The Tax Court and Its Precedent

Lincoln Institute of Land Policy
National Conference of State Tax Judges
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Topics to be Covered

- **A Brief History of the Tax Court**
- **Why Opinions are Written**
- **The Opinion Process**
    - Judges’ Processes
    - The Court’s Processes
- **Types of Tax Court Opinions**
- **Inferences from Opinions**

The United States Tax Court

- **Created in 1924 as the Board of Tax Appeals**
  - Renamed in 1942 and again in 1969
  - Board members renamed "Judges"
- **The IRS Office of Chief Counsel represents the Commissioner**
  - I.R.C. §§ 7452, 7803(b)(2)(D).
- **Created under Article I**
  - "It was established by Congress to interpret and apply the Internal Revenue Code in disputes between taxpayers and the Government. By resolving these disputes, the court exercises a portion of the judicial power of the United States."
    - *Freytag v. Commissioner*, 501 U.S. 868, 891 (1991).
- **"Not an agency of" and "independent of" the Executive branch.**
  - I.R.C. § 7441.

Judges of the US Tax Court

- **19 statutorily authorized "Judges"**
  - Presidentially nominated, Senate confirmed for 15-year terms.
    - I.R.C. § 7443(a).
  - Currently 18 "active" judges of varied backgrounds.
- **Senior Judges**
  - Retired presidentially appointed Judges.
  - Currently 12 senior judges are on recall.
- **Special Trial Judges**
  - Currently 5 Special Trial Judges
  - Decisional authority limited by I.R.C. § 7443A(b), *but see,* T.C. Rules 180-183.
- **"Divisions" of the Court**
  - "The chief judge may from time to time divide the Tax Court into divisions of one or more judges…."
    - I.R.C. § 7444(c).

Case Types and Assignment

Case Types

- **Deficiency (and partnership)**
- **Collection (lien/levy)**
- **Innocent spouse**
- **Whistleblower**
- **Passport**
- **Tax exempt/plan qualification**
- **Other (e.g., disclosure)**

Assignment

- **General Docket**
- **Trial Sessions / Trial Calendars**
  - Retained Jurisdiction
- **Motions for Assignment**
- **Reassignment**

A Collegial Court

- **The Court's "collegial process has served to provide a generally uniform body of law and precedent."**
  - Dubroff, H., & Hellwig, B. J., *The United States Tax Court: An Historical Analysis* (2nd ed. 2014) at 874.
- **"Horizontal stare decisis"**
  - "The report of the division shall become the report of the Tax Court."
    - I.R.C. § 7460(b).
- **The Chief Judge may direct that a report be reviewed by the Court.**
  - I.R.C. § 7460(b).

Lawrence v. Commissioner

- **"One of the difficult problems which confronted the Tax Court, soon after it was created in 1926 as the Board of Tax Appeals, was what to do when an issue came before it again after a Court of Appeals had reversed its prior decision on that point. Clearly, it must thoroughly reconsider the problem in the light of the reasoning of the reversing appellate court and, if convinced thereby, the obvious procedure is to follow the higher court. But if still of the opinion that its original result was right, a court of national jurisdiction to avoid confusion should follow its own honest beliefs until the Supreme Court decides the point. The Tax Court early concluded that it should decide all cases as it thought right."**
    - 27 T.C. 713, 716-17 (1957), *rev'd*, 258 F.2d 562 (9th Cir. 1958).

