

Judicial system of the United States

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Overview of US courts in matters of US Federal Taxation

Taxpayers who are unable to resolve a tax dispute with the US Internal Revenue Service (IRS) may refer the matter to a US court for judicial resolution.

Taxpayers have a choice of three courts in which to file their initial pleading: the US Tax Court, the US Court of Federal Claims, and the US Federal District Court. These are courts of first instance, and they will make a determination in favour of either the taxpayer or the government.

If the taxpayer or the government receives an adverse decision from the court of first instance, they may appeal the decision to a US Federal Circuit Court of Appeals. There are presently 13 of such courts and their jurisdiction is generally based on the geographic region of the United States in which they are located.

If the taxpayer or the government receives an adverse decision from a US Federal Circuit Court of Appeals, a final appeal may be made to the US Supreme Court.

Details on the US courts are discussed below.

I. The Courts of First Instance

A. The US Tax Court

The US Tax Court is a special court with jurisdiction over US federal tax matters. The US Tax Court is located in Washington DC, but it holds sessions in other US cities for the convenience of taxpayers.

The primary advantage of seeking review in the US Tax Court is that the taxpayer is not required to pay the tax assessment before the case is decided by the court. To the contrary, the filing of the petition by the taxpayer prevents the IRS from taking further action to enforce the assessment or to collect the tax until the US Tax Court has rendered a final decision or the case has been terminated.

The US Tax Court has a total of 19 regular judges plus 14 Special Trial Judges. Proceedings in the US Tax Court are conducted before a single judge. The decision in an important case

may be reviewed by the full US Tax Court. The taxpayer does not have a right to have a jury present to resolve factual disputes as is the situation in the US Federal District Courts. The IRS is represented in the US Tax Court by the IRS Office of Chief Counsel.

Decisions of the US Tax Court are published and referenced as, for example, *ABC Industries v. Commissioner of Internal Revenue*, 12 T.C. 123 (2008). The first number is the volume number of the published court reports and the second number is the page number where the decision can be found. The abbreviation T.C. refers to the volumes of the Tax Court Reports, which are the official reporting volumes of the US Tax Court.

The US Tax Court may also issue a decision as a memorandum opinion. This is usually the situation for disputes between taxpayers and the IRS that are more factual in nature. Memorandum opinions are not treated as binding precedent in other decisions by the US Tax Court. A memorandum opinion is published and referenced as, for example, 12 T.C.M. 123 (2008) or 12 T.C. Memo. 123 (2008), depending on the commercial company that publishes the opinion.

A decision of the US Tax Court that is adverse to the taxpayer or the government may be appealed to the US Federal Circuit Court of Appeals for the geographical area where the Tax Court was convened when the case was heard.

Under the rule of *Golsen v. Commissioner of Internal Revenue*, 54 T.C. 742 (1970), *affirmed* 445 F.2d 985 (10th Cir. 1971), the US Tax Court is required to make a decision in a case by applying the judicial precedents for the US Federal Circuit Court of Appeals to which the taxpayer or the IRS would be entitled to appeal an adverse decision.

For example, if the US Tax Court is deciding a case that could be appealed to the US Federal Court of Appeals for the First Circuit, which includes Boston and 5 states in New England, the US Tax Court would be required to follow the interpretation of the US tax law that has been previously given by the US Federal Court of Appeals for the First Circuit. On the other hand, if the US Tax Court is deciding a case that could be appealed to the US Federal Court of Appeals for the Seventh Circuit, which includes Chicago and 3 states in the US Mid-West, the US Tax Court would be required to follow the interpretation of the US tax law that has been previously given by the US Federal Court of Appeals for the Seventh Circuit. This can lead to different tax rulings by the US Tax Court for taxpayers located in different regions of the United States.

Taxpayers who are assessed small tax deficiencies by the IRS, defined as tax deficiencies of USD 50,000 or less, may elect to use the special Tax Court procedures that apply to small cases. Such cases have simplified rules and are normally decided by a Special Trial Judge of the Tax Court. The decision of the judge in such case is final and may not be appealed to another court. The decision may also not be cited as precedent in other court proceedings.

The US Tax Court was established in 1942 as the successor to the US Board of Tax Appeals. Tax cases decided by the US Board of Tax Appeals are referenced as, for example, *ABC Industries v. Commissioner of Internal Revenue*, 12 B.T.A. 123 (1940).

B. The US Court of Federal Claims

The US Court of Federal Claims, like the US Tax Court, is located in Washington, DC. As with the US Tax Court, it will hold sessions in other US cities for the convenience of taxpayers. The US Court of Federal Claims has jurisdiction over all claims that are made against the US Federal Government, including tax claims.

A significant difference between the US Court of Federal Claims and the US Tax Court is that a taxpayer is first required to pay the tax deficiency assessed by the IRS. The procedure is that the taxpayer must pay the disputed tax and file a claim for a refund with the IRS. The petition in the US Court of Federal Claims may only be filed after the refund claim has been denied by the IRS or the IRS has failed to respond to the refund claim within the required time period.

Proceedings in the US Court of Federal Claims are conducted before a single judge, and the taxpayer does not have a right to have a jury present to resolve factual disputes. The government is represented in the US Court of Federal Claims by the US Justice Department.

