

CONGRESSIONAL BUDGET JUSTIFICATION

FISCAL YEAR 2023



Submitted February 28, 2022



STATEMENT OF CHIEF JUDGE MAURICE B. FOLEY
Committees on Appropriations
Subcommittees on Financial Services and General Government
United States House of Representatives and United States Senate

Madam Chair, Messrs. Chairmen, Ranking Members, and Members of the Committees:

Thank you for the opportunity to present the United States Tax Court's Fiscal Year 2023 Congressional Budget Justification. The United States Tax Court is established under Article I of the United States Constitution as the primary judicial forum in which taxpayers may, without first paying the tax, dispute a deficiency determined by the Internal Revenue Service.

The Court's Fiscal Year 2023 budget request is \$57,300,000, a 1.6 percent decrease from the Fiscal Year 2022 requested appropriation. The Court's budget request provides detail for total obligations, reduced by anticipated offsetting fee fund collections. The Fiscal Year 2023 total obligations of \$61,284,000 reflect an increase of \$2.2 million, or 3.8 percent, from Fiscal Year 2022 planned. In Fiscal Year 2023, the Court anticipates using \$4 million from accumulated offsetting fee fund collections. To facilitate the effective use of funds, the Court requests appropriation language to authorize the transfer of \$528,000 in accumulated funds from the practice fee fund to the offsetting fee collections fund, with commensurate reduction in enacted appropriation funding.

In FY 2021, the Court conducted all trials and hearings remotely. Consistent with the statutory mandate to provide an accessible forum with minimal inconvenience and expense to taxpayers, the Court now provides the option for remote proceedings and can quickly pivot to such proceedings when it is warranted.

The Court continues to expand outreach and engagement. In FY 2021, the Court began a new Diversity in Government Internship Program (DiG Tax), a paid internship for talented and underserved students interested in federal government careers. The Court also announced a new Diversity and Inclusion Series comprised of webinars spotlighting the paths and successes of different trailblazers in the legal field.

It has been an honor to serve as Chief Judge through this important chapter in the history of the United States Tax Court. Through all of the challenges, the Court has emerged with more streamlined policies and agile technologies to fulfill its mission more efficiently.

Thank you for your continued support of the United States Tax Court.



Maurice B. Foley, Chief Judge

February 28, 2022

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Overview of the Court

Mission

The mission of the United States Tax Court is to provide a national forum for the expeditious resolution of disputes between taxpayers and the Internal Revenue Service; for careful consideration of the merits of each case; and to ensure a uniform interpretation of the Internal Revenue Code. The Court is committed to providing taxpayers, most of whom are self-represented, with a reasonable opportunity to appear before the Court, with as little inconvenience and expense as is practicable. The Court is also committed to providing an accessible judicial forum with simplified procedures for disputes involving \$50,000 or less.

Historical Overview

In the Revenue Act of 1924, Congress established the Board of Tax Appeals (Board) as an independent agency in the Executive Branch to permit taxpayers to challenge determinations made by the Internal Revenue Service (IRS) of their tax liabilities before payment.¹ In 1942, Congress changed the name of the Board to the "Tax Court of the United States," but the Tax Court of the United States remained an independent agency in the Executive Branch.² In the Tax Reform Act of 1969, the Tax Court of the United States was reconstituted as the United States Tax Court (Tax Court or Court).³

Section 7441 of Title 26 of the United States Code provides that:

There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court. The Tax Court is not an agency of, and shall be independent of, the executive branch of the Government.

The Tax Court is a court of law with nationwide jurisdiction exercising judicial power independent of the Executive and Legislative Branches.⁴ The Tax Court is one of the courts in which taxpayers can bring suit to contest IRS determinations, and it is the primary court in which taxpayers can do so without prepaying any portion of the disputed taxes.⁵

¹ Revenue Act of 1924, ch. 234, § 900(a), (k), 43 Stat. 253, 336. Before 1924 taxpayers who wished to contest a determination made by the Bureau of Internal Revenue (now the IRS) were required to pay the tax assessed and then file suit against the Federal Government for a refund. *See Flora v. United States*, 362 U.S. 145, 151–152 (1960).

² Revenue Act of 1942, ch. 619, § 504(a), 56 Stat. 957.

³ Pub. L. No. 91-172, 83 Stat. 730.

⁴ *Freytag v. Commissioner*, 501 U.S. 868, 890-891 (1991).

⁵ The other federal courts with jurisdiction over tax disputes are the United States Court of Federal Claims, United States district courts, and United States bankruptcy courts.

Pandemic Response and Post-Pandemic Initiatives for Remote Access to Justice

The coronavirus (COVID-19) pandemic continued to present challenges with multiple variants posing new threats to public health and safety. The Court was better equipped to handle these challenges based on lessons learned and actions taken during the early stages of the pandemic. Post-pandemic the Court will continue to determine best practices and technologies that should be retained or adapted. Practices and procedures to conduct remote proceedings and to operate remotely increase access to justice and improve delivery of Court services.

Court Operations

Court personnel demonstrated exceptional dedication and resilience with many process changes and innovations. In FY 2021, most Court employees continued to telework or work remotely. Limiting the number of employees in the courthouse provided a safer environment for those employees who were required to work on-site. At the discretion of judges, chambers staff either teleworked or worked in-person. The success of telework and remote work during the pandemic led the Court to adopt expanded policies, enhancing the ability to attract and retain qualified talent.

