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BY THE U.S. GENERAL ACCOUNTING OFFICE

## Report To The Chief Judge United States Tax Court

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### Tax Court Can Reduce Growing Case Backlog And Expenses Through Administrative Improvements

The U.S. Tax Court is not keeping up with the increasing number of cases being filed. As the backlog grows, both taxpayers and the Internal Revenue Service are waiting longer to have their cases resolved.

GAO believes the court can better cope with its pending cases--which now number more than 58,000--by more fully using available trial time. GAO also suggests some changes that will enable the court to improve its operations and reduce expenses. The Tax Court stated that it has taken action or will take action to implement most of GAO's recommendations.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT  
DIVISION

B-214560

The Honorable Howard A. Dawson, Jr.  
Chief Judge  
United States Tax Court

Dear Judge Dawson:

At the request of the Chairman, Subcommittee on Treasury, Postal Service and General Government, Senate Committee on Appropriations, we have studied the operations of the Tax Court. The report points out that the Tax Court can significantly improve the effectiveness of its operations through administrative changes. In addition, we identify several ways which the Tax Court can save money by modifying its procedures.

The report contains recommendations to you on pages 17, 26, 27, 37, and 38. Under provisions of 31 U.S.C. §720, you are required to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the court's first request for appropriations made more than 60 days after the date of the report.

Copies of this report are being sent to various congressional committees and subcommittees; the Commissioner of Internal Revenue; the Director, the Administrative Office of the United States Courts; the Director, Office of Management and Budget; and other interested parties.

We appreciate the full cooperation and assistance provided us by Tax Court personnel. We look forward to working with you on other tax administration matters in the future.

Sincerely yours,

*W. J. Anderson*

William J. Anderson  
Director



D I G E S T

The predecessor to the U.S. Tax Court was established by the Congress in 1924. Today's court, created in 1969, is an important component of the federal tax system in that all U.S. citizens, corporations, estates, and trusts, as well as resident and nonresident aliens, can use it to contest tax determinations made by the Internal Revenue Service (IRS). The court hears cases in about 105 cities throughout the United States.

Concerned that the Tax Court was struggling with a record case backlog, the Chairman, Subcommittee on Treasury, Postal Service and General Government, Senate Committee on Appropriations, asked GAO to review court operations and identify areas needing improvement. GAO found that the court could make improvements in

- the scheduling and managing of cases;
- administrative operations; and
- the use of innovative management approaches, such as automating routine operations.

IMPROVEMENTS IN TRIAL SCHEDULING  
COULD HELP REDUCE BACKLOG

As a result of the increase in petitions filed with the court, the case backlog doubled between 1980 and 1982 and had reached more than 58,000 cases at the end of 1983. (See p. 1.) To reduce the backlog and to prevent old cases from accumulating, the Tax Court needs to take

action so that available trial time is used more. GAO found, for example, that in calendar year 1981,<sup>1</sup> the court did not use 36 percent of the days that had been specifically set aside for conducting trials. The court has implemented a GAO proposal that the court increase the number of cases scheduled for trial. (See pp. 9 to 11.)

The Tax Court also needs to develop techniques for monitoring the progress being made in closing the cases that have been reported by the parties in the cases as settled. GAO estimates that during calendar year 1981, 63 percent of all cases involving over \$5,000 in tax liability did not settle as scheduled. About half of these cases had not been finally settled until more than 6 months after settlement was due and about 3 percent of the cases were still open in December 1983--more than 2 years after settlement was due. Because the cases were not closed when scheduled, they had to be placed back into the trial setting process. This consumed court time and personnel resources and delayed other cases from being heard. (See pp. 12 to 16.)

ADMINISTRATIVE CHANGES NEEDED  
TO REDUCE COURT OPERATING COSTS

The court spends about \$1 million annually to lease courtrooms in cities where it holds trials as infrequently as once a year. More efficient alternatives could be tried to reduce this expense without greatly inconveniencing taxpayers. For example, the Tax Court could reduce the number of trial locations or work more closely with the Administrative Office of the U.S. Courts to increase the number of courtrooms borrowed from other courts. (See pp. 19 to 22.)

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<sup>1</sup>In 1982, the court held no trial sessions for about 4 months because of a 16-percent cut in its proposed budget resulting from an administration effort to reduce spending. Therefore, GAO used 1981 data because an entire trial year was needed to measure court workload and to develop a case scheduling model.

GAO also noted a need for

- changing accounting procedures to improve the timeliness with which filing fees are deposited (see p. 23) and
- supplementing available travel guidelines to assist the court staff in determining the allowability of certain types of travel costs (see p. 23).

INNOVATIONS IN COURT  
METHODS NEEDED

The Tax Court has not taken advantage of automated equipment, such as word processors and computers, to assist in the processing of court documents and developing needed management information. Instead, the court relies entirely on manual, paper-oriented processes and preprinted forms. GAO found, for example, that for the court staff to prepare its trial calendars, it must maintain and manually count cards for more than 58,000 pending cases three times a year. The court is now beginning an automation of its case processing system as proposed by GAO. (See pp. 31 to 33.)

Given the growing case backlog and its concentration in a few locations, the Tax Court needs to test alternatives to its current system of basing all of its judges in Washington, D.C., and sending them to other cities to conduct trial sessions. GAO believes that the court should experiment with assigning judges to high-workload locations, such as California, to eliminate the travel costs associated with the present system and enable more trial days to be scheduled. (See pp. 33 to 34.)

After the Tax Court holds a trial, it takes the court an average of over 14 months to issue its opinion. The court needs to improve the opinion writing process to reduce this delay. The court has recently emphasized the use of oral opinions which take less time than written opinions. (See pp. 34 to 36.)

## RECOMMENDATIONS

GAO makes numerous recommendations to the chief judge and the Clerk of the Court to change the scheduling and managing of cases (see p. 17), administrative operations (see pp. 26 to 27), and management approaches (see pp. 37 to 38).

Among the recommendations are to

- gather and analyze data on the length of trial sessions so that periodic adjustments to case scheduling can be made in the future;
- change court procedures for handling settled cases to reduce the delay between reporting a case as settled and closing the case;
- establish a mechanism for periodically reviewing the court's trial locations and courtroom leasing arrangements to determine (1) whether the number of trial locations could be reduced and (2) whether arrangements can be made to secure space other than through yearly leases;
- experiment with assigning trial judges to areas of the country with high caseloads; and
- appoint a committee of judges to monitor opinion production for the purpose of identifying ways to increase the number of opinions issued.

## AGENCY COMMENTS AND GAO'S EVALUATION

The Tax Court, in commenting on a draft of this report, generally agreed with GAO's recommendations to reduce the case backlog by improving the scheduling, management, and control over the court's caseload. (See pp. 18 to 19, and app. I.)

The court agreed in part with each of the recommendations GAO made to reduce operating costs. For example, the court agreed to reassess the number of trial locations, but believed it should continue to lease courtrooms around the country to ensure courtroom availability. GAO believes that although leasing



may be necessary in some cases, it should be done only when space cannot be obtained using other less costly alternatives, such as borrowing courtrooms, or less formal space, such as agency hearing rooms. (See pp. 27 to 28, and app. I.)

The court also generally endorsed GAO's recommendations to use more innovative methods. For example, the court is planning to experiment with assigning a judge to one of its other cities and to establish a committee of judges to monitor opinion production. (See pp. 38 to 39, and app. I.)



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#### ABBREVIATIONS

GAO	General Accounting Office
GSA	General Services Administration
IRS	Internal Revenue Service
ITC	International Trade Court
TSR	Trial Status Request Form

## CHAPTER 1

### INTRODUCTION

The United States Tax Court was established by the Congress in 1969. It was originally created in 1924 as an administrative agency in the Department of the Treasury.<sup>1</sup> Today it is an important component of the federal tax system in that all U.S. citizens, corporations, estates, and trusts, as well as resident and nonresident aliens, have access to it to contest tax determinations made by the Internal Revenue Service (IRS). The Court hears cases in about 105 cities throughout the United States.

The Tax Court shares responsibility for tax cases with the U.S. Claims Court and the U.S. District Courts. However, the Tax Court is the only one where payment does not need to be made before the proposed tax liability can be contested. Its principal responsibility and the majority of its cases involve the litigation of income, estate, and gift tax issues. It also has the authority to (1) issue judgments on the tax-exempt status of retirement plans, charitable organizations, and certain government obligations; (2) try cases involving certain excise taxes; and (3) hear certain cases involving disclosure of tax information.

One of the major problems confronting the Tax Court is that prompt resolution of tax cases is becoming increasingly difficult. IRS tries to limit the number of cases that require judicial resolution and has developed an examination and appeals process that is designed to encourage settlement of disputed cases at the lowest possible level. Nevertheless, in fiscal year 1983, taxpayers disputed over 34,000 cases in the Tax Court. This is a 100-percent increase in filings in 4 years. As a result of the increased filings, the Tax Court's backlog has increased from under 14,000 cases to a historic high of over 58,000 cases in the past 10 years. There were 2,910 cases over 5 years old that were awaiting trial at the end of 1983--more than 3 times as many old cases as the court had at the end of fiscal year 1978.

#### ALTHOUGH IRS FAVORS THE ADMINISTRATIVE RESOLUTION OF TAXPAYER DISPUTES, MANY CASES END UP IN THE U.S. TAX COURT

The IRS appeals process can begin at the conclusion of each individual audit. A taxpayer who disagrees with IRS' proposed determination can meet with an IRS supervisor to explain his/her position. If no agreement is reached, the taxpayer is sent a

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<sup>1</sup>For further details on the origins of the court, see appendix IV.

letter which states that the proposed adjustment can be appealed within 30 days. Any taxpayer wishing to appeal is granted a conference with a local IRS appeals officer.

A taxpayer whose dispute is still unresolved or who elects not to appeal within IRS has two options after IRS issues a notice of deficiency: (1) pay the disputed amount and file a complaint with the U.S. District Court or the U.S. Claims Court or (2) not pay the disputed amount and file a petition with the U.S. Tax Court.

Taxpayers who wish to file with the Tax Court have 90 days from the postmark date of the notice from IRS to file a petition.<sup>2</sup> The 90-day period is set by law and, except in certain excise tax and bankruptcy cases, neither IRS nor the court can extend it. The petition sets forth on a point by point basis the areas of dispute between the taxpayer (known as the petitioner) and the Commissioner of IRS. The petitioner must also pay a filing fee and select a place of trial. The fee is set at \$60. But, if the tax case is a small tax case--one in which the tax liability is \$5,000 or less and the taxpayer elects the procedure--the fee is \$10.

PROCEDURES IN THE TAX COURT  
DIFFER ACCORDING TO THE TYPE  
OF CASE BEING HEARD

Trial procedures differ depending upon whether the case is a small tax case or a regular case. Judges for the regular cases are presidential appointees, while those in the small cases are court-appointed. While there is an overall practice of assisting the taxpayer in both types of cases, procedures in the small cases are particularly informal. The special trial judge presiding over the small tax case will usually aid the taxpayer in developing the case and will not usually require legal briefs. Another difference is that the judge will consider evidence, such as affidavits and copies of documents, during small tax cases. This type of evidence could not be used in regular case procedures.

The judge presiding over the case will decide it one of two ways. Either the judge will orally summarize the facts and state the findings at the conclusion of the trial,<sup>3</sup> or write

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<sup>2</sup>Taxpayers have 150 days if the notice is addressed to a person outside the United States.

<sup>3</sup>Before October 1982 all opinions were required to be in writing. This was changed by the Miscellaneous Revenue Act of 1982 (Public Law 97-362) which authorized "bench opinions" when appropriate.

an opinion. If an opinion is written, the judge will consider the testimony and exhibits in the case and may request that the parties file "briefs." Briefs are legal papers that interpret the facts and explain the legal arguments of the parties.

#### AN OVERVIEW OF THE TAX COURT'S STAFFING AND BUDGET

In fiscal year 1983, the Tax Court had an authorized total staff of 271 employees, composed of three groups--presidential appointees and their staffs, special trial judges and their staffs, and an administrative staff under the direction of the Clerk of the Court. The court's fiscal year 1983 budget was \$14.5 million.

In January 1983, the presidential appointees consisted of 1 chief judge, 18 regular judges, and 5 senior judges.<sup>4</sup> (Additional information on the staffing and organization of the Tax Court is included in app. III.)

#### OBJECTIVES, SCOPE, AND METHODOLOGY

The Chairman of the Subcommittee for Treasury, Postal Service and General Government of the Senate Committee on Appropriations, in a letter dated June 30, 1982, asked us to review the Tax Court's operations. The Chairman specifically asked us to review certain areas that were of interest to the Subcommittee, including

- management and disposition of cases;
- productivity of judges;
- procedures for selecting the chief judge;
- need to have some judges permanently located in regional offices;
- staffing, personnel, and travel practices;
- need for computerization and word processing capabilities; and
- utilization of offices and courtroom space.

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<sup>4</sup>Senior judges are retired judges who have been called back to assist the court on a limited basis.

