raise the merits of the liability, however.

Code Sec. 6330(c)(2)(B) provides that the taxpayer may challenge the merits of the liability in a Collection Due Process appeal only if they “did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.” The Tax Court has held that this language precludes a taxpayer from challenging the underlying liability in a Collection Due Process case where the taxpayer previously requested that the liability (in that case a penalty) be abated for reasonable cause and the request was denied by the Office of Appeals.²³ The Tax Court’s holding has been publicly criticized.²⁴

The Court has interpreted this language to allow a taxpayer to challenge the merits of the liability where the taxpayer never received the notice of deficiency, even though the notice of deficiency was sent to the taxpayer’s last known address.²⁵ Taxpayers who receive a pre-assessment notice of a proposed Code Sec. 6672 penalty assessment may not raise the merits of the tax liability in a Collection Due Process appeal.²⁶

A failure to file a Tax Court petition within 30 days of the determination by the Office of Appeals will result in the Tax Court dismissing the petition for lack of jurisdiction. But if the taxpayer raised innocent spouse status or other issues where the Code provides for a period of time to petition the Tax Court of longer than 30 days from the date of the IRS decision, then the Tax Court may still have jurisdiction over a Collection Due Process case where the petition is filed more than 30 days after the Determination is issued by the Office of Appeals.²⁷ In that case the taxpayer filed a Collection Due Process appeal. They raised interest abatement under Code Sec. 6404 and innocent spouse status under Code Sec. 6015. The taxpayer filed a petition more than 30 days after determination under Code Sec. 6330. The Court held that it had no jurisdiction to review the determination generally because the Petition was untimely under Code Sec. 6330(d). But the Court held that it had jurisdiction to review request for abatement of interest under Code Sec. 6404 and possibly had jurisdiction to review denial of innocent spouse claim, since the petition was “timely” under Code Secs. 6404 and 6015.

A failure of the IRS to send a valid notice under Code Secs. 6320 and/or 6330 may deprive the Tax Court of jurisdiction.²⁸ But the Tax Court has held that, where the taxpayer filed a timely request for administrative hearing

in response to a Notice of Intent to Levy, and the IRS treated the request as untimely and thus did not issue a formal “determination,” the written decision of the Office of Appeals constituted a “determination” which triggered the right of the taxpayer to file a Tax Court petition under Code Sec. 6330(f).²⁹

In *L. Greene-Thapedi*,³⁰ the Court held that the payment of underlying tax liability deprived the Court of jurisdiction to determine the merits of the underlying tax liability, even though the dispute regarding the underlying tax liability remained alive after the payment of the amount owed.

In *D.D. Smith*,³¹ the Court held that, where a notice of determination is issued in violation of automatic stay imposed by Bankruptcy Code section 362(a), the petition must be dismissed for lack of jurisdiction because notice of determination was void. And in *C.L. Prevo*,³² the Court held that, where a bankruptcy petition was filed after the notice of determination was issued but before the Tax Court petition was filed, the petition had to be dismissed for lack of jurisdiction because it was filed in violation of the automatic stay. Because there is no statutory equivalent of Code Sec. 6213(f) which applies in a Collection Due Process context, the dismissal deprived the taxpayer of the right to judicial review of the Determination.

5. Innocent Spouse Jurisdiction

Innocent spouse relief refers to statutory relief from joint and several liabilities, which may be granted pursuant to Code Sec. 6015. The Tax Court has jurisdiction to review the denial of relief under Code Sec. 6015 in a normal “tax deficiency” case where a notice of deficiency is issued to the person claiming relief and a timely Tax Court petition is filed.