The total number of petitions filed in a typical 12-month period is between 23,000 and 26,000. In FY 2021, however, 35,297 petitions were filed. The level of IRS audit and enforcement activity directly impacts the number of petitions filed.⁶ The significant increase in petitions received created a processing backlog. Court staff were pulled from multiple offices and worked extra hours. The Court issued several press releases to inform taxpayers and practitioners that the Court was processing petitions as expeditiously as possible. To limit the potential for premature assessments and enforcement actions against petitioners, the Court notified the IRS of petitions received.

Nonattorneys who meet certain requirements and pass an exam are authorized to practice before the Court. In 2020 the Court postponed the in-person nonattorney exam. On November 17, 2021, the nonattorney exam was administered remotely for the first time. Using ExamSoft's platform, 160 examinees took the exam. This format proved more accessible for nationwide examinees and more cost effective than administering the exam in leased facilities in Washington, D.C.

⁶ The IRS changed operations during the pandemic by: (1) not issuing a Notice of Deficiency and other similar actions unless the statute of limitations was about to expire, (2) suspending new automatic liens and levies, (3) not starting new audits unless it was deemed necessary to protect the government's interest in preserving the applicable statute of limitations, and (4) suspending new passport certifications to the Department of State for "seriously delinquent" taxpayer IR-2020-59 (March 25, 2020). In FY 2021, the IRS significantly increased the number of notices issued.

In-Person and Remote Proceedings

The Court's nationwide jurisdiction makes it well-suited for remote proceedings. Remote proceedings provide a valuable and effective means of fulfilling the Court's statutory requirement to hold hearings and trials "with as little inconvenience and expense to taxpayers as is practicable."⁷ Remote proceedings provide scheduling flexibility and an alternative means for conducting trials in the event of local restrictions (e.g., related to the pandemic), travel issues, weather concerns, or courtroom unavailability.

In FY 2021, the Court safely conducted 100 percent of its hearings and trials remotely. The Court gradually re-instated in-person trials in October 2021. During the Covid-19 surge from the Omicron variant, the Court was able to shift proceedings (i.e., scheduled in January and February of 2022) from in-person to remote.

The success of remote proceedings also resulted in the Court's adoption of policies and procedures in August 2021 to institutionalize remote proceedings post-pandemic. This shift was made after considering feedback from representatives of the Low Income Taxpayer Clinics (LITC), American Bar Association, and IRS. The new policy permits a party to request a remote trial. The Court informs petitioners of this option in the notice of receipt of petition that is issued soon after a petition is filed. To routinely accommodate remote trials and hearings, the Court now schedules remote trial sessions every trial term.

⁷ 26 U.S.C. § 7446.

Budget Request

The Court's FY 2023 budget request is \$57,300,000, a 1.6 percent decrease from the FY 2022 requested appropriation amount of \$58,200,000. The Court's budget request provides detail for total obligations, reduced by anticipated offsetting fee fund collections. The FY 2023 total obligations of \$61,284,000 reflect an increase of \$2.2 million, or 3.8 percent from FY 2022 planned total obligations of \$59,050,000. The Court anticipates using \$4 million from accumulated offsetting fee fund collections in Fiscal Year 2023.

No-Year Appropriation Authority

The Court's FY 2023 request includes no-year appropriation authority of \$1,000,000 to facilitate more effective and efficient planning, budgeting, and use of funds. The Court's appropriations for FY 2019 through FY 2022 included no-year appropriation authority of \$1,000,000. In FY 2021, the Court used no-year funding for services related to the new electronic filing and case management system that permitted work to continue efficiently through the periods of appropriation lapses and continuing resolutions. As the Court reimagines and embraces new ways of operating, the no-year authority permits the Court to incorporate necessary technology modernizations in leased courtrooms and develop functionalities for the Court's electronic filing and case management system.

Proposed Appropriation Language

SALARIES AND EXPENSES (INCLUDING TRANSFER OF FUNDS)

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. sec. 3109, and not to exceed \$3,000 for official reception and representation expenses, [\$58,200,000] \$57,300,000, of which \$1,000,000 shall remain available until expended: *Provided, That the amount made available under 26 U.S.C. section 7475 shall be transferred and added to any amounts available under 26 U.S.C. section 7473, to remain available until expended, for the operation and maintenance of the United States Tax Court: Provided further, That travel expenses of the judges shall be paid upon the written certificate of the judge.*