At the Chairman's request, we also reviewed the Tax Court's procedures for scheduling cases and overall court management.

We did most of our work at the Office of the Tax Court in Washington, D.C. The judges and staff are permanently located at this office, although the judges travel to various cities to conduct trials. We observed regular case trial sessions in New York, Baltimore, and Washington D.C. and also attended a small tax case session in Pittsburgh.

We reviewed the policies, procedures, and records of the court, including personnel records and travel vouchers. We reviewed the court's 1981 trial calendars and used them to develop information on case dispositions and court workload.<sup>5</sup> We used the case disposition information from the calendars to develop a model for predicting trial session length. In developing this model, we used standard computerized statistical techniques. In addition, we reviewed a random sample of calendar year 1981 trial calendars to determine the final disposition of cases in which the parties informed the judge at the trial session that a settlement had been reached.

To gain additional insight into the court's operations, we interviewed numerous court personnel, including every regular judge and special trial judge. We also spoke to various IRS officials concerning their dealings with the Tax Court. To compare the procedures and organization of other federal courts with those of the Tax Court, we discussed court operations in general with officials of the Administrative Office of the U.S. Courts and the Federal Judicial Center. We also visited two other federal courts--the Court of Military Appeals and the International Trade Court--because their operations were somewhat comparable to the Tax Court's.

Our work was conducted during the period from July 1982 through August 1983 and was performed in accordance with generally accepted government auditing standards.

At the end of our review, court officials called our attention to the potential increase in court workload that may result from a recent legislative change that provides for the payment of attorney's fees and other costs up to \$25,000 when the position of the government was determined to be unreasonable. The

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<sup>5</sup>In 1982, the court held no trial sessions for about 4 months because of a 16-percent cut in its proposed budget resulting from an administration effort to reduce spending. Therefore, we used 1981 data because an entire trial year was needed to measure court workload and to develop a case scheduling model. We used 1982 and 1983 data for the remainder of our work.



provision only went into effect with cases filed after February 28, 1983, and such cases have not yet been tried. Thus, we were unable to assess the effect of the provision during this review.

## CHAPTER 2

### THE TAX COURT COULD REDUCE ITS CASE

#### BACKLOG BY IMPROVING CASE SCHEDULING AND MANAGEMENT

To better cope with its increasing caseload, the Tax Court needs to more fully use the time it has available for hearing cases. We found, for example, that in calendar year 1981, trials were conducted on only 64 percent of the days that had specifically been set aside for this purpose. The court also needs to develop techniques for monitoring the progress of those cases in which the parties forgo their trial by reporting to the court that a settlement has been reached. During calendar year 1981, 63 percent of all such regular cases were not settled by the agreed upon date and had to be rescheduled for later trial sessions. Such cases disrupt the scheduling process and keep other cases from being set for trial.

#### THE TAX COURT SHOULD INCREASE THE NUMBER OF CASES BEING SCHEDULED FOR TRIAL

The Tax Court does not periodically review its trial scheduling criteria to determine whether the number of cases being scheduled is consuming the full amount of trial time that has been allotted. We found that the Tax Court was conducting trials on about two-thirds of its scheduled trial days. This "shortfall" could be contributing significantly to the Tax Court's backlog not only because the number of trials being conducted is less than what the court can accommodate, but also because, historically, the mere scheduling of cases for trial has been a major impetus for producing settlements without the need for a trial.

#### How does a case get scheduled for trial?

The Tax Court's Calendar Section is responsible for scheduling cases for the three types of calendars used by the court: trial, special session, and motion/settlement/report calendars.

#### Trial calendars

Three times a year, about 7 months before each of the court's three trial terms--winter, spring, and fall--the Calendar Section conducts a city by city count of the cards for all the cases awaiting trial (the general docket). The results of this count are forwarded to the Clerk of the Court who, in consultation with the chief judge, uses them to draw up a list of cities to be visited during each term. In addition, the clerk must decide, on the basis of the number of cases pending,

how many days of trial should be scheduled in each city. Regular case calendars are generally scheduled for 1 or 2 weeks at a single location, but small case calendars may be scheduled for only 1 or 2 days and are frequently combined into a "circuit" of several nearby cities to be visited within a 1- or 2-week period. In drawing up the list of trial sessions for each term, the clerk also considers the court's self-imposed goal of visiting each of the cities in which it conducts trials at least once a year. Even cities with relatively few cases will receive at least an annual visit from the court.

Using court guidelines, the Calendar Section has set up criteria that are used in selecting a reasonable number of cases. The criteria take into account an estimated fall-out rate from those indicating that their case is not ready for trial. In addition, the criteria reflect the large percentage of cases that will settle before or during the trial session, be continued to another session, or be dismissed at the time of trial. Preliminary estimates of trial time for each regular case are supplied by IRS' district counsel. For regular tax cases these estimates can vary widely--from only 1 or 2 hours for some cases to several days for others. The court uses a uniform trial time estimate for small tax cases of 1 hour for each case.

A "Trial Status Request Form" (TSR) is then prepared for all cases pulled by the Calendar Section. The TSR asks the parties to indicate whether the case will settle or go to trial and whether they are ready for trial and how many trial hours they estimate will be needed. The completed TSR's are reviewed by the Calendar Section to determine if both parties are ready. If both are ready or if the court feels the case should be scheduled, a "Notice Setting Case For Trial" is sent to both parties 90 days before the trial date. In small tax cases, the TSR step is omitted, otherwise all steps are identical. The trial calendar itself represents all cases receiving a "Notice Setting Case for Trial."

#### Special session calendars

Occasionally, the court schedules a special trial session for particularly complex and time-consuming cases. Often a special trial session calendar consists of only one case, with projected trial times ranging from 1 day to several days. During 1981, the Tax Court held 40 special sessions with a total trial time of 137 days.

#### Motion/settlement/report calendars

Each Wednesday, in Washington D.C., the court holds a session for resolving issues related to pending cases and for

hearing reports on the progress being made in completing the decision documents in cases that were settled earlier. These sessions deal with motions that are initiated by the respondent, the petitioner, or the court covering a wide range of pre-trial, trial, and post-trial issues. For example, a recent motions calendar included 15 motions:

- 9 related to the failure of petitioners to reply to IRS,
- 1 dealt with a request to change the place of trial,
- 1 requested an order to compel IRS to produce certain documents,
- 2 asked for orders to compel answers to written questions,
- 1 involved arranging a meeting between a petitioner and IRS to agree on basic facts, and
- 1 sought a partial decision in IRS' favor.

Motion/settlement/report calendars are prepared by the Calendar Section 7 days before each motions hearing.

Trials are not conducted for all cases that are scheduled

The parties involved in cases scheduled for a trial session have three opportunities to settle their disputes without a trial.

1. Each case receiving a "Notice Setting Case For Trial" has approximately 90 days until the trial session begins. During this time many petitioners will resolve their differences with IRS and ask that the court enter a stipulated decision.<sup>1</sup> Other cases will reach

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<sup>1</sup>A stipulated decision is defined as a formal settlement agreement between the petitioner and IRS. In effect, both parties have signed a decision document closing the case. At the direction of both the petitioner and respondent, a stipulated decision may be entered by the court at any time in the trial scheduling and trying process. Stipulated decisions are usually the product of discussions between the respondent and the petitioner, without the active participation of a judge. Generally, stipulated decisions are not issued after a full trial.

tentative settlements<sup>2</sup> and request that their case be scheduled to a motions hearing for final resolution.

2. In cases that are called at the trial session, the parties may also request that a stipulated decision be entered or that their case be scheduled to a motions hearing. These decisions are often the result of meetings between the petitioner and respondent or a pre-trial conference with the judge.
3. Cases that the parties are unable to settle but are not ready for trial are continued by the court to another trial session or restored to the general docket. At any time after the trial session the parties to these cases may request that a stipulated decision be entered. The court assumes that parties that have appeared at a trial session will give serious consideration to settling their cases, even though the cases have been continued or restored to the general docket.

The Tax Court does not adjust  
its scheduling criteria on the  
basis of actual experience

The court has not collected data to determine whether its scheduling levels have been set high enough to insure the full use of scheduled trial time. Our analysis showed that 36 percent of the scheduled trial days for regular cases and 34 percent of the days for small tax cases were not being used.

The criteria used by the Calendar Section are tailored to whether the planned calendar is for regular or small tax cases. For regular calendars, the scheduling criteria are linked to the two-step calendaring process. The first step is to send out enough TSR forms to provide 260 estimated trial hours for a 1 week regular session and 360 hours for a 2-week session. From these, the court hopes to receive responses that cases totaling 175 and 225 estimated trial hours for the 1- and 2-week sessions are ready for trial. The court believes that this will produce

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<sup>2</sup>A settlement simply means that both parties agree in principle, but need additional time to work out the details of their agreement. Settlements agreed upon at trial are scheduled to a motions hearing, which is held approximately 90 days after the trial date. By then, the court expects the stipulated decision document to be turned in.

sufficient actual trials to use available trial time. Because of the high rate of settlement and continuances and the short time required to try small tax cases, the court tries to schedule 20 cases for each small case trial day.

To determine whether the full allotment of scheduled trial days was being used, we analyzed the 132 regular and the 179 small tax sessions the court held in 1981. We determined the actual beginning and ending date for each trial session and compared them to the scheduled dates. In most, the scheduled number of days significantly exceeded the number actually used. The overall shortfall figure during 1981 was 36 percent for regular cases and 34 percent for small tax cases.

It is likely that these figures understated total shortfall because we were only able to obtain information on beginning and ending dates. Individual days in a trial session sometimes go unused due to scheduling problems, such as cases where parties are unavailable for a particular time slot, last minute settlements, or the nonappearance of witnesses or litigants. However, no data were compiled by the court to determine how frequently this had occurred. In addition, the court has not evaluated the accuracy of its small and regular case trial time estimates against those cases actually tried.

The information we developed is summarized in the following table:

Table 1

Underutilization Of Scheduled Trial Days  
By Regular And Small Cases  
(Calendar Year 1981)

<u>Type of case</u>	<u>Scheduled trial days</u>	<u>Actual trial days</u>	<u>Shortfall</u>	
			<u>Days</u>	<u>Percent</u>
Regular	1,228	783	445	36
Small	608	399	209	34

The effect of not making full use of available trial time extends beyond the number of cases that would actually be tried. Both IRS and court officials stated that the mere scheduling of cases for trial is a major factor in prompting the respondent and petitioners to work toward resolving their disputes. Because of these factors and other procedural matters, such as the calling of the calendar and hearing motions that occur in each session, we estimated that to fully use the trial time that was available during 1981, the court could have scheduled over

twice as many cases as it did--13,050 instead of 6,395. The doubling of current scheduling levels would have been sufficient to eliminate the growth in the backlog that occurred that year.

In a draft of this report, we proposed that the court increase the number of cases being scheduled to more fully use available trial time. In his response to the draft, the chief judge stated that, for each trial session, the Clerk of the Court is now contacting the parties on almost 3 times as many cases as before.

#### The court can use mathematical models to improve its case scheduling

Using trial data collected for calendar year 1981, we used standard statistical techniques to develop mathematical models for predicting how long a trial session will last. We analyzed a series of scheduling variables, including estimated trial time, number of cases scheduled, length of session, location of session, and presiding judge. We analyzed these factors in isolation and in groups to determine their predictive value. We found that assigning cases based on their estimated trial time--the method used by the court--and assigning a specified number of cases to each session had potential as viable scheduling criteria.

The results of our analysis suggest that the court should increase the number of trial hours it puts on its calendars. Over 90 percent of regular trial sessions ended early; thus, additional cases could have been handled at almost all sessions. Also, the court should experiment with the approach discussed in appendix II. Our analysis showed that how long a trial session would last could be projected with acceptable reliability using the number of cases scheduled. The formulas we developed would enable the court to set its calendars with much greater confidence that all the scheduled trial time would be used. If the system is as effective as our data indicate, the court could fully use its scheduled sessions while eliminating many of the procedural steps that are now required. For example, the TSR now sent to both parties could be eliminated. The court could stop tracking and recording estimated trial time, and IRS and the taxpayers would no longer have to provide these unreliable estimates months before an eventual trial. A detailed discussion of our approach, as well as its results and limitations, can be found in appendix II.

PROCEDURES SHOULD BE DEVELOPED  
TO INSURE THAT CASES REPORTED  
AS SETTLED ARE CLOSED IN A  
TIMELY MANNER

At the beginning of a trial session, IRS will report that some of the cases are settled and request some time (usually 90 days) to complete the computations and close the case by filing a stipulated decision. The judge will request a report on the progress of the settlement at a motions hearing, which is usually set for 90 days after the trial session. Court officials and IRS attorneys told us that when a case is scheduled to a motions hearing for settlement, it is generally understood by both the petitioner and respondent that they have informally contracted with the court to sign a stipulated decision document closing the case before or at the time of the motions hearing.