Decisions of the US Court of Federal Claims are published and referenced as, for example, *ABC Industries v. United States*, 12 Fed. Cl. 123 (2008). The first number is the volume number of the published court reports and the second number is the page number where the decision can be found. The abbreviation Fed. Cl. refers to the volumes of the Federal Claims Reporter, which are the official reporting volumes of the US Court of Federal Claims.

A decision of the US Court of Federal Claims that is adverse to the taxpayer or the government may be appealed to the US Federal Court of Appeals for the Federal Circuit.

The US Court of Federal Claims was known until 29 October 1992 as the US Claims Court. Cases decided by the US Claims Court are referenced as, for example, *ABC Industries v. United States*, 12 Cl. Ct. 123 (1990).

C. The US Federal District Courts

The US Federal District Courts are located throughout the United States. They have general jurisdiction over all types of disputes, including tax disputes, for which the general federal jurisdictional requirements have been met.

There are 91 US Federal District Courts at the present time. There is at least one US Federal District Court for each US state, and the larger US states are divided into two or more districts. The US Federal District Courts are designated by the district in which they are

located, for example, the US District Court for the Northern District of California (N.D. Cal.) or the US District Court for the Eastern District of Michigan (E.D. Mich.).

As with the US Court of Federal Claims, a taxpayer is first required to pay the tax deficiency that is assessed by the IRS and file a claim for refund before filing the petition in the US Federal District Court. The taxpayer will generally file his petition in the US Federal District where he resides.

Proceedings in the US Federal District Courts are conducted before a single judge. Unlike the US Tax Court and the US Court of Federal Claims, the taxpayer has the right to have a jury present to resolve factual disputes. The government is represented in the US Federal District Court by the US Justice Department

Decisions of the US Federal District Court are published and referenced as, for example, *ABC Industries v. United States*, 12 F. Supp. 123 (N.D. Cal. 2008). The first number is the volume number of the published court reports and the second number is the page number where the decision can be found. The abbreviation F. Supp. refers to the volumes of the Federal Supplement, which are the reporting volumes of the US Federal District Courts.

A decision of the US Federal District Court that is adverse to the taxpayer or the government may be appealed to the US Federal Circuit Court of Appeals. The appeal will be made to the US Federal Circuit Court of Appeals that has jurisdiction for the geographical region of the United States where the US Federal District Court is located.

II. The US Federal Circuit Courts of Appeal

The US Federal Circuit Courts of Appeal have jurisdiction for appeals from the three courts of first instance described above.

There are presently 13 US Federal Circuit Courts of Appeal. They include 11 that are designed by a number (1 through 11) that corresponds to a geographic region of the United States, for example, the US Federal Court of Appeals for the First Circuit and the US Federal Court of Appeals for the Seventh Circuit, referred to above. The two remaining US Federal Courts of Appeal are designated as the US Federal Court of Appeals for the District of Columbia Circuit, which has appellate jurisdiction in Washington DC, and the US Federal Court of Appeals for the Federal Circuit, which has appellate jurisdiction over the US Court of Federal Claims.

Proceedings in the US Federal Circuit Courts of Appeal are normally conducted before a panel of three judges. Significant cases can be resolved by an expanded panel of judges. In general, only legal questions (and not factual questions) can be reviewed by the US Federal Courts of Appeal. The government is represented in the US Federal Courts of Appeal by the US Justice Department.

Decisions of the US Federal Circuit Courts of Appeal are published and referenced as, for example, *ABC Industries v. United States*, 12 F.2d 123 (3rd Cir. 2008) *affirming* 12 F. Supp. 123 (N.D. Cal. 2008). The abbreviation F.2d refers to the volumes of the Federal Reporter, which are the reporting volumes of the US Federal Circuit Courts of Appeal. The abbreviation 2d refers to the second series of these reports. The name of the decision will refer to the *Commissioner of Internal Revenue* if the case begins originally in the US Tax Court.

A decision of a US Federal Court of Appeals that is adverse to the taxpayer or the government may be appealed to the US Supreme Court.

III. The US Supreme Court

The US Supreme Court is located in Washington DC and has final appellate jurisdiction over all US federal matters, including taxation. There are nine judges on the US Supreme Court, referred to as justices, and cases are decided by a plurality decision of the justices. The government is represented in the US Supreme Court by the Solicitor General of the United States.

Decisions of the US Supreme Court are published and referenced as, for example, *ABC Industries v. United States*, 12 U.S. 123 (2008), *affirming* 12 F.2d 123 (3rd Cir. 2008). The abbreviation U.S. refers to the volumes of the United States Reporter, which are the official reporting volumes of the US Supreme Court. The name of the decision will refer to the *Commissioner of Internal Revenue* if the case begins originally in the US Tax Court.

It is unusual for the US Supreme Court to accept an appeal of a US federal tax case. An appeal is normally accepted only if it involves a question under the US Constitution, involves a significant question under the US federal tax law, or if it is necessary for the US Supreme Court to resolve conflicting interpretations of the US tax law by the US Federal Circuit Courts of Appeal.