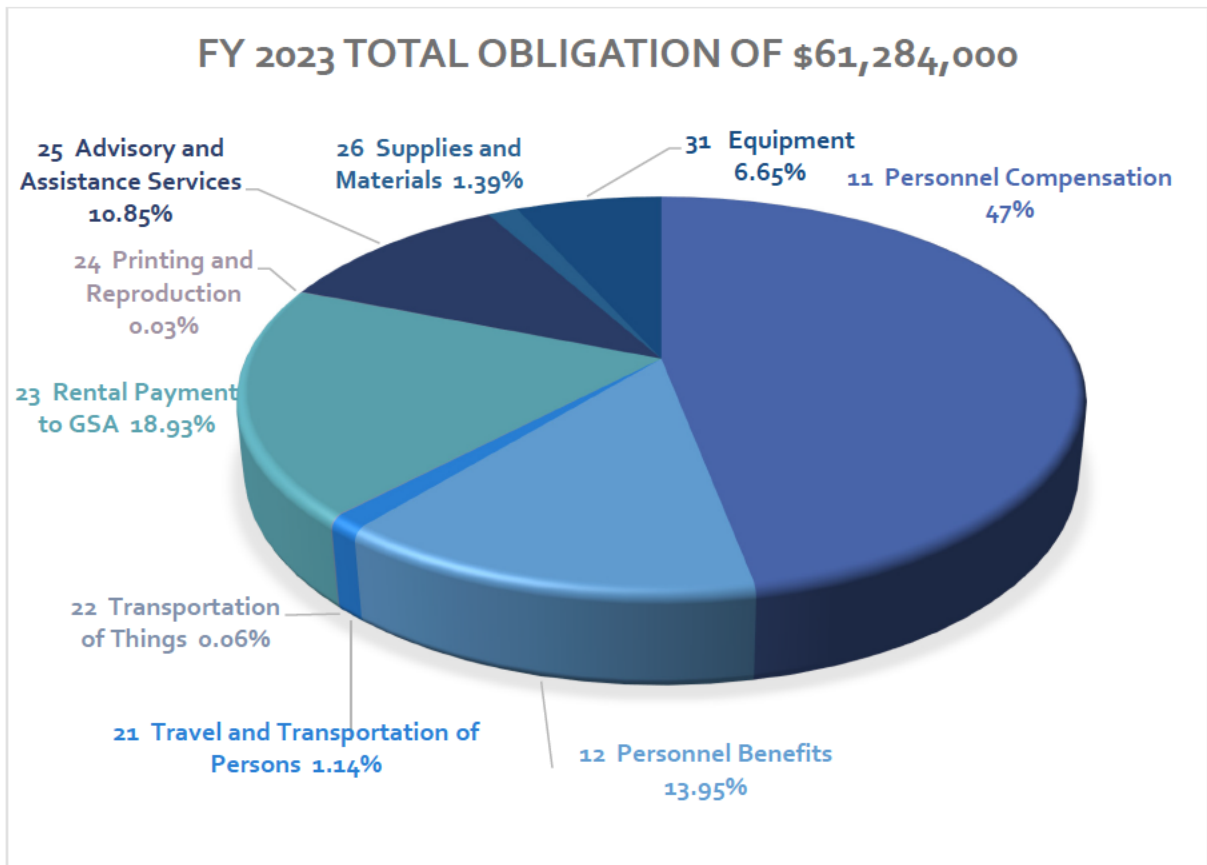
Proposed Committee Report Language

The Committee recommends \$57,300,000 for the U.S. Tax Court. The Committee recommends that the Office of Personnel Management accommodate conversion to the electronic Official Personnel Folder (eOPF) of the U.S. Tax Court employee personnel files no later than the end of FY 2023.

Budget Request Tables

RESOURCE REQUIREMENTS			
	FY 2021 ENACTED	FY 2022 PLANNED	FY 2023 REQUEST
TOTAL OBLIGATIONS	\$56,420,626	\$59,050,000	\$61,284,000
Offsetting Fee Collections Fund Used	(419,269)	(850,000)	(3,984,000)
Practice Fee Fund Used	-0-	-0-	-0-
No-year Funding From Prior Year Used	-0-	-0-	-0-
No-year Funding Carried Forward	-0-	-0-	-0-
Unobligated, Expired Funds	98,643	-0-	-0-
Use of 50% of Lapsed Funds	-0-	-0-	-0-
AVAILABLE APPROPRIATION	\$56,100,000	\$58,200,000	\$57,300,000

ALLOCATION OF TOTAL OBLIGATION



PROGRAM SUMMARY BY OBJECT CLASSIFICATION

(Dollars in Thousands)

23-0100-0-1-752	FY 2021 ENACTED	FY 2022 PLANNED	FY 2023 REQUEST
Direct Obligations			
11 Personnel Compensation	\$26,585	\$27,600	\$28,800
12 Personnel Benefits	7,602	8,020	8,550
21 Travel and Transportation of Persons	4	400	700
22 Transportation of Things	14	20	35
23.1 Rental Payment to GSA	10,583	10,976	10,934
23.3 Communications, Utilities, and Miscellaneous	692	624	668
24 Printing and Reproduction	23	60	21
25.1 Advisory and Assistance Services	1,934	1,988	1,959
25.2 Other Services Non-Federal	242	267	307
25.3 Other Goods and Services from Federal Sources	3,487	4,055	4,280
25.4 Repairs and Maintenance	9	10	10
25.7 Operations and Maintenance Equipment, Software	74	80	95
26 Supplies and Materials	885	900	850
31 Equipment	4,286	4,050	4,075
99.9 TOTAL NEW OBLIGATIONS	\$56,420	\$59,050	\$61,284
Offsetting Fee Collections Fund Used	(419)	(850)	(3,984)
Practice Fee Fund Used	-0-	-0-	-0-
No-Year Funding from Prior Year Used	-0-	-0-	-0-
No-Year Funding Carried Forward	-0-	-0-	-0-
Unobligated, Expired Funds	99	-0-	-0-
Use of 50% of Lapsed Funds	-0-	-0-	-0-
APPROPRIATION REQUEST	\$56,100	\$58,200	\$57,300