Once a case is scheduled for a motions hearing for settlement, court review of the facts and circumstances of the case ends. During the period between the trial and the motions hearing, the petitioner or IRS may write the court and request that the case be continued to another motions hearing or restored to the general docket. If the request is granted, these cases will not appear on the motions calendar. These requests from the petitioner or respondent are not reviewed by a judge. Rather, personnel in the clerk's office review and almost always grant such requests. Only requests to remove cases from a prepared motions calendar are referred to a judge for review and consent.

If a stipulated decision document or other request does not reach the court 7 days before the scheduled motions hearing, the case is put on the motions session calendar. Generally, however, the case is not reviewed to see why it has not been settled, nor is it called at the scheduled hearing. Rather, an attorney from IRS' national office meets with the deputy trial clerk before the hearing and either asks the clerk to continue the case to a later motions hearing, restore the case to the general docket or, if agreement has been reached, the attorney provides the court with the stipulated decision. The judge at the hearing does not examine the reason for the case not settling, nor does the reason become part of the record of the case. As a result, court review of open settlement cases is practically nonexistent. In addition, no formal record exists as to why these cases remain open. Court records will only show that they were continued or restored to the general docket.



Most 1981 cases reported  
as settled were continued  
or restored to the general docket

To determine the rate of settlement breakdown, we randomly selected 15 regular and 10 small tax case trial calendars from the 132 regular and 179 small tax trial sessions held in 1981. A total of 205 regular and 135 small cases were reported as settled during these sessions.<sup>3</sup> We identified those cases reported as settled and reviewed those docket sheets to determine the disposition of each case at its scheduled motions hearing. The disposition of cases continued to a second motions hearing was also recorded.

We found that 37 percent of the regular cases were settled on time. In our limited sample of small cases, 56 percent were settled by the time they were due.

Our analysis showed that 45 percent of the regular cases were restored to the general docket at the motions hearing, and that 18 percent of the cases were continued to a second motions hearing. Of these, over half (20 of 36) were either restored to the general docket at that hearing or continued to a third motions hearing.

To determine how quickly cases listed for settlement were being closed after being continued or restored to the general docket, we calculated for a portion of our sample the elapsed time between the first motions hearing and the final action recorded before December 1983. An analysis of these 71 cases is provided in table 2. In addition to the settlement time listed in the table, each case had at least an additional 90-days from the date of the trial session to finalize the agreement before the scheduled motions hearing. This 90-day period is not included.

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<sup>3</sup>Statistically, the number of regular cases in our sample was sufficiently large to make our findings projectable to the universe of 1,923 such case settlements reported in 1981. However, our sample of small tax case settlements was not sufficiently large to be projected beyond those cases examined.

Table 2

Elapsed Time for Those Regular Cases Not  
Settling at Their First Motions Hearing

<u>Additional elapsed time (months)</u>	<u>Number of cases</u>	<u>Percent of total</u>
under 1 .....	15	21.1
1-3 .....	15	21.1
4-6 .....	9	12.7
7-12 .....	13	18.3
13-18 .....	9	12.7
19 and over .....	<u>10*</u>	<u>14.1</u>
Total cases .....	<u>71</u>	<u>100.0</u>

\*Total includes 2 cases reported settled in January and February 1981 that were still open November 30, 1983.

The court does not gather any information on why settlements are not being completed on time. While we discussed the issue with various people, including IRS officials, court officials, judges, and private attorneys, no one knew why so many cases are not settling. Among the reasons cited as possible explanations were (1) IRS attorney workload was too large, (2) inadequate staff was being provided to the IRS attorneys, (3) petitioners forgot about the settlement, (4) taxpayers or their representatives were manipulating the system,<sup>4</sup> and (5) the parties failed to really work out the details of the settlement in their attempt to avoid trial.

Court should try various  
approaches to close cases  
reported as settled

The court should take whatever measures it can to reduce the delay between report of settlement and the actual submission of the stipulated decision. The court might try several approaches: (1) meet with IRS National Office officials to obtain

<sup>4</sup>The Internal Revenue Code permits taxpayers to be represented in the Tax Court by individuals who are not attorneys. Currently, about 126,000 attorneys and 7,000 non-attorneys are approved for practice before the court. Non-attorneys who wish to practice in the court face an additional requirement in that they must first pass a lengthy written examination administered annually by the court.

their assistance in highlighting the need to close these cases promptly after the trial sessions; (2) have the judge recall all settled cases on the last day of the trial session to identify any cases where the settlement has already broken down and either (a) hold trial or (b) set a date for definite trial as soon as possible; and (3) experiment with different approaches at the trial sessions to getting the cases closed, such as the approach we describe on page 16.

The court should also assess whether it can use available sanctions to increase the number of timely settlements. Court procedures already provide a number of sanctions for use in enforcing the court's established rules, such as deciding against the uncooperative party or dismissal of the case. While dismissal is a harsh solution, the court should make every effort to encourage the filing of a final decision. Delayed settlements delay payment of any taxes owed, clog court calendars, and waste limited court time that could be used to resolve some of the other 58,000 cases pending. One top court official estimated only about 10 percent of settlements should not be completed in time. Only in these few cases, where the complexity of the case justifies it, should the court permit an extension of time beyond the first motions hearing. If the basis for settlement has broken down completely, the court should provide that the case be set to a specific trial session as soon as possible.

In addition to the other steps suggested, the court can try some of the following limited procedural steps:

- Provide instructions that cases considering settlement are expected to file final settlement papers by the last day of the trial session.
- Change the language in the order issued after the trial session that schedules the case for the motions hearing. It now provides that "if the settlement stipulation has not been filed. . . the case will be restored. . . for trial in due course." This does not suggest to the parties that the court expects prompt filing of settlement documents. It is possible that some cases might complete the documents if the order were amended to require explanation for failures to forward the documents and/or to provide that the case will be set for trial at the next available trial session more than 30 days after the hearing.
- Institute review by a judge of all motions to restore a case to the docket or to continue settled cases that are

received after the trial session and at the motions hearing. This procedure would insure that cases scheduled for settlement would not be routinely continued to another hearing or restored to the general docket.

To see what practical results might be realized by active intervention by the court in cases where settlements break down, we asked one judge to participate in an experiment at one trial session. The judge at the trial session required the parties in all settlement cases to read their basis for settlement into the record at the calling of the calendar at the beginning of the trial session. We arranged for the special trial judge for the motions hearing to contact the parties and to call the open cases at the hearing to find out the status of those cases that had not yet settled.

Although this was an isolated example, the results of our experiment were much better than the results produced under the court's usual approach. Of the 18 cases continued for settlement purposes from the trial session, 12 (67 percent) settled before, at, or immediately after the motions hearing; 3 (17 percent) were restored to the general docket; and 3 cases (17 percent) were continued to a second hearing. The results from our analysis of all 1981 settlement cases showed that only 37 percent of all settled cases were closed before or at the hearing, 45 percent were restored to the general docket, and 18 percent were continued to a second motions hearing.

Those cases from our sample trial session that were on the motions calendar also had a much higher rate of closing than the cases on the hearing calendar from other trial sessions. Only 11 of the cases appeared on the motions calendar itself, the other 7 cases having settled before the preparation of the calendar. Of these 11 cases, 5 settled, 3 were continued, and 3 were restored to the general docket. Of the other 36 cases listed for settlement on the motions calendar, only 1 case was settled before, at, or after the session; 33 cases were restored to the general docket; and we were unable to determine the disposition of 2 cases. Thus, our experiment brought 12 of 18 cases to a final conclusion in a timely manner.

## CONCLUSIONS

The Tax Court's case backlog has risen steadily over the past decade. However, given the current efforts to hold the line on federal spending, the court will need to seek opportunities to maximize the use of its existing resources if it is to more effectively deal with its case-backlog problem.

One area for improvement relates to case scheduling. Since only 64 percent of the days that had been scheduled for trial in calendar 1981 were used, the opportunity to hear additional cases was lost. The court needs to gather the data necessary to ensure that its process of setting cases for trial is resulting in the full use of available time. Another area for potential improvement relates to the closing of cases that have been reported as settled.

Our review showed that using the number of cases scheduled offered more potential for efficiently and effectively predicting the length of court sessions than the method presently being used by the court. We believe our model warrants further testing. If the results stand up under further scrutiny, the model should be used.

### RECOMMENDATIONS

Because of the serious backlog problem facing the court and the importance of the trial sessions in getting cases closed, we recommend that the chief judge of the Tax Court

- gather and analyze data on the length of trial sessions so that periodic adjustments to case scheduling can be made in the future; and

- test the model we developed as a basis for estimating the number of cases to be scheduled for trial sessions.

In addition, we recommend that the chief judge take action designed to reduce the number of cases that are presently reported as settled, but not closed, within 90 days. To identify the best approaches for accomplishing this objective, the court should experiment with the solutions we have suggested, as well as others that it may identify.

### AGENCY COMMENTS AND OUR EVALUATION

The Chief Judge of the United States Tax Court commented on a draft of this report by letter dated November 29, 1983. (See app. I.) He stated that the Tax Court welcomed the recommendations made in our report and has already taken action, or will take action, to implement most of them. The court's comments on our recommendations in this chapter follow.

In commenting on our recommendations to gather and analyze data on the length of trial sessions, the chief judge stated that the court is beginning to analyze such data to make further adjustments to its case scheduling. However, the court pointed

out that increasing trial time does not provide the whole answer in that it usually takes a judge far longer to consider the issues and prepare the opinion in a case than to conduct the trial. We share the chief judge's concern about opinion backlogs and have presented our comments on how they might be reduced in chapter 4 of this report.

The Tax Court stated that it will test our model for estimating the number of small tax cases to be scheduled for trial sessions. However, the court does not believe it can use the model for regular cases because it depends on the Trial Status Request (TSR) sent to the parties 6 months before the session to determine what cases are ready for trial and to identify tax shelter cases where only one of a number of related cases needs to be tried. In this regard, we want to point out that although our proposal may suggest elimination of the TSR process as a potential benefit, the proposal is compatible with the current TSR system. Our model is designed to assure more efficient use of scheduled trial time by helping the court project how many cases, or estimated trial hours, should be scheduled to use all the available trial time. Currently, the court schedules all cases that report on the TSR that they are ready for trial. The court could either retain the current TSR system and send them to the parties in many more cases or it could disassociate the TSR's from specific trial sessions. For example, the court could send TSR's on all cases 6 months prior to the beginning of the first session of a court term. While the court does use the TSR's as a primary method of identifying tax shelter cases, other methods of identification, such as matching with IRS records, could be used. This could enable the court to consolidate those cases earlier than they can be under the current process. In any case, even with current increases in cases sent TSR's, over 40 percent of the court's regular case trial time was not used in its Spring 1983 term. Our model should enable the court to better use its available trial time.

To reduce the number of cases that are reported as being settled but are not being closed, the court is requiring judges to retain cases reported as settled until documents are filed closing them. This approach could be effective if the judges actively follow up on these cases.

### CHAPTER 3

#### ADMINISTRATIVE CHANGES ARE NEEDED

##### IN THE TAX COURT

To reduce operating costs, the Tax Court needs to change some of its administrative procedures. For instance, the court is spending about \$1 million a year to rent courtroom space in numerous locations throughout the country that is often seldom used. More cost efficient alternatives, such as reducing the number of trial locations, should be explored. Also, the court needs to (1) improve its procedures for handling filing fees and controlling cash receipts and (2) develop written supplemental travel guidelines. Since staffing requirements for the Tax Court have never been reviewed, the court should also evaluate whether its staff is being used most productively.

##### SPACE MANAGEMENT ACTIVITIES CAN BE IMPROVED

The Tax Court, because it visits its trial cities as rarely as once a year, generally tries to borrow courtrooms for its sessions from other federal, state, or local courts. In cities where it has had repeated problems in obtaining courtrooms, the Tax Court rents courtrooms by paying an annual fee to the General Services Administration (GSA). In 1981, the Tax Court spent \$863,276 to rent courtroom space in 30 of its 105 trial cities. Moreover, the court estimates that in 1984, it will spend \$1,122,000 to rent space in 31 cities.

The cost of renting courtroom space in certain cities is high when the number of days the Tax Court is using the courtrooms is considered. For example, the average cost per day in Pittsburgh, where the Tax Court met for 10 days in fiscal year 1981, was \$4,012.50. In Memphis, where the court met for 7 days, the average cost per day was \$3,180.71.

To effectively conduct trial sessions judges need to have adequate space. But, because of the high costs associated with renting space, this alternative should be adopted only as a last resort. The Tax Court should first seek to obtain available government space through the Administrative Office of the U.S. Courts--a practice that is presently not being followed. Also, the Tax Court should develop a procedure to periodically review the need for continuing court sessions in low-use cities.

The Tax Court should work  
with the Administrative Office  
of the U.S. Courts to obtain  
needed courtroom space

When space is not available in a city that the Tax Court is going to be visiting, Tax Court officials have tried to obtain the use of a courtroom by borrowing it directly from a federal judge who is located in that city. We were informed that this practice has had mixed results because some federal judges have been very cooperative in making space available, while others have been reluctant to do so.