Golsen v. Commissioner

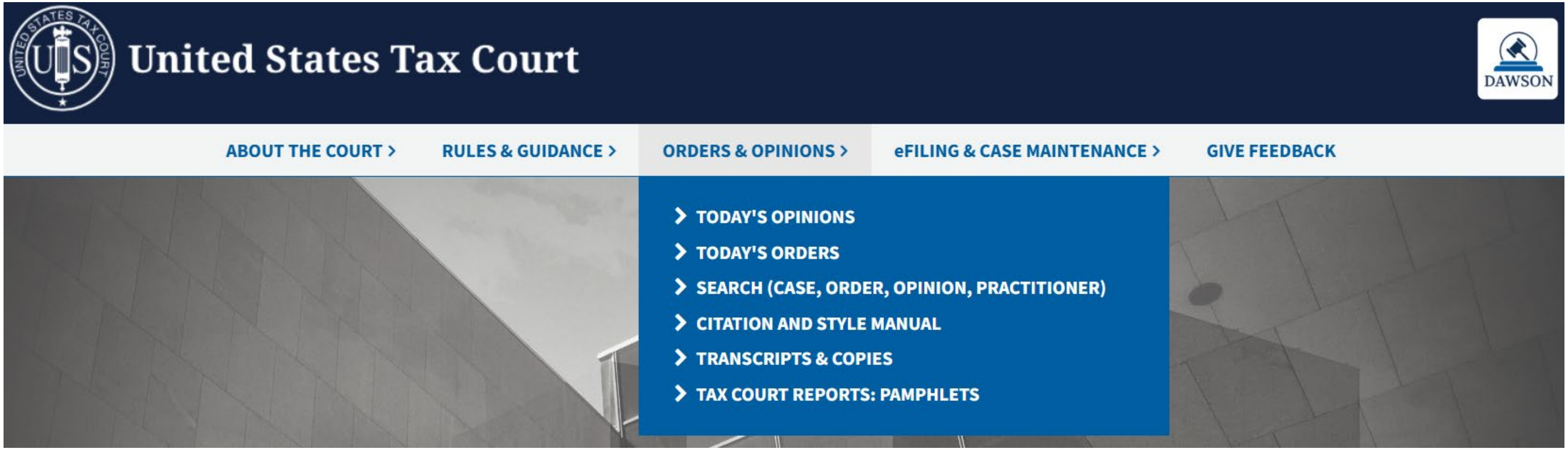
- **“[I]t is our best judgment that better judicial administration requires us to follow a Court of Appeals decision which is squarely in point where appeal from our decision lies to that Court of Appeals and to that court alone.”**
  - 54 T.C. 742, 757 (1970), *aff’d*, 445 F.2d 985 (10th Cir. 1971).
- **“[W]here the Court of Appeals to which appeal lies has already passed upon the issue before us, efficient and harmonious judicial administration calls for us to follow the decision of that court. … We shall remain able to foster uniformity by giving effect to our own views in cases appealable to courts whose views have not yet been expressed, and, even where the relevant Court of Appeals has already made its views known, by explaining why we agree or disagree with the precedent that we feel constrained to follow.”**
  - *Id*. at 757.

"Reports"

- **"The Tax Court shall report in writing all its findings of fact, opinions, and memorandum opinions."**
  - I.R.C. § 7459(b)
- **Orders v. Opinions**
  - Motion v. Trial, Novelty, Practicality
  - Example
    - *System Technologies, Inc. v. Commissioner,* Dkt. No. 12211-21, Order (Jan. 3, 2025).
- **Orders are not precedential.**
  - "Orders shall not be treated as precedent, except as may be relevant for purposes of establishing the law of the case, res judicata, collateral estoppel, or other similar doctrine."
    - Rule 50(f).
  - "Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Tax Court."
    - I.R.C. § 7460(b).

Publicly Availability

- **All Opinions and Orders are published daily at ustaxcourt.gov.**
- **All Opinions and Orders searchable.**
- **Exceptions: sealed cases and sealed documents**



Judges' Opinion Processes

- **35 Judges, at least 35 processes**

Court Opinion Processes

- **Submission to and review by Chief Judge**
  - Approval or referral to Court Conference.
  - I.R.C. § 7460(b).
- **Revision by Judge**
- **Submission to Reporter of Decisions**
  - USTC Citation and Style Manual (available at ustaxcourt.gov).
- **Revision by Judge**
- **Resubmission to Reporter of Decisions**
- **Internal Circulation**
- **Release**

Bench Opinions

- **Specifically authorized by statute**
  - "Subject to such conditions as the Tax Court may by rule provide, the requirements of this subsection and of section 7460 are met if findings of fact or opinion are stated orally and recorded in the transcript of the proceedings."
    - I.R.C. § 7459(b).
- **Not precedential**
  - "Opinions stated orally in accordance with paragraph (a) of this Rule may not be relied upon as precedent, except as may be relevant for purposes of establishing the law of the case, res judicata, collateral estoppel, or other similar doctrine."
    - Rule 152(c).
- **Example**
  - *Bright v. Commissioner*, No. 10095-22, Order of Service of Transcript (Bench Opinion) (May 4, 2023) (substantiation of gambling losses).