FISCAL YEAR 2023 BUDGET HIGHLIGHTS: CHANGES TO BASE

FY 2022 APPROPRIATION REQUESTED	\$58,200,000
Offsetting Fee Collections Fund Used	850,000
FY 2023 TOTAL OBLIGATIONS	\$59,050,000
PERSONNEL COMPENSATION AND PERSONNEL BENEFITS (Obj. Cl. 11 and 12)	
Judicial Officers Salaries and Benefits	555,000
Tax Court Judicial Officers Survivors Annuity Fund	0
Staff Salaries and Benefits	1,100,000
Transit Subsidy	75,000
TRAVEL AND TRANSPORTATION OF PERSONS (Obj. Cl. 21)	300,000
TRANSPORTATION OF THINGS (Obj. Cl. 22)	15,000
RENTS, COMMUNICATIONS, AND UTILITIES (Obj. Cl. 23)	
Rental Payments to General Services Administration	(41,705)
Communications, Utilities, and Miscellaneous	44,705
PRINTING AND REPRODUCTION (Obj. Cl. 24)	(39,000)
OTHER CONTRACTUAL SERVICES (Obj. Cl. 25)	
Advisory and Assistance Services	(29,500)
Other Services Non-Federal	40,000
Other Goods and Services from Federal Sources	225,000
Repairs and Maintenance	0
Operations and Maintenance Equipment and Software	14,500
SUPPLIES AND MATERIALS (Obj. Cl. 26)	(50,000)
EQUIPMENT (Obj. Cl. 31)	25,000
FY 2023 TOTAL OBLIGATIONS	\$61,284,000
Offsetting Fee Collections Fund Used	(3,984,000)
Practice Fee Fund Used	-0-
FY 2023 APPROPRIATION REQUEST	\$57,300,000

STAFFING LEVELS – FULL-TIME EQUIVALENTS

23-0100-0-1-752	FY 2021 ACTUAL	FY 2022 PLANNED	FY 2023 PROJECTED
Judges (active and senior presidentially appointed)	38	40	42
Special Trial Judges	4	6	5
Employees	167	178	187
TOTAL FULL-TIME EQUIVALENTS	209	224	234

Budget Adjustments and Explanation

(For the Budget Adjustments and Explanation section, amounts are rounded.)

Personnel Compensation and Personnel Benefits (Object Classifications 11 and 12)

The Court's FY 2023 budget request includes \$28.8 million for salaries and \$8.5 million for benefits, an increase of \$1.2 million and \$530,000, respectively, from FY 2022 planned.

Judicial Officers

The Court's FY 2023 budget request includes \$9.9 million for salaries and \$1.45 million for general benefits for judicial officers, an increase of \$435,000 and \$120,000, respectively, from FY 2022 planned.

The Tax Court is composed of 19 judges who are appointed to 15-year terms by the President, with the advice and consent of the Senate.⁸ Tax Court judges are paid at the same rate and in the same installments as judges of the district courts of the United States. A judge who is eligible to retire and who elects to receive retired pay is subject to recall by the Chief Judge to serve as a senior judge. The period a retired judge can be called upon to perform judicial duties cannot, however, in the aggregate, exceed 90 calendar days in any one calendar year without that judge's consent. Senior judges receive pay at the same rate as active Tax Court judges. Special trial judges, who are appointed by the Chief Judge, are paid at a rate equal to 90 percent of the rate for active Tax Court judges.⁹

The Court's FY 2023 budget request includes a total of 47 presidentially appointed judges (a full complement of the statutory 19 presidentially appointed judges, 13 senior judges on recall, and 10 senior judges not on recall) and 5 special trial judges, reflecting an increase of 1 judge from the Court's FY 2022 planned.

As of the date of submission, the Tax Court has 2 judicial vacancies, for which the President has not submitted nominations. The Court's FY 2023 request anticipates that both of the judicial vacancies are filled in FY 2022.

Tax Court Judicial Officers Survivors Annuity Fund

The Court's FY 2023 budget request includes \$170,000, based on an actuarial assessment, for the FY 2023 contribution to the Tax Court judges survivors annuity fund (JSAF), reflecting no change from the FY 2022 planned. The actual contribution in FY 2021 to JSAF was approximately \$162,000. At the time of this submission, there are 26 judges participating in JSAF, with 4 surviving spouses and no dependent children receiving survivorship annuity payments. In FY 2022, the Court anticipates that 1 new surviving spouse will begin receiving survivorship annuity payments.

⁸ 26 U.S.C. § 7443. See [List of Judges](#) below.

⁹ 26 U.S.C. § 7443A(d).

Congress established the JSAF to provide survivorship benefits to eligible surviving spouses and dependent children of deceased Tax Court judges. Participating judges pay 3.5 percent of their salaries or retired pay into the fund. Additional payments to offset JSAF unfunded liabilities are provided from the Court's annual appropriation.

Court Personnel

The Court's FY 2023 budget request includes \$18.9 million for staff salaries and \$6.8 million for general benefits, increases of \$765,000 and \$335,000, respectively, from FY 2022 planned. The increases are primarily attributable to staff positions for the new presidentially appointed judges and new operational staff.

The FY 2023 request includes a full year of compensation and benefits for the additional staff for the two new presidentially appointed judges and the new operational staff hired in FY 2022. The Court's FY 2023 request reflects the 2.2 percent raise and locality raises effective in calendar year 2022.

The Court anticipates hiring staff for the new judges in mid-FY 2022 (one chambers administrator and two law clerks for each new judge). The Court hired staff for the new special trial judges in mid-FY 2022 (one chambers administrator and one law clerk for each special trial judge). The Court also anticipates hiring information technology staff in FY 2022.

Over 20 percent of the Court's staff are retirement eligible within 5 years. This percentage is consistent with overall federal government workforce projections. To attract and retain the most qualified talent for the future, the Court is embracing telework and remote work.

In FY 2021, the Court began a new Diversity in Government Internship Program (DiG Tax), a paid internship for talented and underserved undergraduate or graduate students interested in federal government careers.

Transit Subsidy

The Court's FY 2023 budget request includes \$100,000 for commuting assistance transit benefits to Court employees as authorized by law, an increase of \$75,000 from FY 2022 planned. The FY 2021 and 2022 expenditures were significantly lower than historical levels because of the requirement for most Court employees to telework during the pandemic. The FY 2023 request anticipates an increase of in-person work.