The Tax Court has not entered into a working arrangement with the Administrative Office of the U.S. Courts, the agency responsible for the managing of the federal court system, to obtain space where needed. Officials of the Administrative Office informed us that they have made arrangements for some other traveling federal courts, such as the Claims Court, and could also do so for the Tax Court. Officials stated, however, that it would be necessary for the Tax Court to provide the Office with adequate lead time so that the operations of the federal courts are not disrupted.

The Administrative Office did not specify how much notice it would need. But, because of the trial scheduling procedures now followed by the Tax Court, we believe the court would be able to provide at least 6 months notice of its need for courtroom space for hearing regular and small cases. For many cities, the court could even consider establishing a regular annual schedule for its visits.

It seems reasonable to assume that the Administrative Office will not be able to provide space at all locations where courtrooms are needed, and that the Tax Court's practice of renting courtroom space will probably continue in some locations. Therefore, in making arrangements with the Administrative Office, the Tax Court could offer to share the use of its courtroom space at those locations where such space is rented. Since some of those courtrooms are in cities where space is in short supply, the court might be able to use the offer of sharing its space to its advantage in making arrangements with the Administrative Office.

The Tax Court should develop  
procedures to periodically review  
the need for retaining all of  
its trial locations

The number of cases filed in many of the cities in which the Tax Court conducts its sessions is very small. In October



1983, 49 cities had less than 100 cases each and 18 of these cities had 15 or less cases.

The court might reduce the amount of money spent on courtroom space by periodically reviewing the need to retain all of its trial cities. In addition,

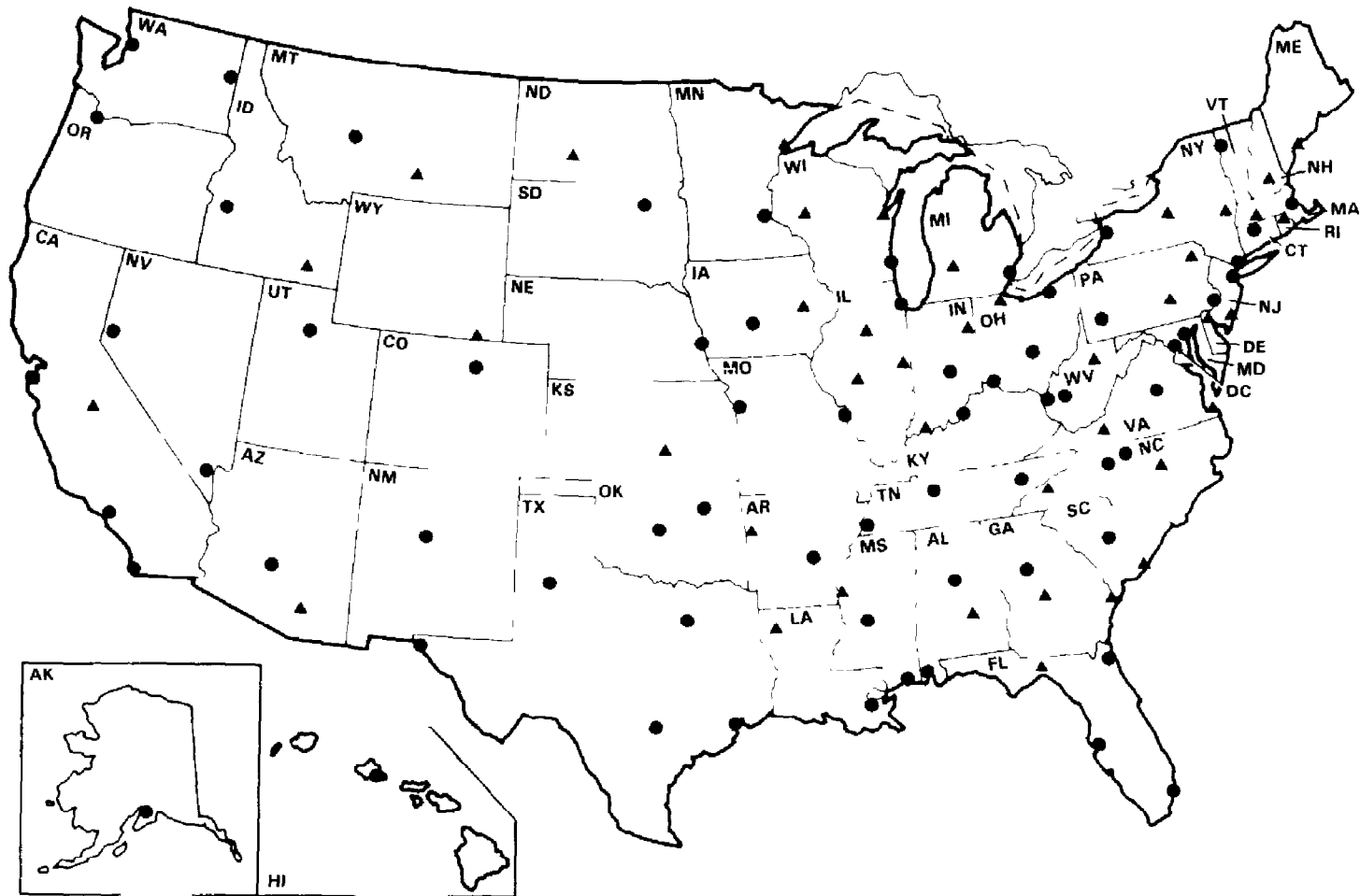
- (1) consolidating cities would produce a fuller schedule in the remaining cities;
- (2) traveling costs would be reduced in that trips to cities for short sessions of 1 or 2 days would be curtailed; and
- (3) the number of sessions that could be scheduled in high caseload cities could be increased because fewer annual visits to low volume cities would be required.

Because the court had no criteria for deciding when to add or drop a city, we identified those cities within 150 miles of one another. We used 150 miles because we thought that 3 hours of driving time was not unreasonable, particularly since taxpayers in many parts of the country were required to travel further. We found that the court holds small case sessions in 32 cities that are within 150 miles of cities in which it hears both regular and small cases, and many of these cities have very few cases. For example, Wilmington, Delaware, only 29 miles from Philadelphia, had just 54 cases. In addition, the court has at least 14 pairs of cities in which it hears regular cases that are within 150 miles of each other. For example, Huntington, West Virginia, which had just 12 regular cases as of October 1983, is 51 miles from Charleston. The Tax Court is paying rent on courtrooms in five cities that are within 150 miles of another city where it is also renting space. In another six cities, the court rents space within 150 miles of cities where the court is able to borrow space. Two trial cities are less than 110 miles from the court's Washington headquarters.

While our selection of 150 miles between trial cities was arbitrary, the discussion above illustrates how many trial locations are very close to others. The map on the following page shows how in some parts of the country taxpayers must travel long distances to reach a Tax Court trial location, while in other sections the court has several trial locations near the taxpayers. Applying reasoned criteria on workload and distance would enable the Tax Court to site its sessions at locations that would make it convenient for a maximum number of taxpayers at a minimum cost.

Figure 1

### Tax Court Trial Locations



- ▲ CITIES WHERE TAX COURT HEARS ONLY SMALL CASES
- CITIES WHERE TAX COURT HEARS BOTH REGULAR AND SMALL CASES

CASH MANAGEMENT PRACTICES  
SHOULD BE STRENGTHENED

The court had limited written instructions requiring that cash and checks be secured. While no shortages had been reported, the Tax Court procedures could be improved. We found that cash and checks were being kept in a lockable closet and file cabinet, rather than in a safe as required by GSA property management regulations. Checks and cash that accompanied petitions remained with them until they were processed. In addition, because of court procedures for accumulating late payments and processing them periodically, fees paid late remained unsecured for several days before they were processed and sent forward. A recent change in court procedures that provided for direct local deposit of funds instead of sending the money to the Federal Reserve Bank of Baltimore did result in quicker crediting of the funds to the Treasury. However, even with the recent change in procedure, the Tax Court did not always promptly deposit funds received.

When collections are not deposited promptly, access to the funds by the Treasury is delayed. For example, in the Petitions Section, the staff will accumulate all of the fees received until that day's petitions are processed. Tax Court personnel advised us that when they receive a large number of petitions, it may take several days to process them. As a result, fees can remain in the Petitions Section for several days before being forwarded to the Fiscal Office. Moreover, maintaining checks and cash on hand unnecessarily increases the potential of their being lost, stolen, or misused.

WRITTEN INTERNAL TRAVEL  
PROCEDURES ARE NEEDED

With only minimal exceptions, Tax Court judges and administrative staff personnel are following appropriate travel regulations. We reviewed all of the vouchers for the regular judges and special trial judges for fiscal 1981 and a sample of staff vouchers and found them to be in general compliance with the regulations both for judges and others at the court. Unlike many other agencies, though, the Tax Court has no supplemental written instructions to provide court policy on some special reimbursements, justification for use of first-class travel, and other matters in areas not covered specifically in the judges' or the staff's travel regulations. Therefore, the judges and administrative personnel may not be fully aware of what they are and are not entitled to claim while traveling.

THE NUMBER OF STAFF NEEDED BY REGULAR  
JUDGES NEEDS TO BE REEVALUATED

Each regular judge is authorized a personal staff comprising two law clerks and two secretaries--a staffing pattern that has been in place since the Tax Court was created in 1924. Since the number of staff varies from that of other federal courts and has never been reviewed, the court should evaluate whether the current number of staff is appropriate.

Officials of the Administrative Office of the U.S. Courts told us that the size and composition of a federal judge's staff varies. For example, the District Court judges have two law clerks and one secretary while the Court of Appeals judges have two secretaries and three law clerks. The rules and regulations governing all policies and procedures of the Federal Court System are established by the Judicial Conference of the United States which meets twice a year to review and revise, if necessary, those policies and procedures. Guidelines for the employment of secretaries and law clerks by circuit judges, district judges, and bankruptcy judges are contained in the September 1979 Judicial Conference report. Although not under the jurisdiction of the Judicial Conference or the Administrative Office, the Tax Court usually abides by their guidelines for district court judges. In this case, however, the Tax Court judges have larger staffs than authorized for other trial court judges.

Tax Court regular judges appear to give their secretaries additional responsibilities beyond routine clerical work. We talked to two Tax Court secretaries working for the same judge and they explained that besides their routine clerical work, such as answering the phones and typing, which takes about 40 percent of their time, they are responsible for

- finalizing the trial calendars,
- obtaining all case files requested by law clerks and judges,
- checking the accuracy of all legal citations, and
- recordkeeping.

The secretaries also analyze reports received from IRS and compare them to the trial calendar that they have been maintaining for the judge regarding the trial status of each docketed case in an upcoming session. The secretaries follow up on any discrepancies between the two reports with IRS. They also maintain a card file on all cases submitted to the judge and keep card files for cases scheduled for trial, cases on appeal, etc.

it is conducting sessions in too many locations to promote the efficient use of valuable trial time. The court has been gradually increasing the number of trial locations as the caseload grows. The court has not, however, looked at whether all the cities at which sessions are now held should continue to be used.

The Tax Court does not have written internal controls to control handling and processing of cash and checks. Although no shortages have been reported, the Tax Court personnel did not always keep cash and checks secure or make timely deposits of funds. There were no internal written guidelines for handling and depositing cash and checks.

The Tax Court has no guidelines to supplement applicable travel regulations to provide additional reimbursement information to traveling court personnel nor does the court have clear guidelines to control the use of first-class travel accommodations. The court's written supplement should advise the judges and administrative personnel what they are and are not entitled to claim while they are traveling.

The number of court staff needed, especially on the judges' staffs, may not match the amount of work required. The court has not undertaken any review of staffing needs. The court may be able to use these staff positions more efficiently in other areas.

#### RECOMMENDATIONS

We recommend that the chief judge and the Clerk of the Court

- establish a mechanism for periodically reviewing the court's trial locations and courtroom leasing arrangements to determine (1) whether the number of trial locations could be reduced and (2) whether arrangements can be made to secure space other than through yearly leases.
- develop written guidelines for handling and processing cash and checks and take appropriate steps to physically secure checks and cash in a safe while petitions are being processed.
- develop guidelines to supplement the Travel Regulations for U.S. Justices and Judges and GSA Travel Regulations and to establish procedures for justifying the use of first-class travel accommodations.
- provide for the periodic assessment of staffing levels required by the court. In this regard, the need for the

regular judges to have two secretaries should be examined.

#### AGENCY COMMENTS AND OUR EVALUATION

The Tax Court agreed in part with each of our recommendations in this chapter.

The court agreed to reassess the number of trial locations at which it hears cases. However, it did not agree that it should reduce its current reliance on leasing space. Instead, it pointed out the advantage it offers other agencies by providing them, rent free, the space it leases but is not using.