The Court also has jurisdiction to review “stand alone” claims for innocent spouse relief filed under subsections (c), (d) and (f) of Code Sec. 6015. This includes claims for relief from both understatements of tax and underpayment of tax. A claimant need not wait for the IRS to deny a claim to file a petition in Tax Court. If the IRS has failed to act on the claim within six months after the claim is filed, the person may file a Tax Court petition at any time thereafter, until the IRS formally denies relief in whole or in part. After the IRS formally denies a claim for relief in whole or in part, the person claiming relief must file a Tax Court petition within 90 days after the date on which the notice of denial is mailed to the claimant. A petition filed after this 90-day period will be dismissed for lack of jurisdiction.³³

Jurisdiction over all types of “stand alone” claims for relief was conferred on the Court *via* Code Sec. 6015(e)

(1) as amended by the Tax Relief and Health Care Act of 2006.³⁴ This amendment legislatively overruled a line of cases which had held that courts lacked jurisdiction to review “stand alone” claims for relief brought under subsection (f).

In innocent spouse cases, the Tax Court lacks jurisdiction to determine issues other than whether the petitioner is entitled to relief.³⁵

The last thing a practitioner wants to do is to inadvertently deprive their client of the ability to seek judicial review of a matter in the future if it turns out that the client wants to challenge a decision of the IRS in court.

The Tax Court lacks jurisdiction to rule on a taxpayers refund request when no deficiency notice was issued for the year in question.³⁶

If the IRS grants innocent spouse relief, the Tax Court does not have jurisdiction to review a petition filed by the nonelecting spouse which objects to the granting of relief.³⁷

In certain circumstances, Code Sec. 66 grants spouses relief from the community property income splitting requirements where separate returns are filed by residents of community property states. Unlike the situation with Code Sec. 6015 claims, Code Sec. 66 does not provide for jurisdiction permitting a taxpayer to file a stand-alone petition in response to a denial of a request for relief.³⁸ Thus, the Tax Court has jurisdiction to review the denial of a claim for relief under Code Sec. 66 only in those cases where it has jurisdiction as the result of the issuance of a valid notice of deficiency by the IRS, followed by a timely petition.

6. Worker Classification/Employment Tax Jurisdiction

Code Sec. 7436 governs the jurisdiction of the Tax Court over employment tax matters. Under the current version of the Code, if the IRS makes a “determination” (in connection with an audit) that one or more persons are “employees” of the party being audited for purposes of Subtitle C or that the party being audited is not entitled relief under Code Sec. 530 of the Revenue Act of 1978, and there is a “actual controversy” over that determination,

then the Tax Court has jurisdiction to review the correctness of the “determination.” That includes a review of the IRS’s determination of status of the worker(s) in question and a review of the amounts additional employment taxes which the IRS has determined are owed.³⁹

Until this year, most everyone believed that the Tax Court’s jurisdiction could only be invoked by filing a petition within 90 days after the IRS issued a Notice of Determination of Worker Classification (NDWC).⁴⁰ In *SECC Corp.*,⁴¹ however, the Tax Court, in a reviewed opinion, held that a “determination” which triggers the right of a taxpayer to file a Tax Court petition can be a written letter from the Office of Appeals which concludes that workers are employees and/or that the putative employer is not entitled to relief under Code Sec. 530. Under the rationale of this opinion, a Tax Court petition could be filed as early as the issuance of an audit report by the IRS.

The opinion effectively concluded that there is no outer time limit for filing a petition with the Court until the IRS sends a notice of its determination to the taxpayer by registered or certified mail, in which case the deadline for filing a petition is 90 days after the date of such notice.

The IRS strongly disagrees with the opinion in *SECC*.⁴² The IRS also takes the position that, where there are “dual status” workers, the IRS may assess additional employment taxes without following the procedures set forth in Code Sec. 7436. Since the *SECC* case involved “dual status” workers who were issued both Form W-2 and Form 1099, the Tax Court has rejected this position.

7. Whistleblower Jurisdiction

Pursuant to Code Sec. 7623(b)(4), the Tax Court has jurisdiction over an action for review of a whistleblower award with respect to information provided on or after December 20, 2006. Such an action must be brought within 30 days of the date of the whistleblower award determination. In order for a Whistleblower award to be given, the IRS must proceed with an administrative or judicial action based on the information provided by the whistleblower.