Travel and Transportation of Persons and Transportation of Things (Object Classifications 21 and 22)

The Court's FY 2023 budget request includes \$700,000 for travel and transportation of persons, an increase of \$300,000 from FY 2022 planned, and \$35,000 for transportation of things, an increase of \$15,000 from FY 2022 planned.

By statute, the times and places of Tax Court sessions must provide taxpayers an opportunity to appear before the Court with as little inconvenience and expense as is practicable.¹⁰ During the pandemic, the Court implemented procedures for remote trials and hearings. The Court, therefore, was able to conduct

¹⁰ 26 U.S.C. § 7446.

trial sessions relating to each of the 74 designated cities while prioritizing the health and safety concerns for litigants, taxpayer representatives, witnesses, LITC representatives, bar sponsored pro bono program representatives, the public, Court personnel, and judges.

All trials and hearings held in FY 2021 were conducted remotely. In FY 2022, the Court began a gradual expansion of in-person proceedings, which is expected to continue in FY 2023. The in-person proceedings will require travel by judges, accompanied by trial clerks and equipment, to various cities. During FY 2022, the Court anticipates conducting approximately 65 weeks of in-person regularly scheduled trial sessions and 30 in-person special trial sessions for cases requiring lengthy trials. During FY 2023, the Court anticipates conducting approximately 125 weeks of in-person regularly scheduled trial sessions and 50 in-person special trial sessions for cases requiring lengthy trials.

Rents, Communications, and Utilities (Object Classification 23)

The Court's FY 2023 budget request includes \$11.6 million for rents, communications, and utilities, reflecting no change from FY 2022 planned.

Rental Payments to General Services Administration (23.1)

The Court's FY 2023 budget request includes \$10.93 million to the General Services Administration (GSA) for rent, a decrease of \$42,000 from FY 2022 planned.¹¹

The petitioner, at the time of filing the petition, requests the preferred place of trial from 74 designated trial cities.¹² The Tax Court currently leases space in 37 cities, including the Washington, D.C. courthouse. GSA determines the rents the Court must pay for courtroom and chambers space without negotiation. With the capability of conducting trials and hearings remotely and the ability to analyze case-related data with the new electronic filing and case management system, the Court expects to evaluate the number and location of courtrooms used for trial sessions.

In the 37 designated trial cities where the Court does not lease space, it borrows space from other federal courts. Pre-pandemic, the Court found it increasingly difficult to secure borrowed courtroom space in federal courthouses in many of these cities. Since the pandemic, there are greater spatial challenges. Federal courts are using multiple spaces to safely conduct in-person proceedings, guided by pandemic-related directives from local, state, and federal public health authorities. Remote trials and hearings are an alternative when borrowed space is unavailable.

In FY 2017, GSA funded a water intrusion study of the Washington D.C. courthouse that identified multiple structural deficiencies. Subsequently, GSA funded a project to replace the water membrane under the courthouse's monumental stairs and replace the guardrails on the stairs and all exterior spaces on the first level. As of January 10, 2022, GSA reported that the project was 93 percent complete. GSA is actively addressing necessary remedial railing work.

¹¹ See [Designated Trial Session Cities](#).

¹² Taxpayers who file a petition are referred to as petitioners.

Communications, Utilities, and Miscellaneous Charges (23.3)

The Court's FY 2023 budget request includes \$668,000 for communications, utilities, and miscellaneous charges, reflecting an increase of \$44,000 from FY 2022 planned. Court operations require reliable and redundant network access services at the Washington, D.C. courthouse, at the cities where trials and hearings are held, and for judges and staff to telework and work remotely.

Printing and Reproduction (Object Classification 24)

The Court's FY 2023 budget request includes \$21,000 for printing and reproduction costs, reflecting a decrease of \$39,000 from FY 2022 planned. The Government Publishing Office and commercial vendors provide printing of Tax Court Reports, forms, and documents.

Other Contractual Services (Object Classification 25)

The Court's FY 2023 budget request includes \$6.65 million for other contractual services, including security and technology services, reflecting an increase of \$250,000 from FY 2022 planned.

Advisory and Assistance Services (25.1)

The Court's FY 2023 budget request includes \$1.959 million for advisory and assistance services, reflecting a decrease of \$29,000 from FY 2022 planned. These services include professional services to support technology demands, including cybersecurity vigilance. See [Information Technology Initiatives](#) below. These services also include expenditures such as loose-leaf filing services, shredding services, the annual Judicial Survivors' Annuity Fund actuarial report, and professional services related to the Court's nonattorney examination.

Other Services Non-Federal (25.2)

The Court's FY 2023 budget request includes \$307,000 for other services from non-federal sources, reflecting an increase of \$40,000 from FY 2022 planned. Non-federal sources provide court reporting and interpreter services.

Other Goods and Services from Federal Sources (25.3)

The Court's FY 2023 budget request includes \$4.3 million for other goods and services from federal sources, reflecting an increase of \$225,000 from FY 2022 planned. These services include judicial and court security (United States Marshals Service and Federal Protective Service); payroll services (Department of Interior, Interior Business Center); financial management, procurement and travel services (Department of Treasury, Bureau of the Fiscal Services, Administrative Resource Center); HSPD-12/PIV credentialing (GSA); and personnel background checks (Defense Counterintelligence and Security Agency).

The FY 2023 request includes funding of \$160,000 for assessment and implementation services of the Office of Personnel Management's (OPM) Federal Data Solutions, Data Warehouse Program for conversion to the electronic Official Personnel Folder (eOPF). With approximately 200 personnel files, the project is a small undertaking for OPM, with immeasurable benefits to the Court. Reliance on paper personnel files is an impediment for continuity of operations and created multiple obstacles during the pandemic, such as requiring on-site processing for retirements, transfers to and from the Court, and

certain personnel actions. Every year since FY 2018, the Court has requested funding for this conversion. OPM has consistently failed to act. Accordingly, the Court respectfully requests appropriation language directing OPM to accommodate conversion of the Court's files no later than the end of FY 2023.