Our proposal was not made with a view toward eliminating the court's current practice of leasing courtroom space. There will probably continue to be situations where leasing is the only alternative available to the court. However, we continue to believe that the Tax Court should exhaust all other means available to it, including consulting with the Administrative Office of the U.S. Courts, before making that type of commitment. While having its own courtrooms does make it easier for the court to schedule trial sessions, a number of alternatives are available to the court that should minimize the inconvenience. For example, the court could set a regular schedule for visiting many cities or, for special sessions, the court could use smaller, less formal rooms such as hearing rooms. Furthermore, the court should periodically reassess opportunities to borrow space in cities where it leases courtrooms to determine if it can surrender its leased space. The court's comments about the other government agencies that use the space are not part of the issue of whether the court is obtaining space at the least possible cost. But, in any case, we question whether the court should lease space because other government agencies have a need for it and can obtain it rent free.

With respect to the need for (1) written guidelines for processing cash and checks and (2) safeguards for filing fees while processing petitions, the court believed that its procedures were generally proper. We continue to believe that, although its current procedures are in accordance with Treasury requirements, the court should prepare guidelines for the use of its staff in processing cash and checks. These would help assure that the staff is able to properly process these payments, now in excess of \$1 million annually. For example, we found that the petitions staff would accumulate fees paid late and hold the checks until a group of late payments had been received. Thus, the court might hold some checks for several days or more when these should have been promptly deposited. To better safeguard filing fees, the court agreed that it would take steps to secure the cash and checks in a safe after they are removed from the petitions.

Concerning our recommendation to issue supplemental travel guidelines, we believe that the modification planned by the court to the employee's annual travel authorization, which will provide limited supplemental guidance to travelers, should be sufficient. The court pointed out that the Tax Court discourages first-class travel by its judges and that most of its judges did not travel first-class. We believe that when judges fly first-class, they should certify to its necessity as required by existing travel regulations.

Our final recommendation in this chapter was that the court reevaluate the staffing at the court, especially whether the regular judges need to have two secretaries. While the court agreed in principle that staffing should be periodically reassessed, it felt that the two secretaries were required by each judge to support his or her work and that of the law clerks and any additional personnel assigned to the judge. The court said it will consider the potential impact word processing and other automation might have on the secretarial staffing.

## CHAPTER 4

### INNOVATIVE MANAGEMENT APPROACHES

#### COULD IMPROVE THE OPERATIONS OF THE COURT

In chapters 2 and 3, we discussed current problems with the court's operation and suggested possible solutions. These proposed solutions would not require that the court make drastic changes to either its organization or its approach to processing petitions. Long-range changes in the court's organization and operations, however, should be considered to improve overall system effectiveness. Some of the issues that should be considered include (1) placing more emphasis on having petitioners and the respondent move their cases more quickly; (2) automating routine court functions; (3) assigning some court trial staff to areas other than Washington, D.C., on a limited basis; and (4) improving the processing of opinions.

#### CURRENT CALENDAR SYSTEM

##### PERMITS LENGTHY DELAY BEFORE TRIAL

Under the current Tax Court calendar system, regular cases can languish for years without the court taking action to move them. To a large extent, the court relies on both the petitioners and IRS to move their cases through the court system. This nonaggressive approach has resulted in a "hard-core" group of cases that repeatedly go through the court's trial setting and motions hearing process without being tried or otherwise resolved. For example, in a December 1982 Baltimore session of 57 cases, 3 dated from 1978, 7 from 1979, 9 from 1980, 25 from 1981, and 13 from 1982. Thus, almost one-fifth of the cases had been at the court awaiting scheduling for 3 or more years and about one-third of the cases had been waiting for 2 years or longer. In five other winter 1982 calendars we reviewed, over one-quarter of the cases were from 1979 or before. And, at the end of 1982, over 3,000 cases from before 1978 had not yet been to trial.

The Tax Court's situation is a contrast to the International Trade Court (ITC), which is very similar in design and function. In 1970, the ITC (formerly U.S. Customs Court) was faced with case management problems even more severe than the Tax Court's. ITC's reaction was to adopt an aggressive attitude toward case management. This change in management philosophy and the subsequent changes in how cases are scheduled for trial has been very successful.

#### The International Trade Court has developed a case management system that works

In 1970, the ITC made some procedural changes to get control of its case management problems. At the time, the court



was facing a serious backlog problem--over 500,000 pending cases. Lengthy trial calendars of up to 5,000 cases were not uncommon, and almost all of the scheduled cases were being repeatedly continued. By changing its rules and procedures, the court has now reduced its current inventory to about 60,000 cases, reduced its backlog by 440,000 cases, and greatly increased the productivity of its judges.

Basic to the changes made by the ITC was the development of a series of calendars: (1) the reserve calendar, (2) the joined issue calendar, and (3) the suspension calendar. The calendars have fixed time frames after which the case is dismissed unless it is moved along. For example, cases are placed on the reserve calendar after filing. After 1 year the case is automatically dismissed for lack of prosecution unless the party has moved it to the next stage--the joined issue calendar--or has sought an extension. The court notifies the party 30 days before the end of the 1-year period. If the party take no action, the dismissal is done as a purely administrative measure by the clerk's office without involving a judge.

The joined issue calendar works similarly. The parties have 1 year to either settle the case or prepare for trial. If additional time is needed, a continuance motion must be granted by one of the judges assigned to hear motions. If the parties take no action, the case is dismissed after 1 year by the clerk's office. Cases move out of the joined issue calendar by filing a notice of trial, at which time the judge assigned will contact the parties and schedule trial. Trials are almost always held on schedule.

Another element of calendar management at the ITC is the use of a suspension calendar. A case is put on this calendar when the parties believe the issues are similar to those in another case and wish to wait until the other case is resolved. Once the designated case is decided, the court contacts the parties whose cases are in suspense and gives them 30 days to decide upon a course of action. The parties can either settle following the pattern of the controlling case, or seek a trial on their case. If they do nothing, the clerk will dismiss their case.

The exercise of dismissal power by the clerk gives the court ultimate control over its cases. At ITC, like the Tax Court, a dismissal means that the government's original determination is sustained, and the private party owes the entire amount. As a result, the parties will, if they think there is any merit to their position, do whatever is required to avoid a dismissal.

The Tax Court should consider  
adapting the ITC approach to  
its operations

While there are differences between the ITC and the Tax Court which would affect the calendar system, the approach used at ITC could still significantly benefit the Tax Court. The major difference between the two courts is the extent to which petitioners are represented by attorneys. At ITC, about 90 percent of the petitioners are represented by attorneys, usually specialists in import-export questions. At the Tax Court only about 50 percent of the cases have attorney representation, although most large and complex cases have attorneys. The result is that parties at the ITC are more familiar with the court processing and procedures than they are at the Tax Court. However, by limiting the actions required of the taxpayer or the taxpayer's representative and providing well-written explanatory materials and notices, the Tax Court should be able to use a system similar to ITC's.

The emergence of tax shelter litigation as a significant problem provides one indication of how the use of a suspension calendar at the Tax Court could significantly improve case management. According to IRS, which currently has an extensive audit effort under way in the tax shelter area, approximately one-third of the pending cases are tax shelter cases. Many shelters consist of hundreds of taxpayers who have merely invested in the shelter and have no responsibility beyond their original investments. These shelters will often have members scattered across the country. The Tax Court is finding that when it tries to set these cases for trial, the response is often that the taxpayers are awaiting resolution of another related case. With a suspension file system, the court could track similar cases and when the the lead case is resolved, provide stringent timeframes for resolving the others.

LIMITED TAX COURT  
AUTOMATION MAY LOWER  
COSTS AND IMPROVE OPERATIONS

The operations now performed on the administrative side of the Tax Court are prime candidates for automation. In the Calendar Section, the case card, now produced in the Petitions Section for each case, is manually filed by place of trial in one of two cabinets depending on whether it is a regular case or small case. The cards filed in each city group are further divided into several subgroups: (1) cases on a current calendar; (2) cases out for assessment for a future trial session; (3) cases in any of several groups, such as large tax shelters; or (4) cases that will require a very long trial session. Under current court procedures for setting future calendars, all 58,000 pending case cards are counted by hand three times a year to develop a trial schedule. If the court wants to determine

how many cases related to a subgroup, such as a large tax shelter partnership, have been filed nationwide and where the cases were filed, the Calendar Section must check the calendar cards for all 105 trial locations, consult special lists or docket card groupings in the Docket Section, and/or review case listings obtained from IRS. Thus, repetitive pulling and counting of the cards goes on continuously in the Calendar Section.

The Statistics Office also has a procedure based on a card. Beginning with the petition, key documents are routed through the office before being placed in the case file. The office makes up a three-part card that is filed (1) by docket number, (2) alphabetically by taxpayer's name, and (3) by judge for those cases awaiting opinions. To prepare the management information reports that are available to the court, the statistics staff counts the relevant cards. For example, to prepare the court's monthly report on judges' workload, the staff counts the cards on a judge's pending cases. The judge's secretary then verifies the statistics count from the judge's own records before the report is issued. To determine amounts in dispute and the final tax liability, the statistics staff has to manually total the dollar entries on the cards. For example, in 1982 the statistics staff had to total dollar amounts from over 24,000 case cards. A staff of five is required to prepare and maintain the cards and to prepare a number of workload reports. These functions and others at the Tax Court system could be automated.

#### Court automation may lead to staff savings

We looked at systems operated by ITC and the Court of Military Appeals to determine the extent to which their automated operations would be applicable to the Tax Court's operations. At ITC, computers provide calendar management and general management information reports. At the Court of Military Appeals, all case operations are automated. The court has a computer through which major steps are processed, including acknowledging receipt of the petition, issuing needed motions and other orders, and, finally, the word processing of the opinion. The "docket sheet" controlling each case is maintained on computer and paper case documents have been almost completely replaced.

More efficient utilization of staff might result from computerization at the Tax Court. At the ITC, for example, the work of six people in the Calendar Section is now done by the three person computer staff. This staff also prepares management reports as well as maintaining statistical records and some court personnel files. At the Tax Court, 10 clerical people--5 in calendar and 5 in statistics--are now required to maintain control over less information.

Only half of the six person staff formerly processing case documents manually are needed at ITC to operate the computer system. The staff savings were greater than expenditures for computer equipment. The ITC's total computer expenditure was about \$30,000. At the Court of Military Appeals, the staff estimated that they have spent about \$250,000 for computer equipment. For this expenditure, they have a system that functions throughout the court, and they expect that the system will provide the base for a unified system between the Court of Military Appeals and the three Armed Services' Courts of Military Review. Although court officials could not cite specific staff savings, they believe that the system has promoted greater efficiency and enabled them to avoid staff increases.

Word processing capabilities  
could improve court efficiency

Modern word processing equipment could greatly simplify the process the Tax Court now uses to send out thousands of notices, orders, and motions each year. Now, the court uses a mix of partially preprinted forms and typing to prepare the material.

Word processing would also reduce the typing workload. Preparing written opinions involves repetitive typing tasks. Several typed drafts may be required before the opinion leaves a judge's office. After the judge sends it forward, it is reviewed and may be issued either by the chief judge and his staff or may go through review by the whole court. Each time the draft changes, it is retyped. Both of the other courts we looked at used some form of word processing. The Administrative Office staff advised us that many of the federal courts either have obtained word processing equipment or are studying the issue.

While we identified the potential for at least some word processing applications at the court, we did not conduct the full study of typing needs and applications recommended by the National Bureau of Standards. The Tax Court has just obtained limited word processing capability and should undertake this study before obtaining additional equipment. The study should also provide information necessary to determine (1) whether additional equipment is needed, (2) what type of equipment is needed, and (3) whether the word processing capabilities should be centralized in one unit or dispersed to each affected office.

LIMITED REGIONALIZATION COULD  
FACILITATE CASE CLOSINGS

Less than 3 percent of the Tax Court's caseload is handled where the court is headquartered--Washington, D.C. To reach the

other 97 percent of the cases, the judges traveled to over 100 cities on more than 300 trips in 1981. The court spends about 5 percent of its budget on travel--almost all of which is trial related.

Although the court conducts trials in over 100 locations, its workload is mostly in a few areas. At the end of fiscal year 1983, the court's regular caseload was concentrated in five cities: New York, Miami, Chicago, Los Angeles, and San Francisco. The five cities had 22,844 of 45,910 regular cases--almost 50 percent. San Francisco had over 4,000 regular cases, and Los Angeles had over 8,000. California had 13,377 of the regular cases--almost 30 percent of the Tax Court inventory. Yet in 1981, the trial year we analyzed, the court spent less than 15 percent of its trial days in California.

The problem of mismatching trial time with case distribution is similar in the small case area. In Los Angeles there were, as of September 30, 1983, over 1,500 small cases--about 16 percent of the total small case inventory. Yet only 13 trial sessions--a total of 69.5 trial days--were held in Los Angeles out of a total of 172 sessions and 398.5 actual trial days.