Summary Opinions

- **Opinions deciding issues in small tax cases (i.e., “S” cases).**
- **“A decision entered in any case in which the proceedings are conducted under this section *shall not be reviewed* in any other court and *shall not be treated as a precedent* for any other case.”**
  - I.R.C. § 7463(b) (emphasis added).
- **Subject to the standard opinion processes.**
- **Example**
  - *Sherman v. Commissioner*, T.C. Summ. 2018-15 (whether Mary Kay retirement payments are deferred compensation subject to self-employment tax).

Memorandum Opinions

- **“[C]ases involving application of familiar legal principles to routine factual situations, nonrecurring or enormously complicated factual situations, obsolete statutes or regulations, straightforward factual determinations, or arguments patently lacking in merit will be classified as memorandum opinions.”**
  - Mary Ann Cohen, *How to Read Tax Court Opinions*, 1 Hous. Bus. & Tax L.J. 1, 7 (2001).
- **Historically, but no longer, published commercially.**
- **“Memo opinions purportedly lack precedential value.”**
  - Amandeep S. Grewal, *The Un-Precedented Tax Court*, 101 Iowa L. Rev. 2065, 2067 (2016) citing *Dunaway v. Commissioner*, 124 T.C. 80, 87 (2005) (“memorandum opinions of this Court are not regarded as binding precedent”).
- **Example**
  - *Dealers Auto Auction of Southwest LLC v. Commissioner*, T.C. Memo. 2025-38 (Apr. 28, 2025) (reasonable cause for failure to file information returns).

Division (T.C.) Opinions

- **“Division opinions officially published by the court are those in which a legal issue of first impression is decided, a legal principle is applied or extended to a recurring factual pattern, a significant exception to a previously announced general rule is created, or there are similarly significant and precedentially valuable cases.”**
  - Mary Ann Cohen, *How to Read Tax Court Opinions*, 1 Hous. Bus. & Tax L.J. 1, 7 (2001). *See also* I.R.C. § 7462, *Publication of Reports*.
- **Headnotes**
  - Written by the authoring judge.
- **Examples**
  - *Donlan v. Commissioner*, 164 T.C. 57 (2025) (petition generator).
  - Compare *Rent-A-Center, Inc. v. Commissioner*, 142 T.C. 1 (2014) with *Securitas Holdings, Inc. v. Commissioner*, T.C. Memo. 2014-225 (captive insurance).

Reviewed (T.C.) Opinions

- **Chief Judge may direct that a report be reviewed by the Tax Court.**
  - I.R.C. § 7460(b).
  - "The Tax Court" consists of the active, presidentially appointed judges.
    - I.R.C. §§ 7441, 7443(a).
- **"The report of a division shall *not* be a part of the record in any case in which the chief judge directs that such report shall be reviewed by the Tax Court."**
  - I.R.C. § 7460(b) (*emphasis added*).
- **Examples**
  - *Dynamo Holdings Ltd. P'ship v. Commissioner*, 150 T.C. 224 (2018) (use of predictive coding to respond to discovery, unanimous).
  - *Bohner v. Commissioner*, 143 T.C. 224, 233 (2014) (Buch, J., *dissenting*) (IRA rollover to CSRS).

Inferences from the Opinion Process

- **An opinion from any judge is an opinion of the Court as it was constituted when the opinion was issued.**
    - Orders and bench opinions should not be viewed as opinions of the Court.
- ***Judges* follow the Court's precedent unless *the Court* decides to revisit it.**
- **It is safe to assume (though not guaranteed):**
    - No more than one voting judge disagreed with a summary, memorandum, or division opinion when it was issued.
    - The Court does not view a memorandum opinion as breaking new ground on a legal issue.