Judicial and Court Security

The Court's FY 2023 budget request includes \$3.4 million for security services that are provided by the United States Marshals Service and the Federal Protective Service (FPS). The Court is obligated to pay FPS for security services in federal buildings where the Court leases space around the country.

The Court became a protectee of the USMS in 2008 and is obligated by law to reimburse the USMS for security services. The requested amount provides reimbursement to the USMS for the salaries and benefits of a judicial security inspector assigned to the Tax Court and a management program analyst. The request also includes the salaries and benefits for security officers assigned to provide security coverage at the Washington, D.C. courthouse and at all in-person trials and hearings.

The FY 2021 actual reimbursements to the USMS were lower than a typical year as a result of pandemic-related operational changes. Because all trials and hearings were conducted remotely, there were no guard-hire hours for in-person proceedings.

The Daniel Anderl Judicial Security and Privacy Act of 2021 (S. 2340), as reported to the U.S. Senate by the U.S. Senate Committee on the Judiciary, included the Tax Court. The purpose of the legislation is to enhance security procedures and increase the availability of tools to protect federal judges and their families. This legislation would limit the release of personally identifiable information of judges and prohibit the posting or selling of such information by federal agencies and data brokers.

Repairs and Maintenance (25.4)

The Court's FY 2023 budget request includes \$10,000 for the use of private contractor services (e.g., internal and perimeter security services) for courthouse operations and maintenance, reflecting no change from FY 2022 planned.

Operations and Maintenance Equipment and Software (25.7)

The Court's FY 2023 budget request includes \$95,000 for the maintenance agreements for library equipment and certain case services equipment, reflecting an increase of \$15,000 from FY 2022 planned.

Supplies and Materials (Object Classification 26)

The Court's FY 2023 budget request includes \$850,000 for supplies and materials, a decrease of \$50,000 from FY 2022 planned. The Court's FY 2023 request anticipates \$3,000 in reception and representation expenses associated with official receptions and similar functions that the Court hosts for the purpose of outreach and furtherance of the administration of justice.

Equipment (Object Classification 31)

The Court's FY 2023 budget request includes \$4.075 million for technology equipment, office furniture, furnishings, and other equipment, an increase of \$25,000 from FY 2022 planned.

The Court continues to maintain equipment such as computers, monitors, scanners, and printers that require cyclical replacement. The global supply chain constraints (e.g., chip shortages) have resulted in delays to upgrade the Washington, D.C. courthouse IT infrastructure, including updating network switches and the physical access control system. Inflation rate increases in FY 2022 are also impacting technology equipment expenditures.

The FY 2022 planned included in this FY 2023 request anticipates \$20,000 for chambers suite furniture and furnishings for two new judges anticipated in FY 2022 (i.e., new judges for Divisions 12 and 14). A chambers suite includes: (1) the judge's private office; (2) law clerk office(s); (3) judicial assistant(s) workstation(s); (4) reference or conference room; and (5) other associated spaces used by the judge and support staff.

Information Technology Initiatives

The Court recognizes the importance and the benefits of implementing new technology and the dangers of ignoring them. Although it has taken several years to transition from legacy systems and equipment, the Court is now positioned to continuously modernize and embrace change.

The Court's ongoing migration to cloud-based solutions provides more cost effective and secure technology for operations. In FY 2021, the Court decommissioned over 100 on-site servers resulting in a minimal amount of technology equipment for the Court to maintain. In May 2021, the President issued an Executive Order on Improving the Nation's Cybersecurity mandating zero trust security requirements for federal information systems. The Court was an early adopter of this cybersecurity approach and took initial implementation steps in FY 2021. As the Court proceeds with implementing this cybersecurity strategy, the expectations are to have a simpler overall network infrastructure, a better user experience, and, ultimately, improved protection against cyberthreats.

In conjunction with the Court's migration to modern technology, the Court has engaged Gartner, Inc. for an assessment to determine the optimum IT staffing levels and required skill sets necessary to successfully operate and maintain the Court's newly implemented technologies. The Court anticipates delivery of recommendations from Gartner, Inc. in FY 2022, with analysis and implementation to follow soon thereafter.

Electronic Filing and Case Management System

The Court marked the first year of DAWSON (Docket Access Within a Secure Online Network),¹³ which was launched on December 28, 2020. DAWSON is an open-source, cloud-based application that is mobile-friendly. The system's implementation included a new feature to electronically file a petition to start a new case, which has proved particularly beneficial during the pandemic.

During the first year in operation, over 750 features were added and over 450 bugs were addressed. The system now permits the public to search and view Court orders and opinions without a fee. The Court recognizes the importance of access to case records and has prioritized the programming issues related to sealed documents and sealed cases. As functionality is added the Court will continue to realize greater efficiencies (e.g., related to consolidated cases, minute orders, and calendars). Overall, DAWSON continues to make the Court more accessible for taxpayers, practitioners, and the public.

¹³ The Court's new case management system, DAWSON, is named after the late Howard A. Dawson, Jr., a former Chief Judge and the longest serving judge of the Court (1962-2016).

Tax Court Fee Funds

Offsetting Fee Collections Fund

The offsetting fee collections fund is available to the Court without fiscal year limitation.¹⁴ In FY 2022 and FY 2023, the Court anticipates using funds from the Offsetting Fee Collections Fund for continued technology modernization efforts and other operational needs.