Given the large portion of the caseload located in a few areas like California and New York, the court should consider experimenting with a limited assignment of special and/or regular judges to some of these areas for a fixed period. The court could compare case closings in these areas with high volume areas where judges were not assigned. In performing the experiment, the court could assess the extent to which it affects costs, consistency of decisions, and administration. After a set period, the court should assess the results of the experiment and the need to expand or curtail it.

#### THE TAX COURT SHOULD TAKE STEPS TO REDUCE ITS GROWING OPINION BACKLOG

The number of cases tried by special, regular, and senior judges each year has risen from about 1,450 in 1978 to about 2,100 in 1981. Each of these cases requires the court to issue an opinion.

The regular judges have increased the number of opinions written in regular and small cases each year from 644 in fiscal year 1978 to 782 in 1981--an increase of 21 percent. The average number of written opinions by the 16 regular judges on the court during those years went from 40.2 in 1978 to 48.9 in 1981. During this same period, however, the opinion backlog grew by 16 percent, from 554 to 641. This occurred because the number of trials increased faster than the regular judges increased their number of opinions.

The growing opinion backlog has also led to another problem--an increase in average time between the trial and the filing of the opinion by the court. The average time in regular cases has increased from 11 months in 1978 to over 14 months in 1982--an increase of 27 percent. In addition, the court issued opinions in 24 cases where the trial had been held over 3 years earlier. Lengthy delay between trial and opinion can have many costs, such as additional interest charges on taxes owed and taxpayer uncertainty about how the case will be decided. In addition, other cases on related issues may be delayed while the parties await the outcome.

Although the Tax Court judges handle the opinion writing process in much the same way, we found wide variations in the number of opinions written by the judges. For example, in 1981, when the average number of opinions written by the 16 regular judges was 48.9, 2 judges produced under 30 opinions each. In 1982, 3 judges produced under 40 opinions, while 4 judges produced 50 or more opinions. We also found wide variations in the opinion backlogs of the judges. In 1981, for example, when the average opinion backlog was 44.7, 4 judges had backlogs of 50 or more cases, while 4 other judges had backlogs of under 30 cases.

Even with individual differences in opinion writing style and approach and complexity of the cases, the wide variance among the judges in both the number of opinions written and the opinion backlog could suggest that improvements be made in the opinion writing process to improve overall court productivity. In this regard, we found that there is no monitoring of opinion output, no systematic opinion review after publication, and no evaluation of the opinion writing process.

In addition to writing opinions, regular judges also reviewed opinions of the special trial judges. This review was required because, although the special trial judges write opinions in the small tax cases, they did not have the authority to actually issue the decisions of the court. Previously, under Section 7459 of the Internal Revenue Code, only regular judges were actually responsible for promulgating court decisions. However, the Miscellaneous Revenue Act of 1982 (Public Law 97-362), which was enacted on October 25, 1982, gives the special trial judge the authority to issue decisions of the court subject to such review as the court deems appropriate. As a result, it may be possible for the court to expedite the issuance of the opinions of the special trial judges. If so, regular judges could spend less time reviewing opinions and more time hearing cases and preparing opinions of their own.

Special trial judges can  
be more fully utilized

Although the number of small cases filed has increased, the special trial judges have been able to deal with the increased filings without their opinion backlog growing. It has decreased from 235 in 1978 to 213 in 1982, even though the number of trials has increased. The special trial judges increased their annual opinion output 93 percent in that period--from 616 to 1,187. One factor in their increased productivity has been an effort to write shorter opinions for small tax cases.

We believe that the Tax Court could experiment with assigning pre-trial motions in regular cases to special trial judges. This could help reduce both the case backlog and the regular case opinion backlog by allowing regular judges to try more cases and write more opinions.

Bench opinion authority  
should reduce opinion writing

The authority to issue bench opinions rather than issuing the more time-consuming written opinions should enable the judges to issue more opinions than they have in the past. Fourteen of the 23 regular and senior judges we interviewed told us that they thought bench opinion authority would have a positive effect on the problem of issuing opinions. The judges said that bench opinion authority would be helpful in cases involving (1) the value of property, (2) proof of a deduction, and (3) tax protestors. Seven judges said that bench opinions would have no effect, and two judges stated that they did not know. The judges used bench opinions in 19 regular cases between March and October 1983.

Eight of the 10 special trial judges told us that bench opinion authority would aid in issuing opinions. Four special trial judges told us they could have decided the case at the bench in about 10 percent of their recent cases. Three other judges said they could have issued bench decisions in between 25 and 70 percent of their recent cases. In a draft of our report we proposed that the court actively encourage the use of bench opinions by regular and special trial judges. In commenting on our draft, the chief judge stated that the court's Rules of Practice and Procedure have been revised and written guidelines have been provided to all of the judges to encourage them to use bench opinions. Between March and October 1983, 93 small tax cases were decided by bench opinions.

CONCLUSIONS

We identified a number of areas in which the Tax Court could adopt procedural changes that would produce more

efficient caseload management. These are discussed in chapters 2 and 3. In this chapter, we identified areas where the court could implement innovative approaches that have been tried successfully in other courts.

The Tax Court should consider changes to its current calendar system and move toward automation to cut costs and improve its operations. Another change that the court should consider is regionalizing its operations. Regionalization might enable the Tax Court to improve the adequacy of its court coverage in cities with large caseloads.

Also, there is a growing opinion backlog at the Tax Court that could worsen if the court attempts to reduce its growing case backlog by scheduling more cases for trial. The wide differences among judges in the number of opinions written and in the size of the opinion backlogs suggest that improvements can be made. The court does not monitor opinion output, has no systematic review of opinions after publication, and has no evaluation of the opinion process. To avoid further increases in the length of time from trial to final resolution of the case--now over 14 months--the court must improve its opinion writing process. In addition, the court should monitor the use of bench opinions to be sure they are being used to the maximum extent possible.

Finally, the court could more fully utilize its special trial judges by increasing the assistance they provide to regular judges.

#### RECOMMENDATIONS

To improve the long-range operations of the Tax Court, we recommend that the chief judge

- modify the calendar system at the court to encourage the parties to move cases more rapidly through the process and
- test the feasibility of some decentralization of the court.

In the particular area of the opinion backlog, we recommend that the chief judge

- appoint a committee of judges to monitor opinion production for the purpose of identifying ways to increase the number of opinions issued. Some approaches that the



committee should consider include standardizing opinion formats, encouraging shorter opinions, expediting opinion reviews, and developing production targets.

--assign special trial judges to handle pre-trial matters in regular cases so that regular judges have more time to devote to trying cases and drafting opinions.

#### AGENCY COMMENTS AND OUR EVALUATION

The Tax Court generally agreed with our recommendations in this chapter and stated that it has either implemented or is planning to implement them.

In discussing our recommendation to modify the calendar system, the court pointed out that it currently sends TSR's to the parties in cases at least once a year. In small cases, the court noted that it schedules most of them for trial within a year of filing the petition. The court also pointed out that it has made a special effort to close older cases, stating that the number of cases over 5 years old has been reduced to less than 3,000 cases--a reduction of over 10 percent. In addition, it has decided to utilize special trial judges to conduct pre-trial or report sessions on old cases. Finally, the court plans to study the approaches used at ITC to see if they are adaptable to the Tax Court.

In commenting on a draft of this report, the court agreed with our proposal to automate its operations. It has hired a consulting firm to design a system for automating its case processing. It is also experimenting with the use of word processing equipment.

The court agreed with our recommendation that it experiment with decentralizing its operations. If the court can obtain funding, it may (1) place a special trial judge in Los Angeles, the city with the largest small and regular case inventories; and (2) assign a special trial judge to handle an increased number of small case trial sessions in other high-inventory cities, such as San Francisco and New York.

The court agreed with our recommendation to establish a committee of judges to monitor the opinion production. However, the court pointed out the approaches cited are things the court already uses or encourages. The court mentioned two things it is already doing that help to control the opinion backlogs. First, it has its own style manual to assure style uniformity. Second, the review of opinions by the chief judge's office is generally completed within 2 weeks. While these measures have helped to keep the opinion backlog from growing more rapidly,

additional improvements can be considered by the committee to (1) reduce the review time of opinions within each judge's office, (2) produce more standard opinion arguments and formats to supplement current standardized style procedures, and (3) develop production targets for opinion output by the judges.

The Tax Court agreed with our recommendation to utilize special trial judges more fully. It pointed out that special trial judges are being assigned increasing numbers of regular cases under special court rules. In addition, it plans to use special trial judges to decide the claims for reasonable litigation costs in regular cases. It felt, however, that where regular judges wished to retain pretrial responsibility for their calendars, they should do so.

UNITED STATES TAX COURT

WASHINGTON D C 20217

CHAMBERS OF  
HOWARD A DAWSON JR  
CHIEF JUDGE

November 29, 1983

Mr. William J. Anderson  
Director, General Government Division  
United States General Accounting Office  
Washington, D.C. 20548

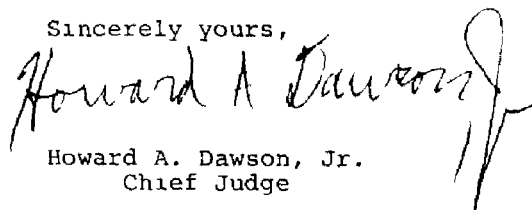
Dear Mr. Anderson:

Thank you for the opportunity to review your draft of a proposed report entitled "The Tax Court Can Reduce Its Growing Backlog of Cases and Its Expenses Through Administrative Improvements."

The Tax Court has always taken pride in the quality of its work. In recent years, however, it has become more difficult to maintain our high standards for quality and production in face of a constantly increasing caseload. We realize that if the Court is to meet this challenge, it must operate as efficiently as possible. We therefore welcome the recommendations made in your draft report. We have already taken action, or will take action, to implement most of them.

In order to inform you of our thinking, we are enclosing with this letter our responses to your specific recommendations.

Sincerely yours,



Howard A. Dawson, Jr.  
Chief Judge

Enclosure:  
Responses to report  
recommendations

TAX COURT RESPONSES TO RECOMMENDATIONS  
CONTAINED IN DRAFT REPORTRecommendation No. 1 - Page 11:

Because of the serious backlog problem facing the Court and the importance of the trial sessions in getting cases closed, we recommend that the Chief Judge of the Tax Court:

-- Increase the number of cases being scheduled to more fully use available trial time.

Response:

We agree with this recommendation and we have already taken action to implement it.

As the report indicates, in 1981 the Court's practice in regular cases was to TSR 260 estimated trial hours for a one-week trial session and 360 estimated trial hours for a two-week trial session. Our goal then was to follow up with a trial calendar aggregating 175 hours for a one-week session and 225 hours for a two-week session. Now, however, the Court's practice in regular cases is to TSR a minimum of 600 estimated trial hours for a two-week session. Our objective is to follow up with a trial calendar which is proportionately heavier than before. An increased number of estimated trial hours is also

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TSR'd for one-week trial sessions. However, the Court is inclined to conduct fewer one-week trial sessions and emphasize two-week sessions.

We want to emphasize that merely increasing the number of cases scheduled for trial or increasing trial time does not provide the full answer. The most vital function of the Court is its opinion process. The total number of cases heard, i.e., trial time, is only the tip of the iceberg. It usually takes a judge much longer to consider the issues and prepare opinions. The backlog of each judge for opinion purposes is therefore crucial.

In order to more effectively utilize available trial time in "S" cases, the Court will test the GAO model for estimating the number of small tax cases to be calendared for trial. In this regard see our response to recommendation #3.

Finally, the Court is considering the possibility of scheduling a substantial number of regular and small tax case trial sessions during the summer months.

Recommendation No. 2 - Page 17:

-- Gather and analyze data on the length of trial sessions so that periodic adjustments to case scheduling can be made in the future.

Response:

We agree with this recommendation and we will take action to implement it.

Initially we will gather data on the length of regular and small tax case trial sessions on a manual basis. In the future we expect to use an ADP system to perform this task. In this regard see our response to recommendation #10.

Recommendation No. 3 - Page 17:

-- Test the model we developed as a basis for estimating the number of cases to be scheduled for trial sessions.

Response:

We agree with this recommendation insofar as "S" cases are concerned and we will take action to implement it. However, we do not agree with the recommendation insofar as regular cases are concerned.

As the report indicates, the Court's practice has been to prepare "S" case calendars on a case count, rather than estimated trial-time, basis. The GAO model uses this same approach, but utilizes a mathematical formula to determine the optimum number of cases which should be calendared for trial. We will experiment with that formula.

In regular cases we think the present two-step calendaring system is preferable to the model for several reasons. First, it enables the Court to differentiate between those cases which are ready for trial and those which are not ready. Second, it enables the Court to differentiate between those cases which should be calendared for trial at a regular session and those which should not be calendared because of their disproportionate number of trial hours. Third, it

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enables the Court to differentiate between those cases which are related and those which are not. In this regard it has become especially important to identify tax-shelter cases given the dramatic increase in their number since 1981, the focal point of the GAO study. As a practical matter, it may only be necessary to try one case involving a particular tax shelter in order to resolve the others involving that same shelter. In summary, we think that the parties' response to the TSR provides information which facilitates the making of a rational decision whether to calendar a particular case for trial. However, the Court will consider alternatives to the TSR procedure by which the same information might be obtained more effectively. Regardless of the means, we are hopeful that any system can be made more efficient through the use of automation and computerization. In this regard see our response to recommendation #10.