Jones Bluff, LLC v. Commissioner
166 T.C. No. 6 (2026)

- P is an LLC that is treated as a partnership for federal tax purposes. P is subject to the centralized partnership audit regime as established by the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114-74, 129 Stat. 584.
- P filed a Motion for Summary Judgment contending that the BBA partnership audit regime violates the due process rights of P's individual members.
- *Held*: P cannot raise a due process claim under U.S. Const. amend. V on behalf of its individual members.
  - KERRIGAN, *J.*, wrote the opinion of the Court, which URDA, *C.J.*, and BUCH, NEGA, PUGH, ASHFORD, COPELAND, JONES, TORO, GREAVES, MARSHALL, WEILER, WAY, LANDY, ARBEIT, GUIDER, JENKINS, and FUNG, *JJ.*, joined.
  - BUCH, *J.*, wrote a concurring opinion, which COPELAND, WAY, JENKINS, and FUNG, *JJ.*, joined.

Ranch Springs, LLC v. Commissioner 164 T.C. 93 (2025)

- P is the tax matters partner of LLC, which claimed on its 2017 return a charitable contribution deduction for a conservation easement donation
- LLC had acquired the land for $6,500 per acre in December 2016. In December 2017 an appraiser hired by LLC valued the land at $236,673 per acre.
- *Held*: The transaction by which LLC acquired the property in December 2016 occurred at arm’s length be tween a willing seller and a willing buyer, both with reasonable knowledge of relevant facts and neither being under any compulsion to buy or sell. The per-acre price upon which the parties agreed, $6,500, provides very strong evidence as to the fair market value of the property before the easement was granted.

Paul Adams Quarry Trust, LLC v. Commissioner T.C. Memo. 2025-112

- The principal question before the Court is the value of the easement Paul-Adams granted to the Oconee River Land Trust (Oconee Trust) in December 2017 over approximately 207 acres in Elberton, Georgia (Paul-Adams property).
- In view of the entire record in this case, we find petitioner’s claim utterly unsupportable. In brief, the history of the parcel at issue, the state of the relevant industry in 2017, market transactions in the area (some of which involved Mr. Adams himself), and credible expert testimony all tell us that the value of the conservation easement was nowhere near the amount claimed.

Jordan v. Commissioner
T.C. Summ. 2013-91

- Respondent determined a deficiency of $900 in petitioner Gale Jordan's Federal income tax for 2008 and an accuracy-related penalty under section 6662(a) of $180. Respondent determined a deficiency of$3,385 in petitioner Lora A. Jarrett's Federal income tax for 2008 and an accuracy-related penalty under section 6662(a) of$677.
- The issues for decision are: (1) whether petitioners were carrying on a rental property business in 2008 and (2) whether petitioners are liable for the accuracy-related penalties.
- We find that the property was not placed in service in 2008 and thus petitioners may not deduct the expenses relating to the property for 2008. Further, petitioners are liable for their respective accuracy related penalties.

Veribest Vesta, LLC. V. Commissioner
Order of service of Transcript (Bench Opinion) No. 9158-23 (July 17, 2025)

- In determining the amount of a charitable contribution for the donation of a conservation easement, one generally determines the value of the property before donation of the easement and the value of the property after donation. The difference between those two numbers is the value of the charitable contribution.
- To determine the value of its charitable contribution, Veribest Vesta calculated the going concern value of an operating granite mine.
- But the value of land in the area of the old Grimes quarry was well known. While the precise value of any particular parcel may vary, locals understood quarry properties to be worth about $2,000 per acre. Contemporaneous sales records of properties in the surrounding region generally reflect a value ranging from $1,999 to $2,840 per acre. And the old Grimes quarry sold just two years before the donation for $1,818 per acre.

Veribest Vesta (cont.)

- We have previously written, “It is *not credible* to posit that a buyer would pay —for the easement property alone— the entire NPV of a hypothetical business on the property.”
- The Seventh Circuit has explained that valuing land based on a hypothetical use is … “*nonsense* on its own terms.”
- The Fourth Circuit, when faced with a situation in which taxpayers attempted to claim a deduction for eight times what they paid for the property just a year earlier observed, "Such a claim simply does not pass any reasonable *smell test*, much less the tax law's requirements.“ If eight times does not pass the smell test, 200 times certainly does not.

Veribest Vesta (cont.)

- We mention all this because this is one of eleven cases before this Court in which True North Resources is the partnership representative pursuing the litigation. And we provide this warning, that continuing to pursue similarly *incredible, nonsensical, and, quite frankly, smelly* arguments may result in sanctions on petitioner or its counsel.