OFFSETTING FEE COLLECTIONS FUND			
	FY 2021 ENACTED	FY 2022 PLANNED	FY 2023 PROJECTED
BEGINNING BALANCE	\$2,517,019	\$3,358,104	\$3,543,700
DE-OBLIGATIONS FROM PRIOR YEAR	(80,768)	-0-	-0-
FISCAL YEAR COLLECTIONS			
Filing Fee Collections	1,274,062	1,000,000	900,000
Admissions Fee Collections	33,700	20,000	20,000
Copying Fee Collections	11,735	15,000	15,000
Nonattorney Exam Fee Collections	17,250	0	4,700
Rules of Practice Fee Collections	640	500	500
Certificates Fee Collections	3,735	96	100
TOTAL FISCAL YEAR FEE COLLECTIONS	\$1,341,122	\$1,035,596	\$940,300
TOTAL FEE COLLECTIONS BEFORE OFFSET	\$3,777,373	\$4,393,700	\$4,484,000
Obligations Financed from Fee Collections	(419,269)	(850,000)	(3,984,000)
ENDING BALANCE	\$3,358,104	\$3,543,700	\$500,000

Practice Fee Fund

The Court is authorized by statute to impose and collect a practice fee (also referred to as a periodic registration fee) on practitioners admitted to practice before the Court.¹⁵ Those fees can only be used to employ independent counsel to pursue disciplinary matters involving Tax Court practitioners and to provide services to pro se taxpayers. The Practice Fee Fund has an accumulated balance of \$528,528 at the end of FY 2020. Since FY 2008, the Court has not spent any funds to employ independent counsel to pursue practitioner disciplinary matters. In January 2020, the Court suspended assessment of the periodic registration fee to prevent further accumulation of funds in a fund account of limited use. In FY 2021, no expenditures were made from the fund. The Court proposed legislation to Congress requesting the repeal of 26 U.S.C. section 7475, the Practice Fee Fund, and the transfer of the balance into the offsetting fee

¹⁴ 26 U.S.C. § 7473. The fees deposited into this fund include all Tax Court fees except registration fees imposed for any judicial conference pursuant to 26 U.S.C. sec. 7470A and registration fees imposed on practitioners admitted to practice before the Tax Court pursuant to 26 U.S.C. sec. 7475.

¹⁵ 26 U.S.C. § 7475.

collections fund authorized by Congress pursuant to 26 U.S.C. section 7473 for the operation and maintenance of the Court.¹⁶

PRACTICE FEE FUND			
	FY 2021 ENACTED	FY 2022 PLANNED	FY 2023 PROJECTED
BEGINNING BALANCE	\$528,528	\$528,528	\$528,528
Fee Collections	-0-	-0-	-0-
EXPENSES	-0-	-0-	-0-
ENDING BALANCE	\$528,528	\$528,528	\$528,528

Judicial Conference Registration Fee Fund

The Court has statutory authority to impose a reasonable registration fee on persons participating at judicial conferences convened for the purpose of considering the business of the Tax Court and recommending means of improving the administration of justice within the jurisdiction of the Tax Court.¹⁷ In addition to judicial officers and senior staff, such judicial conferences are attended by practitioners admitted to practice before the Court and other persons active in the legal profession. The registration fee collections are available to defray the expenses of such conferences. The last judicial conference was held in FY 2018. With the ongoing uncertainties related to COVID-19, the Court is not requesting funds for an in-person judicial conference in FY 2023.

JUDICIAL CONFERENCE REGISTRATION FEE FUND			
	FY 2021 ENACTED	FY 2022 PLANNED	FY 2023 PROJECTED
BEGINNING BALANCE	-0-	-0-	-0-
Registration Fee Collections	-0-	-0-	-0-
Meeting Room, Banquet, and Audio-Visual Expenses	-0-	-0-	-0-
ENDING BALANCE	-0-	-0-	-0-

¹⁶ See proposed [Appropriation Language](#) above and [Legislative Proposals](#) below.

¹⁷ 26 U.S.C. § 7470A.