While the Court has jurisdiction to review the IRS determination in regards to the award (or denial of award) to the whistleblower, the Court’s jurisdiction does not allow the Court to force the IRS to proceed with an administrative or judicial action against the individual who had the whistle blown on them.⁴³ Further, in situations in which the IRS used information provided by the whistleblower both before and after December 20, 2006, the Tax Court has jurisdiction to review a whistleblower award.⁴⁴

The Tax Court has jurisdiction over *any* whistleblower determination, regardless of if the taxpayer fails to petition

the first determination, so long as the petition of the subsequent determination is filed timely.⁴⁵

8. Interest Abatement Jurisdiction

Pursuant to Code Sec. 6404, the Tax Court has jurisdiction over the IRS’s failure to abate interest so long as such action is brought within 180 days after the mailing of the IRS final determination. The IRS is not required to grant or deny a request for abatement of interest within a reasonable period of time, and the Court lacks jurisdiction until such a final determination is made, regardless of how long it takes.⁴⁶ Further, in order for jurisdiction to apply, the taxpayer must meet the requirements under Code Sec. 7430(c)(4)(A)(iii), which generally require that the taxpayer’s net worth not exceed \$2 million for individuals and \$7 million for businesses. The Tax Court standard used is whether the IRS abused its discretion in failing to abate the interest at issue.

The Supreme Court has determined that Tax Court is the sole forum for judicial review of an IRS decision not to abate interest on an assessment deficiency.⁴⁷ If the Tax Court does not have jurisdiction over the underlying case and the taxpayer does not challenge the interest charge asserted by the IRS, the Tax Court cannot assume jurisdiction.⁴⁸ The Tax Court does not treat a notice of deficiency as a final determination to not abate interest unless the IRS intends for the notice of deficiency to serve as a final determination not to abate interest. This is true even if the taxpayer requests the IRS to abate interest during settlement conferences, but does not file a formal request for abatement with the IRS.⁴⁹

9. Declaratory Relief Jurisdiction

The Tax Court has jurisdiction over declaratory judgment actions relating to the qualifications of certain retirement plans, the classification of certain private foundations, the status of certain governmental obligations, determinations relating to oversheltered returns, and a determinations relating to a request for extension of time for payment of estate tax.

i. Private Foundations. Code Sec. 7428 grants the Tax Court jurisdiction over the classification of certain private foundations so long as administrative remedies available within the IRS have been exhausted. Under this section, the Tax Court must be petitioned within 90 days from the mailing of the notice of determination. Such action may also be brought if the IRS does not make a determination within 270 days after the date on which the request for such determination was made. The filing of an application for recognition of exemption is not a prerequisite for Tax Court jurisdiction.⁵⁰

The Tax Court has found that, in cases where the IRS notified a taxpayer of its intent to revoke its nonprivate foundation status, a written protest objecting to the proposed action is considered a request for a determination. As such the taxpayer had the right to bring forth an action in Tax Court once 270 days had passed and the IRS had not responded to the request.⁵¹ The Tax Court does not have jurisdiction in cases where the IRS is simply examining the organization, and a notice of proposed revocation has yet to be issued, unless the 270 day requirement has been met.⁵²

ii. Oversheltered Returns. An oversheltered return is a return which shows no taxable income for the tax year and shows a net loss from partnership items. Where the Secretary makes a determination with respect to the treatment of items on an oversheltered return, and the adjustment does not give rise to a deficiency because of the net loss from partnership items, then the Secretary is authorized to send a notice of adjustment to the Taxpayer. Code Sec. 6234 grants the Tax Court jurisdiction over the notice of adjustment. This section requires the taxpayer to petition the Tax Court within 90 days (150 if the taxpayer is outside the United States) from the mailing of the notice of adjustment.