Recommendation No. 4 - Page 17:

In addition, we recommend that the Court take action designed to reduce the number of cases which are presently reported as settled, but not closed within 90 days. To identify the best approaches for accomplishing this objective, the Court should experiment with the solutions we have suggested as well as others which it may identify.

Response:

We agree with this recommendation and we will take action to implement it.

One approach that the Court is considering would require judges and special trial judges to retain jurisdiction over all cases reported as settled at regular and small tax case trial sessions. The judges will monitor those cases in order to insure that the settlement documents are filed within a reasonable period of time. Other approaches will be studied and adopted if practical.

Recommendation No. 5 - Page 26:

We recommend that the Chief Judge of the Tax Court and the Clerk of the Court:

-- Establish a mechanism for periodically reviewing the Court's trial locations and courtroom leasing arrangements to determine (1) whether the number of trial locations could be reduced and (2) whether arrangements can be made to secure space other than through yearly leases.

Response:

We agree with the first part of this recommendation. We will periodically review the number of places of trial in order to determine whether that number can be reduced consistent with the mandate of section 7446, I.R.C. 1954. In making our review we will specifically consider the proximity of other cities in which the Court also hears cases.

However, we have serious reservations about the second part of the recommendation. Although we have no objection in principle to borrowing available courtroom space from other courts, and in fact do so without cost in over 70 cities, we think there are a number of important reasons for the Court to have its own facilities. Foremost among these reasons is the Court's ability to control both the timing and number of trial sessions in a particular city. Thus, sessions can be

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scheduled when they are needed rather than when space is available. We would also like to emphasize that the Court makes its facilities in the field available to other courts and agencies, which use them regularly and extensively. We therefore think it is misleading to merely analyze the average daily cost of our facilities for Tax Court use only without also analyzing the overall benefit derived by the Government as a whole. Accordingly, we have prepared a schedule reflecting the use of our courtrooms, both by the Tax Court and other courts and agencies. That schedule is attached as an appendix to this document.

## APPENDIX

USE OF TAX COURT COURTROOMS

FYE September 30, 1983

<u>CITY</u>	<u>DAYS SCHEDULED FOR USE BY TAX COURT</u>	<u>ACTUAL DAYS OF USE BY OTHER COURTS &amp; AGENCIES</u>
ATLANTA	36	196
BOSTON	31	41
CHICAGO	103	55
CINCINNATI	10	84
CLEVELAND	10 <sup>a/</sup>	8
DALLAS	30	49
DENVER	20	216
DETROIT	44	228
HARTFORD	25 <sup>a/</sup>	19
HOUSTON	20	227
INDIANAPOLIS	43	25
JACKSONVILLE	15	123
LAS VEGAS	20	82
LOS ANGELES	137	16
LOUISVILLE	12	240
MEMPHIS	17	225
MIAMI	78	45
MILWAUKEE	25	227
NEWARK	52 <sup>b/</sup>	10
NEW ORLEANS	15	19
NEW YORK	163	131
PHILADELPHIA	65	26
PHOENIX	23	40
PITTSBURGH	25	99
SAN ANTONIO	12	42
SAN DIEGO	35	51
SAN FRANCISCO	175	40
ST. LOUIS	23	207
TAMPA	47	39
WINSTON-SALEM	12	77
WASHINGTON, D.C.	119	16

a/ New facility

b/ Relocated facility

Recommendation No. 6 - Page 26:

-- Develop written guidelines for handling and processing cash and checks and take appropriate steps to physically secure checks and cash in a safe while petitions are being processed.

Response:

The Court strictly adheres to the Treasury Department's Fiscal Requirements Manual. The manual requires that the Court maintain an "audit trail" of all checks received. (Payment of the filing fee is made by check in over 99 percent of all cases.) The key to the audit trail is to the docket number assigned to each petition. The assignment of docket numbers is a function performed by the Petitions Section. That section also determines whether the taxpayer has submitted the correct fee. These functions could not be performed by the mailroom. During nine months of the year the Petitions Section is able to process the petitions, reconcile the filing fees, and forward both the fees and the reconciliation to the Fiscal Office on the day of receipt. During the peak season, however, two or more days may be required to process all of the petitions received on a particular day. In the Court's view, the interest lost because of the slight delay in the deposit of checks during the peak season is secondary to the necessity of maintaining an audit trail and reviewing the filing fees for the correct amount. Although the Court is not aware of any filing

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fee having ever been lost or stolen during the peak season, checks which have been imprinted with a docket number, reviewed for the correct amount, and detached from petitions will henceforth be secured overnight in a safe pending their reconciliation and transfer to the Fiscal Office.

Recommendation No. 7 - Page 26:

-- Develop guidelines to supplement the Travel Regulations for U.S. Justices and Judges and GSA Travel Regulations and to establish procedures for justifying the use of first-class travel accommodations.

Response:

We do not perceive the need to issue detailed supplemental travel regulations.

Section 7443(d), I.R.C. 1954, provides that Tax Court judges "shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Court of International Trade." The Court of International Trade adheres to the travel regulations published by the Administrative Office of the United States Courts. The Tax Court also strictly adheres to those regulations. Insofar as its employees are concerned, the Tax Court follows section 7471(b), I.R.C. 1954, and strictly adheres to the travel regulations published by the General Services Administration. The Tax Court does not reimburse either its judges or its employees on any basis more favorable than that

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authorized by the applicable travel regulations, and we do not read the GAO report to suggest otherwise.

Insofar as first-class travel is concerned, the Tax Court also strictly adheres to the travel regulations published by the Administrative Office and GSA which govern this matter. In addition, the Tax Court discourages first-class travel by its judges to most of the cities in which cases are heard and, in fact, most judges do not travel first-class.

Finally, the annual travel authorizations issued to Tax Court judges and employees will be amended to incorporate guidelines on certain specific matters that are left to agency discretion by the Administrative Office and GSA travel regulations.



Recommendation No. 8 - Page 26:

-- Provide for the periodic assessment of staffing levels required by the Court. In this regard, the need for the regular judges to have two secretaries should be examined.

Response:

Although we agree in principle that the Court's staffing patterns should be periodically reviewed, we think each regular judge presently needs two secretaries in order to adequately support his or her work and that of the two law clerks and any additional personnel that may be assigned to the judge. In addition to their clerical duties, the secretaries have substantial administrative responsibilities. Moreover, in many chambers the secretaries function as paralegals, drafting routine orders and decisions and checking the accuracy of legal citations. We would also like to emphasize that the size of each judge's staff has not changed in over fifty years, notwithstanding the dramatic increase in the case load during recent years which has generated substantially more work for the secretaries.

We will consider the feasibility of either establishing a word processing center or better utilizing word-processing equipment, and determine its impact on secretarial staffing. In this regard see our response to recommendation #10.

Recommendation No. 9 - Page 37:

In order to improve the long-range operations of the Tax Court, we recommend that the Chief Judge:

-- Modify the calendaring system at the Court to encourage the parties to move cases more rapidly through the process.

Response:

The Court makes every effort to calendar cases within a reasonable period of time. Once regular cases are at issue, most are the subject of a TSR at least once a year. In addition, virtually every small tax case is calendared for trial within 12 months from the date on which the petition is filed, and in most cases the notice of trial is issued within 4 to 8 months.

Without modifying the present case calendaring system, the Court has reduced the number of "old" cases, i.e., cases more than five years old, both in terms of their number and their percentage:

<u>FYE</u>	<u>Number</u>	<u>Percentage</u>
9/30/81	3,230	7
9/30/82	3,057	6
9/30/83	2,910	5

This reduction has been accomplished by identifying old cases and making every reasonable effort to either

- 2

calendar them for trial at regular sessions or formally assign them to a judge so that the case be closely monitored. The Court has also adopted a strict policy against the continuance of such cases, absent compelling reasons. In some instances, however, the Court has little, if any, control over the time in which a case is resolved. For example, a number of the old cases involve estates. The resolution of the issues in those cases generally depends on certain action by a probate court or other local court over which the Tax Court has no control.

We are planning to use one or more special trial judges to conduct pre-trial or status report sessions with respect to the "old" cases now pending. This should accelerate the disposition of such cases. In addition, we will study the system used by the Court of International Trade to determine whether its calendaring procedures are adaptable to this Court.

See also our response to recommendations #1, #2, and #3.

Recommendation No. 10 - Page 33:

-- Begin efforts to automate court operations through such techniques as computerization of case documents and word processing.

Response:

We agree with this recommendation and we have already taken action to implement it.

The Court arranged through the General Services Administration to contract with a consulting firm for the design of an automated case processing system. A draft version of such a design was recently submitted to the Court. We have studied the draft and furnished our comments to the consulting firm. We are presently waiting for the final design.

Earlier this year the Court obtained a limited number of word processors for the use of the judges. We are currently experimenting with the use of these units. However, we have not yet determined whether they are cost effective for the judge's type of work.

See also our responses to recommendations #2, #3, and #8.

Recommendation No. 11 - Page 37:

-- Test the feasibility of some decentralization of the Court.

Response:

We agree with this recommendation and we will take action to implement it, subject to the availability of necessary funds.

The Court may experiment by placing a special trial judge in Los Angeles, the city with the greatest inventory, for a trial period. The special trial judge would hear "S" cases, General Order No. 8 regular cases (see 81 T.C. v), and pre-trial motions in regular cases. The Court may also experiment by scheduling an increased number of small tax case sessions in high-inventory cities such as San Francisco and New York and assigning all of those sessions to the same special trial judges for a term or more extended period.

Recommendation No. 12 - Page 37:

In the particular area of the opinion backlog, we recommend that the Chief Judge:

Appoint a committee of judges to monitor opinion production for the purpose of identifying ways to increase the number of opinions issued. Some approaches that the committee should consider include standardizing opinion formats, encouraging shorter opinions, expediting opinion reviews, and developing production targets.

Response:

We agree with this recommendation and we will take action to implement it. We would like to note, however, that the specific approaches identified in the recommendation are matters that the Court already uses or encourages. For example, the Court has its own style manual, which all personnel are expected to follow. On matters which are not specifically covered therein, the Court follows the style manual published by the Government Printing Office. Insofar as opinion review is concerned, review of a proposed opinion is generally completed within two weeks after it is received in the Chief Judge's office. In any event, section 7460(b), I.R.C. 1954, requires that a proposed opinion be reviewed within 30 days unless the Chief Judge directs

- 2 -

that it be reviewed by the Court. Finally, any time that might be saved by discontinuing the review of small tax case opinions by a regular judge is secondary to the need of insuring consistency and uniformity in the outcome of these cases. Under section 7463(b), I.R.C. 1954, the decision in a small tax case is not reviewable by any other court.

Recommendation No. 13 - Page 36:

Actively encourage the use of oral opinions by regular and special trial judges.

Response:

We agree with this recommendation and we have already taken action to implement it.

Consistent with the authority conferred by section 7459(b), I.R.C. 1954, the Court's Rules of Practice and Procedure have been revised to specifically provide for "bench opinions." Written guidelines have been prepared and disseminated to the judges and special trial judges, all of whom have been encouraged to orally state their findings of fact or opinion in appropriate cases. The judges and special trial judges have been rendering a significant number of such opinions during the fall term of the Court.



Recommendation No. 14 - Page 38:

Assign special trial judges to handle pre-trial matters in regular cases so that regular judges have more time to devote to trying cases and drafting opinions.

Response:

For the most part, we agree with this recommendation.

Special trial judges have been, and will continue to be, assigned to handle the Court's weekly motions sessions in Washington, D.C. under Delegation Order No. 8, 81 T.C. vii, dated July 1, 1983. Most pre-trial motions, as well as many dispositive motions, are decided at these sessions. In addition, the Court anticipates that special trial judges will play an active role in deciding claims for reasonable litigation costs in regular cases. We would also like to emphasize that a recent amendment to section 7456, I.R.C. 1954, authorizes the chief judge to assign certain regular cases to special trial judges and authorize them to make the decision of the Court. This authority has been exercised and special trial judges are being assigned such cases for decision. Additional regular cases are being assigned to special trial judges pursuant to General Order No. 8, 81 T.C. v, dated July 1, 1983, and Rule 180 of the Court's Rules of Practice and Procedure. Finally, the Court is continuing to assign regular cases having complex and factually-involved issues to special trial judges for trial, pre-trial or report.

- 2 -

Our only reservation to the recommendation involves pre-trial motions in respect of cases on trial calendars that have been assigned to regular judges. Some regular judges prefer to handle such motions themselves and do not find this duty particularly time-consuming.