iii. Qualification of a Retirement Plan. The Tax Court has declaratory relief jurisdiction in cases of actual controversy involving a determination (or failure to make a determination) by the Secretary with respect to the initial qualification or continuing qualification of a retirement plan under subchapter D of chapter 1.⁵³ In cases where the Secretary makes a determination, the Tax Court must be petitioned within 90 days of the mailing of the determination. In such actions, the Commissioner has the burden of proof as to grounds for disqualification of the retirement plan that were not included in the adverse determination letter to the taxpayer.⁵⁴ If a petition is filed outside the 90-day period specified by the statute, the Court lacks jurisdiction over the petition.⁵⁵

iv. State or Local Bond Income Determination. Where the Secretary makes a determination that interest on a prospective obligation is not excludible from income under Code Sec. 103(a), the Tax Court has jurisdiction so long as the Court determined that the taxpayer exhausted all available administrative remedies and so long as the petition is filed within 90 days of the mailing of the determination.⁵⁶ The Court also has jurisdiction under this section where the Secretary fails to make a determination and 180 days have passed since the request for the determination was made.

v. Extension of Time for Payment of Estate Tax. The Tax Court also has declaratory relief jurisdiction in the case

of a controversy involving a determination by the Secretary as to whether an election may be made under Code Sec. 6166 with respect to an estate.⁵⁷ Code Sec. 6166 relates to extensions of time for payment of estate tax where the estate consists largely of interests in closely held businesses.

Code Sec. 7479 also applies to whether the extension of time for payment of tax provided in Code Sec. 6166(a) has ceased to apply with respect to an estate. A Tax Court petition must be received within 90 days from the mailing of the notice of determination and the Court must find that the taxpayer exhausted all available administrative remedies. If the Secretary does not make a determination within 180 days of the request for such determination the taxpayer will be deemed to have exhausted its administrative remedies.

B. District Courts

District Courts are Article III courts, established by the Constitution. Their jurisdiction to hear tax-related disputes is governed by statute. Like the Tax Court, District Courts have jurisdiction to define the scope of their own jurisdiction. They owe no deference to regulations issued by the Executive Branch if those regulations purport to define the scope of the court's jurisdiction.⁵⁸

There are a number of statutes granting jurisdiction to District Courts to decide tax-related disputes, some under the Internal Revenue Code (Title 26) and some under Title 28 of the United States Code. These statutes can be sorted into the following different categories: (1) Title 28 sections granting jurisdiction over tax cases generally, (2) Internal Revenue Code (Title 26) sections granting jurisdiction over suits seeking refunds of money collected or paid, (3) Code sections granting jurisdiction over suits other than those brought to recover money collected or paid, and (4) Code sections granting jurisdiction over enforcement actions brought by the government. Below is a summary of many of these statutes, by category.

1. Summary of Jurisdictional Statutes for District Court Actions

Title 28 Sections granting jurisdiction over tax cases generally:

- 28 USC §1340—Jurisdiction over any civil action arising under any act of Congress providing for internal revenue, *etc.*
- 28 USC §1345—Jurisdiction over civil actions brought by the United States.
- 28 USC §1346(a)—Jurisdiction over suits to recover any internal revenue tax allegedly erroneously or illegally assessed or collected, any penalty claimed to have been collected without authority or any sum

allegedly excessive or in any manner wrongfully collected under the internal revenue laws.

- 28 USC §2410—Jurisdiction over suits to quiet title to property on which the IRS claims a lien. This section applies to all liens in favor of the United States, not just liens in favor of the IRS.

Title 26 Sections granting jurisdiction over suits for recovery of money:

- 7422—Grants jurisdiction for suits for refund of taxes paid.
- 7426—Grants jurisdiction for suits for wrongful levy to recover funds collected by the IRS (note that other types of non-monetary relief are available).

Title 26 Sections granting jurisdiction over suits for relief other than recovery of money collected or paid:

- 982—Jurisdiction over petition to quash Formal Document Request for Foreign Records.
- 6038A—Jurisdiction over petition to quash summons for records pertaining to certain foreign-owned corporations.
- 6110—Jurisdiction over suits to obtain disclosure of information relating to written determinations.
- 6226—Jurisdiction to review Final Partnership Administrative Adjustment.
- 6228—Jurisdiction to review failure to allow Administrative Adjustment Request in full.
- 6247—Jurisdiction to review Partnership Adjustment.
- 6252—Jurisdiction to review failure to allow Administrative Adjustment Request in full.
- 7426—Jurisdiction over wrongful levy suits for injunctive relief and damages, suits regarding surplus sales proceeds, and suits regarding substituted sale proceeds.
- 7429—Jurisdiction to review Jeopardy and Termination Assessments.
- 7431—Jurisdiction over actions to recover damages for wrongful inspection or disclosure of return information.
- 7432—Jurisdiction over actions to recover damages for failure to release lien.
- 7433—Jurisdiction over actions for damages for unauthorized collection actions.
- 7433A—Jurisdiction over actions for unauthorized collection actions by contract collectors.
- 7434—Jurisdiction over actions for damages for fraudulent filing of information returns.
- 7435—Jurisdiction over actions for damages for unauthorized enticement of information disclosure.
- 7609—Jurisdiction over petition to quash third-party recordkeeper summons.

Sections granting jurisdiction over enforcement actions brought by government:

- 7402—Jurisdiction over all suits brought to enforce internal revenue laws, including writs *ne exeat re-publica*, appointment of receiver, enforcement of summons, *etc.*
- 7403—Jurisdiction over suits to reduce assessments to judgment and to enforce tax liens.
- 7404—Jurisdiction over suits for estate taxes.
- 7405—Jurisdiction over suits to recover erroneous refunds.
- 7407—Jurisdiction over suits to enjoin tax return preparers.
- 7408—Jurisdiction over suits to enjoin certain conduct related to tax shelters and reportable transactions.
- 7409—Jurisdiction over suits to enjoin flagrant political expenditures by Code Sec. 501(c)(3) organizations.

Jurisdictional problems in suits brought by taxpayers in District Courts arise when taxpayers fail to comply with the prerequisites for filing suit. In tax refund suits, a formal claim for refund must be filed before a suit for refund can be filed. Code Sec. 7422, although an informal claim, might be sufficient under certain circumstances.⁵⁹ Furthermore, for “non-divisible” taxes, the full amount of the tax liability must be paid before a refund suit can be brought.⁶⁰

District Courts also have jurisdiction over TEFRA partnership cases where an appropriate amount of tax is deposited with the IRS by the deadline for filing the petition.⁶¹

Certain types of taxes do not need to be paid in full before a refund suit may be brought (after filing a refund claim), but some categories of these taxes have additional time requirements which must be met.⁶² If the tax is “divisible,” the full amount owed need not be paid.⁶³

Under the variance doctrine, a taxpayer is barred from raising in a refund suit grounds for recovery which had not previously been set forth in its claim for a refund.⁶⁴ The alleged error upon which the refund claim is based must be clearly and specifically set forth in the refund claim. A generalized plea of error will not suffice. All grounds upon which a taxpayer relies must be stated in the original claim for refund. Grounds not raised at that time cannot be raised later in a suit for refund.

But this doctrine does not apply where the government’s own action creates the variance.⁶⁵

A refund claim must also adequately describe the basis for the refund claim.⁶⁶

A suit for a tax refund cannot be brought before the earlier of (1) six months from the date on which the claim was filed or (2) the denial of the claim for refund. A refund suit must be brought within two years of the date on which the claim was formally denied.⁶⁷ Failure to

file suit within these time guidelines means that the court lacks jurisdiction over the suit for refund.⁶⁸

A claim for refund can properly seek all amounts paid by the taxpayer if it is filed within three years of the date of the filing of the return, plus the amount of time that has expired on a filing extension before the return is filed, as long as the return is filed timely under the filing extension. Alternatively, a claim for refund can properly seek all amounts paid by the taxpayer within a two-year period prior to the filing of the refund claim.⁶⁹ If a claim is filed late, it is not possible to recover payments for which the claim is late-filed in a refund suit, even if the suit is brought timely.⁷⁰

C. Federal Court of Claims

This Court is an Article I Court established by Congress. Its general jurisdictional grant is found in 28 USC §1491. Under 28 USC §1346(a), the jurisdiction of this Court is co-extensive with the jurisdiction of District Courts in refund claims. Relief in suits brought in this Court is limited to the recovery of money. Thus, nearly all tax-related suits in this Court are tax refund suits.

D. Bankruptcy Courts

Bankruptcy Courts are arms of the District Courts. Over the years, the Supreme Court has addressed the scope of the jurisdiction of the Bankruptcy Courts under the Constitution.⁷¹ Disputes regarding the scope of the Bankruptcy Courts continue to this day.⁷²

Bankruptcy Courts' jurisdiction over tax matters is generally governed by section 505 of the Bankruptcy Code. This language is seemingly very broad, stating that the Court "may determine the amount or legality of any tax, any fine, or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction."

This seemingly broad language has important exceptions, but Bankruptcy Court may offer certain taxpayers the only judicial forum available to litigate the merits of their tax liability if the Tax Court and the District Court cannot acquire jurisdiction over their case. For example, a taxpayer may have failed to file a timely Tax Court petition in response to a notice of deficiency and may lack the ability to full pay the liability, which is a prerequisite to filing a suit for refund in District Court.

Although the language of Code Sec. 505(a) does not limit the Court to deciding the tax liabilities of the bankruptcy debtor, most courts have held that the Bankruptcy Court lacks jurisdiction to determine the tax liability of a nondebtor under Code Sec. 505.⁷³

Code Sec. 505 permits those persons who are precluded from challenging a liability outside of bankruptcy because of a failure to take timely action under the TEFRA partnership audit rules to challenge that liability in bankruptcy, provided that the liability was not previously adjudicated.⁷⁴

Care should be taken to determine whether the "previously adjudicated" exception applies to state tax liabilities.⁷⁵

ENDNOTES

¹ See, e.g., *W.F. Judge*, 88 TC 1175, Dec. 43,902 (1987).

² Code Secs. 6212, 6213(a) and 6214.

³ *D.L. Smith*, 140 TC 48, Dec. 59,465 (2014).

⁴ See, e.g., *W. Jones*, 62 TC 1, Dec. 32,527 (1974).

⁵ See *H.S. Scar*, CA-9, 87-1 ustr ¶19277, 814 F2d 1363.

⁶ See, e.g., *J.A. Rochelle*, 116 TC 356, Dec. 54,348 (2001) (where taxpayer filed petition 56 days after expiration of the 90-day statutory deadline, failure of the IRS to list the last date for timely filing a petition on the notice of deficiency did not invalidate notice of deficiency), see also *B.L. Axe*, 58 TC 256, Dec. 31,377 (1972) (Tax Court lacked jurisdiction where a timely petition was sent to the wrong address and was not received by the Tax Court until after the 90-day deadline had expired).

⁷ Compare *P. Ruegsegger*, 68 TC 463, Dec. 34,492 (1977) (petition deemed timely) with *J.T. Elliott*, 59 TCM 678, Dec. 46,604(M), TC Memo. 1990-257 (petition deemed untimely).

⁸ See, e.g., *P.P. Sotiropoulos*, 142 TC No. 15, Dec.

59,890 (May 5, 2014).

⁹ See *P. Pietanza*, 92 TC 729, Dec. 45,576 (1989), *aff'd without published opinion*, CA-3, 935 F2d 1282 (1991).

¹⁰ See, e.g., *SECC Corp.*, 142 TC No. 12, Dec. 59,870 (Apr. 3, 2014).

¹¹ *R.B. Halpern*, 96 TC 895, Dec. 47,424 (1991).

¹² *John C. Hom & Associates, Inc.*, 140 TC No. 11, 140 T.C. 210 (May 11, 2013).

¹³ Code Sec. 6226.

¹⁴ See *Tempest Associates Ltd.*, 94 TC 794, Dec. 46,624 (1990).

¹⁵ See *G. Woods*, S Ct, 2013-2 ustr ¶150,604, 134 S Ct 557 (2013), *A. Meruelo*, CA-9, 2012-2 ustr ¶150,522, 691 F3d 1108, *I. Greenwald*, 142 TC No. 18, Dec. 59,913 (May 21, 2014), *J.C. Bedrosian*, 143 TC No. 4, Dec. 59,991 (Aug. 13, 2014).

¹⁶ Code Sec. 6228.

¹⁷ Code Sec. 6330(d).