REGRESSION ANALYSIS OF TAX COURT  
CASE SCHEDULING APPROACHES

Because the court's current system of scheduling cases to trial resulted in the trial sessions ending earlier than scheduled in about 90 percent of the sessions, we reviewed the Tax Court's trial scheduling criteria to determine (1) if current scheduling criteria are good predictors of actual workload, (2) whether better or more easily used criteria to predict actual trial time are available, and (3) if data available to the court are sufficient to develop a model to better insure the full use of scheduled trial time. We found that through the use of statistical techniques a way of predicting expected actual trial time can be developed.

Although we believe our results to be reliable, we have to qualify them in two respects: (1) timeframe covered by the data analyzed and (2) limitations on the actual time trials were conducted.

The timeframe we analyzed was only 1 year's trial schedule data because the court had not retained records from before 1981. The validity of our analysis and conclusions, therefore, rests on how well 1981 reflects the general behavior patterns of the Tax Court. Court officials advised us that 1981 was a typical trial year. In addition, we believe the variables that we analyzed are relatively static--the individual judges, trial locations, types of cases, and other influencing factors have not changed much over the years. Although we believe these variables are static, their contributing influence to the behavior of actual trial time could vary. As a result, a variable such as trial location may appear insignificant with only limited data, but, when analyzed over many years, could emerge as an important one. If the court tries our approach, it should collect data on potentially significant variables over long periods of time and use these data to modify our formulas accordingly.

Secondly, the data we compiled on actual trial times are conservative because the data available only gave the beginning and ending date of trial sessions. As a result, we were unable to determine how many trial days between the start and close of a trial session were not being used. In one session that we observed, 4 of the 9 days between the start and end of the session were not used. If a large number of such days are going unused, the court could increase its workload beyond the levels predicted by our model. To improve the model accuracy, the court needs to collect data on the times during the sessions actually spent in trials.

The statistical approaches used in the modeling were single and multi-variate regression analyses. Regression analysis seeks to find that variable or combination of variables that best accounts for the changes in the targeted variable. How well a variable explains the change in the targeted variable is measured by an index called  $R^2$ , which ranges from 0 for no predictive value to 1 for a perfect explanation.<sup>1</sup> We analyzed all the variables that we could obtain from current court data: number of cases, length of session, judge, term of court, and the estimates provided to the court by IRS of time for cases that will probably go to trial and those that IRS thinks are sure to go to trial.

When variables were grouped, we obtained our best predictors of actual trial time. Multi-variate analysis of all available variables resulted in the prediction of actual trial time with an  $R^2$  value of 0.38. This combination of variables, however, would be extremely difficult to track, collect, and use. In terms of usable data only estimated trial time and number of cases scheduled were good predictors of actual trial time. Because of the unreliability of IRS' estimates, sure trial time had almost no predictive value.

As a predictor of expected workload, estimated trial time, the criterion primarily used by the court, shows an acceptable relationship to actual trial time. For regular cases, we calculated the strength of this relationship to have an  $R^2$  of 0.25. In our case, an  $R^2$  value of 0.25 indicates that a quarter of the variation in actual trial time is accounted for by the prediction of estimated trial hours. However, we found that the  $R^2$  value for the number of cases scheduled is 0.22, making it only slightly less useful as a predictor of actual trial time. The  $R^2$  values from the analysis of small tax case data was much higher at 0.76 for estimated trial time and 0.75 for the number of scheduled cases. While these variables more completely explain the variation in trial session lengths for small cases than for regular cases, the relationship for regular cases is still sufficiently reliable to allow development of a usable mathematical model using either estimated trial time or number of cases.

While the approach now used by the court provides the best single variable predictor of actual trial time, using a case

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<sup>1</sup> $R^2$  is known as the coefficient of determination. This coefficient shows in quantitative terms how much of the variation in the dependent variable (actual trial time) is accounted for or explained by an independent variable (estimated trial time).

count system would produce results that are almost as good as those produced by current methods and reduce paperwork required to prepare for trial sessions. In practice this approach would be easier to implement and maintain than the current approach. The court's current two-step process of sending both petitioner and respondent a "Trial Status Request" form and later a "Notice Setting Case For Trial" could be replaced by a one-step trial setting notice. In cases that were not ready for trial or required a lengthy trial, the notice could provide the procedures for seeking a continuance or a special session of the court.

The number of actual trial hours resulting from this process would depend upon two factors: (1) how many parties would seek a continuance because they are not ready for trial and (2) how many of those cases ready for trial would actually result in trial time being used. The extent to which continuances are sought is unknown because we did not collect data on the fall-out rate from the TSR system. Initially, the court would need to rely on experience and a close monitoring of results from a single step system to determine the average rate of fall out. Actual trial time can be predicted by using the regression analysis. On the basis of our work with 1981 calendar results, we developed the following formulas for setting the proper criteria levels when using the case count approach:

Regular Cases

Expected trial days = 1.986 + (0.065 x number of cases)

Small Cases

Expected trial days = 0.748 + (0.031 x number of cases)

In these formulas, 1.986 and 0.748 days reflect the court time needed in every session for such actions as calendar calls, motions, reports, and cases added late. The variables 0.065 and 0.031 represent the number of days required to try cases on the calendars. This number is so low because most cases on the calendars settle before trial.

Using the formulas for the case count approach we calculated the following scheduling criteria for regular and small sessions:

Table 3

Suggested Scheduling Criteria For  
Small And Regular Sessions

Type of case scheduled calendar	# of cases scheduled	Expected # of trial days
<u>Regular</u>		
1 week	50	5
2 weeks	125	10
<u>Small</u>		
1 day	8	1
2 days	40	2
1 week	140	5
2 weeks	300	10

These criteria must be used with the understanding that they are best estimates of what will occur at specified scheduling levels over numerous trial sessions. Actual trial results will often fall above or below the predicted number of trial days. However, the degree to which actual values will vary from the best estimate will be fairly small. For example, if 125 cases are scheduled for a 2 week regular session, our best estimate tells us that the judge can expect to have 10 days worth of trials. In reality, the judge is likely to have more or less than 10 days of trial. However, on the basis of our analysis, in 68 percent of the calendars the judge will have no less than 8.3 days of trial and no more than 11.7 days of trial. Furthermore, 95 percent of the time the judge will have no less than 6.6 days of trial and no more than 13.4 days of trial.

The court should closely monitor how widely actual trial results vary from the predicted average and adjust the case scheduling level accordingly. In those instances where actual trial time needed exceeds scheduled limits, the court will need to exercise its authority under its rule 134, which states that "a case or matter scheduled on a calendar may be continued by the court upon motion or at its own initiative." This would involve minimum taxpayer inconvenience. For example, since the average trial time per regular case is slightly over 1 day, we project that if a judge's trial sessions ran 3 days over the predicted total, the judge would need to reschedule, on average,

only about 3 of the additional 60 cases that our criteria add to the schedule. The court could experiment with techniques to alleviate any burden on this small group of cases. For example, the judge could ask for postponements of trial on a volunteer basis, or cases not heard at one trial session could be rescheduled on a priority basis to another session. Of course, cases rescheduled to another session could settle with IRS at any time between trial sessions.

STAFFING, ORGANIZATION, AND PERSONNEL PRACTICES  
OF THE UNITED STATES TAX COURT

STAFFING OF THE U.S. TAX COURT

There are four basic types of employees in the Tax Court: presidential appointees, schedule "C" employees, schedule "A" employees, and civil servants. (The number of each as of January 1983 is listed in parenthesis)

1. Presidential appointees (24) - These are the regular judges who are appointed by the President with the advice and the consent of the Senate for a 15-year term. Their appointments are based solely on the grounds of fitness to perform the duties of the office. Upon expiration of their original term, they may be reappointed by the President for another 15 years. They can only be removed from office by order of the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office.

2. Schedule "C" employees (68) - These are non-competitive, excepted positions which are based on a confidential relationship between the employer and employee; that is, they are hired directly by the judges. Civil service protections are not extended to Schedule "C" employees. Tax Court employees who come under this classification include special trial judges, regular judges' law clerks, and one of the two secretaries on each regular judge's staff. The law clerks are hired by each regular judge and generally stay about 2 years. Special trial judges are appointed by the chief judge and may be removed from office by him.

3. Schedule "A" employees (30) - These employees are hired under authority given by the Office of Personnel Management to the Tax Court within the past 5 years. They are generally the special trial judges' law clerks. Schedule "A" employees, like their schedule "C" counterparts hold noncompetitive positions which are not subject to civil service protections. In the Tax Court, schedule "A" employees cannot exceed the grade of GS-11 whereas schedule "C" employees can advance to a GS-13.

4. Civil servants (135) - All of the remaining employees are civil servants. This means they are subject to Office of Personnel Management rules and regulations and are extended protections against arbitrary hiring and firing.



CIVIL SERVICE PROTECTIONS OF TAX COURT PERSONNEL

About 53 percent of the Tax Court staff are covered under civil service and thus receive full protections, while the remainder are employed under other systems. Civil service employees enjoy full protective rights including the right to appeal to the merit system protection board. The 47 percent of Tax Court personnel who fill noncompetitive positions are not extended civil service protections. Our review, however, disclosed no irregularities in the court's hiring or firing practices with regard to either civil service or noncompetitive personnel.

Employee hiring and separating practices of the court appeared to be normal

There were 90 employees hired by the Tax Court during fiscal years 1981 and 1982. The court usually uses the Office of Personnel Management roster when seeking to fill low graded positions, such as clerical slots. Sometimes, however, a present clerical employee will notify a friend who would then apply for the job. Management level jobs are usually announced through a position vacancy announcement, which describes the duties and requirements of the position being sought. These announcements are circulated to federal agencies in accordance with applicable regulations.

One of the major areas of recurring hiring for non-competitive positions is hiring of law clerks for the regular and special trial judges. According to the court personnel management specialist, the hiring of law clerks (schedule "C" employees) consists of forwarding informational material describing the law clerk positions to leading law schools through their placement offices. The law clerk is normally a 2-year position. Judges needing the law clerks usually interview the prospective candidate and do the actual hiring.

In our review, we contacted 30 of the 90 Tax Court employees who were hired during fiscal years 1981 and 1982 and found that about 82 percent heard of the position through a friend, law professor, or placement office at their university. The remaining 18 percent were hired from Office of Personnel Management rosters either directly or indirectly.

During fiscal years 1977 through 1981, 122 employees left the Tax Court for various reasons. Not included in these separations were schedule "C" and schedule "A" law clerks who normally stay for about 2-year period. From reviewing the records of the remaining 105 employees, we found that 11 retired, 2 died, 13 returned to school, and the others left either for

either for personal reasons or to accept new jobs. We found that 12 additional Tax Court employees left during fiscal year 1982 for the following reasons: 6 accepted other jobs, 2 returned to school, and 4 left for personal reasons.

We randomly contacted five of those employees separated during 1982 to verify that the reasons for leaving quoted in the files were accurate. All of the employees we contacted told us that they left of their own free will and for the reasons stated in their files. We found no evidence indicating that employees were leaving the Tax Court for other than the usual reasons employees leave any other type employment.

DISCUSSION OF THE PROCEDURE  
FOR ELECTING THE CHIEF JUDGE

The Tax Court is the only federal court where the chief judge is elected by the other regular judges. All other federal chief judges are selected either by seniority or by appointment by the President. In examining the legislative histories and talking with various outside parties, we found no evidence suggesting one method of selection is better than another, nor could we discover any evidence as to why a given method of selection is used.

The Tax Court elects its chief judge from among the court's judges by the majority vote of the regular judges in an election held every 2 years as required under §7444 (b) of the Internal Revenue Code. When the court was created in 1924 as an independent executive agency known as the Board of Tax Appeals, its members, known as commissioners, elected a chairman by majority vote in a biannual election. This method of electing the chairman was continued when, in 1942, the name of the Board was changed to the Tax Court of the United States. At that time, its Commissioners became judges and the chairman became the chief judge. In 1969, when the Congress, in the Tax Reform Act of 1969 (Public Law 91-172), changed it to the U.S. Tax Court and granted it full court status as an Article I court under the Constitution (a court chartered by the Congress), the provision for electing the chief judge by a majority vote of the other judges was again continued.

The chief judges in most of the other federal courts are selected by seniority. The chief judge for each of the 13 Circuit Courts of Appeal and each of the 94 District Courts is selected this way. The judge for each of these courts who has been on that court the longest and who is under age 65 becomes the chief judge. The term of each chief judge is 7 years but he/she cannot serve as chief judge beyond age 69.

A few federal chief judges are designated by the President. The chief judges of the Court of International Trade, the Claims Court, and the Court of Military Appeals are all selected in this manner. The chief judge of the Claims Court and of the Court of International Trade serve until they reach age 70, then the President designates a new chief judge. The chief judge of the Court of Military Appeals can serve indefinitely as chief judge as long as he/she is a member of the court. The Chief Justice of the U.S. Supreme Court is selected by nomination by the President with the advice and consent of the Senate. The Chief Justice is the only federal judge who must be nominated as a chief judge and must be approved as a chief judge by the Senate.

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