¹⁸ See *K. Orum*, 123 TC 1, Dec. 55,681 (2004).

¹⁹ Code Sec. 6330(a).

²⁰ *R.B. Magana*, 118 TC 488, Dec. 54,765 (2002).

²¹ *Id.*

²² *J. Giamelli*, 129 TC 107, Dec. 57,155 (2007).

²³ *J.E. Lewis*, 128 TC 48, Dec. 56,876 (2007).

²⁴ See www.procedurallytaxing.com/when-taxpayers-challenge-the-merits-of-the-underlying-liability-in-cdp-appeals-why-the-tax-court-was-wrong-in-lewis-v-commissioner-and-its-progeny-2/.

²⁵ *A.L. Kuykendall*, 129 TC 77, Dec. 57,118 (2007).

²⁶ *M.M. Mason*, 132 TC 301, Dec. 57,807 (2009).

²⁷ See *C.D. Gray*, 138 TC 295, Dec. 59,004 (2012).

²⁸ See *J.R. Kennedy*, 116 TC 255, Dec. 54,315 (2001) (the IRS failed to send Code Sec. 6320 notice to taxpayer's last known address; petition dismissed for lack of jurisdiction because no "determination" was made under Code Sec. 6320).

²⁹ *M. Craig*, 119 TC 252, Dec. 54,933 (2002).

³⁰ *L. Greene-Thapedi*, 126 TC 1, Dec. 56,401 (2006).

³¹ *D.D. Smith*, 124 TC 36, Dec. 55,921 (2005).

³² *C.L. Prevo*, 123 TC 326, Dec. 55,823 (2004).

³³ *J.A. Barnes*, 130 TC 248, Dec. 57,463 (2008).

³⁴ See *K.M. Wilson*, 99 TCM 1552, Dec. 58,248(M), TC Memo. 2010-134, *aff'd on other grounds*,

- CA-9, 2013-1 ustrc ¶150,147, 705 F3d 980.
- ³⁵ See, e.g., *E.B. Block*, 120 TC 62, Dec. 55,026 (2003) (Tax Court did not have jurisdiction in an innocent spouse case to determine whether the assessment of the tax at issue was barred by the statute of limitations).
- ³⁶ *T.E. Bartman*, CA-8, 2006-1 ustrc ¶150,298, 446 F3d 785.
- ³⁷ *W.R. Holloway*, 94 TCM 25, Dec. 56,992(M), TC Memo. 2007-175.
- ³⁸ *K. Bernal*, 120 TC 102, Dec. 55,042 (2003).
- ³⁹ Code Sec. 7436(a).
- ⁴⁰ See, e.g., *Charlotte's Office Boutique, Inc.*, 121 TC 89, Dec. 55,254 (2003), *aff'd*, CA-9, 2005-2 ustrc ¶150,593, 425 F3d 1203.
- ⁴¹ *SECC Corp.*, *supra* note 10.
- ⁴² See Chief Counsel Notice CC-2014-11 (Dec. 8, 2014).
- ⁴³ *W. Cooper III*, 136 TC 597, Dec. 58,665 (2011).
- ⁴⁴ *Whistleblower 10949-13W*, 107 TCM 1524, Dec. 59,927(M), TC Memo. 2014-106.
- ⁴⁵ *T.M. Comparini*, 143 TC No. 14 (Oct. 2, 2014).
- ⁴⁶ *D.H. Cho*, 76 TCM 651, Dec. 52,909(M), TC Memo. 1998-363.
- ⁴⁷ *J.F. Hinck*, SCT, 2007-1 ustrc ¶150,496, 127 SCT 2011, 550 US 501 (2007).
- ⁴⁸ *J.B. Kraft*, 74 TCM 983, Dec. 52,313(M), TC Memo. 1997-476.
- ⁴⁹ *J.C. Bourekis*, 110 TC 20, Dec. 52,517 (1998).
- ⁵⁰ *Universal Life Church*, 83 TC 292, Dec. 41,457 (1984).
- ⁵¹ *J.D. Gladstone Foundation*, 77 TC 221, Dec. 38,114 (1981).
- ⁵² *Id.*
- ⁵³ Code Sec. 7476.
- ⁵⁴ *R.G. Miller*, 76 TC 433, Dec. 37,755 (1981).
- ⁵⁵ *Calvert Anesthesia Associates-Pricha Phattiyakul, M.D. P.A.*, 110 TC 285, Dec. 52,669 (1998).
- ⁵⁶ Code Sec. 7478.
- ⁵⁷ Code Sec. 7479.
- ⁵⁸ See, e.g., *Schweika v. Department of Homeland Security*, CA-6, 723 F3d 710 (2013).
- ⁵⁹ See *D. Yuen*, CA-9, 87-2 ustrc ¶19483, 825 F2d 244.
- ⁶⁰ *W.E. Flora*, SCT, 60-1 ustrc ¶19347, 362 US 145, 80 SCT 630.
- ⁶¹ Code Sec. 6226(e).
- ⁶² See, e.g., *J.M. Thomas*, CA-9, 85-1 ustrc ¶19263, 755 F2d 728.
- ⁶³ See *J.L. Kaplan*, CA-FC, 2014-1 ustrc ¶150,157, 115 FedCl 491 (2014).
- ⁶⁴ See, e.g., *Mallette Bros. Const. Co., Inc.*, CA-5, 83-1 ustrc ¶19144, 695 F2d 145.
- ⁶⁵ See, e.g., *D.E. Brown*, CA-9, 70-1 ustrc ¶19435, 427 F2d 57, 62 (holding that taxpayers "cannot be foreclosed from responding" to new issues created by the Government after the filing of the initial refund claim).
- ⁶⁶ *Stelco Holding Co. and Pikeville Coal Co.*, *infra* note 68, *D.W. Larson*, FedCl, 2009-2 ustrc ¶150,646, 89 FedCl 363, *Lake Mead Air, Inc.*, DC-NV, 99-1 ustrc ¶170,119, 991 FSupp 1209.
- ⁶⁷ Code Sec. 6532.
- ⁶⁸ See, e.g., *Stelco Holding Co. and Pikeville Coal Co.*, FedCl, 98-2 ustrc ¶150,771, 42 FedCl 101 (suit dismissed as filed too early).
- ⁶⁹ Code Secs. 6511-6513.
- ⁷⁰ *M. Brockamp*, SCT, 97-1 ustrc ¶150,216, 519 US 347, 117 SCT 849, S. *Qureshi*, CA-9, 96-1 ustrc ¶150,053, 75 F3d 494.
- ⁷¹ See, e.g., *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, SCT, 458 US 50 (1982).
- ⁷² See, e.g., *Stern v. Marshall*, SCT, 131 SCT 2594 (2011), *Executive Benefits Insurance Agency v. Arkinson (In re Bellingham Insurance Agency, Inc.)*, 134 SCT 2165 (2014).
- ⁷³ *Compare American Principals Leasing Corp.*, CA-9, 90-1 ustrc ¶150,292, 904 F2d 477 (Code Sec. 505 did not allow court to determine taxes owed by non-debtor partners of a partnership debtor), *In re Brandt-Airflex Corp.*, CA-2, 88-1 ustrc ¶19258, 843 F2d 90 (Code Sec. 505 only allows determination of debtor's tax liability, not liability of debtor's officer that arose from debtor's failure to pay payroll taxes) and *Huckabee Auto Co.*, CA-11, 86-1 ustrc ¶19268, 783 F2d 1546 (same), with *Quattrone Accountants, Inc.*, CA-3, 90-1 ustrc ¶150,103, 895 F2d 921 (Court lacks jurisdiction under 28 USC 1331; Code Sec. 505 does not limit jurisdiction to determining tax liabilities of debtors).
- ⁷⁴ *Central Valley AG Enterprises*, CA-9, 2008-2 ustrc ¶150,405, 531 F3d 750.
- ⁷⁵ See, e.g., *Matz v. California State Board of Equalization (In re Mantz)*, CA-9, 343 F3d 1207 (2003).

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