Case Management and Statistics

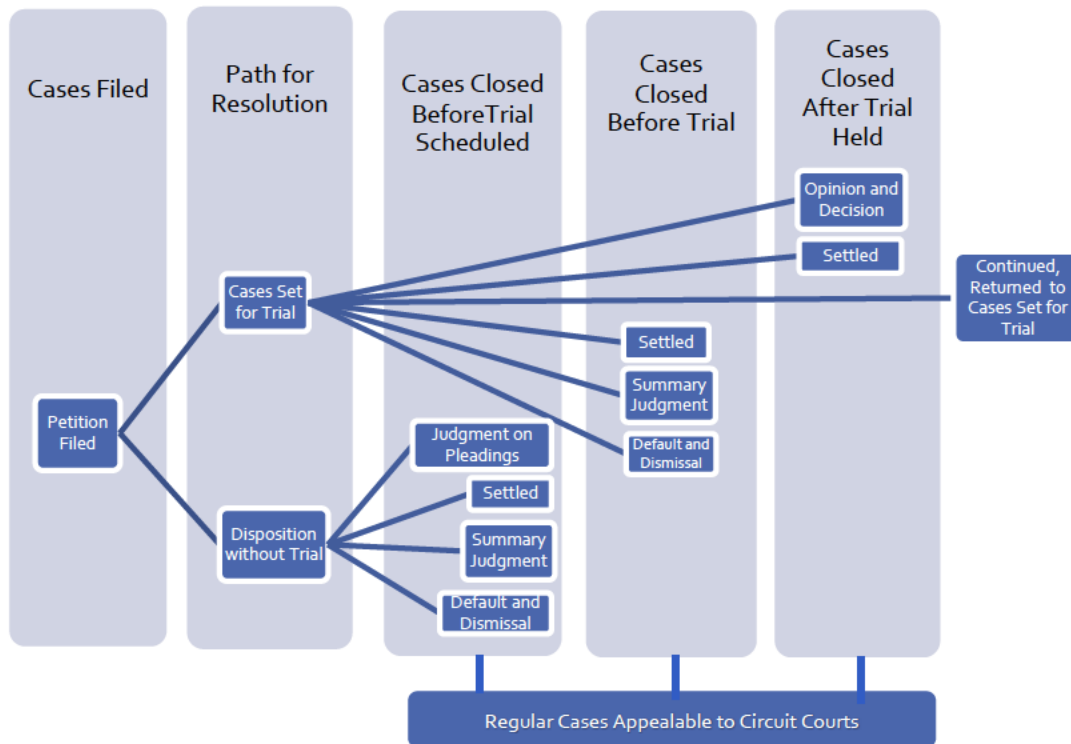
Jurisdiction and Types of Cases

The scope of the Tax Court's jurisdiction is set forth in Title 26 of the U.S. Code (the Internal Revenue Code). The Court's jurisdiction includes income, estate, gift, and certain excise tax deficiencies, collection due process cases, claims for spousal relief from joint and several liability, partnership proceedings, declaratory judgments, interest abatement actions, review of awards under the IRS whistleblower program, and review of IRS certifications related to passports. Taxpayers, including individuals and business entities, who wish to contest an IRS notice of deficiency or notice of determination may petition the Tax Court to hear and decide the matter.

Small Cases

By statute, certain petitioners may elect small tax case treatment (i.e., a simplified procedure for cases in which the taxes in dispute, including penalties, do not exceed \$50,000 per taxable year). The Court generally applies more relaxed rules of evidence in small tax cases. Small case trials are conducted informally, and any probative evidence is admissible.

LIFECYCLE OF TAX COURT CASES



Caseload

The Court's caseload varies from year to year based on a combination of the scope of jurisdiction provided by Congress, the level of audit and enforcement activity by the IRS, and the choice of forum by taxpayers. In FY 2021, there was a significant increase in the number of cases filed in contrast to FY 2020's significant decrease. In FY 2020, the IRS temporarily suspended issuing notices of deficiency and certain other notices.¹⁸ In FY 2021, of the 35,297 cases filed, 21,187 were regular cases and 14,110 were small cases.

TAX COURT CASES FILED AND CLOSED ¹⁹		
FISCAL YEAR	FILED	CLOSED
2017	27,091	29,037
2018	25,422	26,259
2019	24,364	21,740
2020	16,988	19,568
2021	35,297	19,770

*In calendar year 2021, there were 39,390 cases filed and 20,981 cases closed.

The overwhelming majority, 96 percent, of the cases filed in FY 2021 were based on the Court's original deficiency jurisdiction granted by Congress.

CASES FILED BASED ON JURISDICTION TYPE FISCAL YEAR 2021		
JURISDICTION TYPE	FILED	PERCENT
Deficiency	34,049	96.46%
Lien/Levy	1,160	3.29%
Whistleblower	63	0.18%
Passport	4	0.01%
Declaratory Judgment, Exempt Organization	17	0.05%
Declaratory Judgment, Retirement Plan Revocation	4	0.01%
Disclosure	0	0.00%
TOTAL	35,297	100%

¹⁸ IR-2020-59 (March 25, 2020), *supra* note 6.

¹⁹ The number of cases includes an insignificant margin of error.

On December 28, 2020, the Court launched DAWSON. For the first time, taxpayers could file a petition electronically to start a new case. In FY 2021, of the 35,297 cases filed, 29,384 were paper petitions and 5,913 were electronic petitions. Electronic filing increased from 12 percent of filings in January 2021 to 29 percent of filings in September 2021.

PERCENTAGE OF PAPER AND ELECTRONIC PETITIONS		
FISCAL YEAR	PAPER	ELECTRONIC
2021	83%	17%

Trial Sessions

A regularly scheduled trial session is typically a one-week period where the judge conducts one or more trials. Judges conduct trial sessions during three terms per year (winter, spring, and fall). The number of trial sessions scheduled during a term is based on the number of cases ready for trial. Generally, a one-week regular case session will have a calendar of approximately 100 cases per judge. A one-week small case session will have a calendar of approximately 125 cases per judge. Over the last several years, most active judges were assigned from 7 to 10 trial sessions annually. Judges also schedule special trial sessions for cases requiring lengthy trials.

The Court strives to resolve cases quickly while giving careful consideration to the merits of each case. To achieve this goal, the Court schedules cases for trial promptly after the pleadings are complete. Most cases, however, are closed as a result of settlement between the parties, and thus do not go to trial. Judges are actively involved in pretrial matters and management of settlement discussions to reach resolution of a case before the trial session date.

The Court originally scheduled 153 weeks for regular trial sessions and 113 weeks for special trial sessions in FY 2021. Frequently, cases settle before the trial is held, thus negating the need for the trial session. As a result, in FY 2021 the Court held 122 regularly scheduled weeks of trial and 73 special trial sessions, which were all conducted remotely.

NUMBER OF REGULARLY SCHEDULED WEEKS OF TRIAL			
FISCAL YEAR	TOTAL HELD	IN-PERSON SESSIONS HELD	REMOTE SESSIONS HELD
2016	202	202	N/A
2017	169	169	N/A
2018	164	164	N/A
2019	212	212	N/A
2020	99	87	12
2021	122	0	122

Trials and Appeals

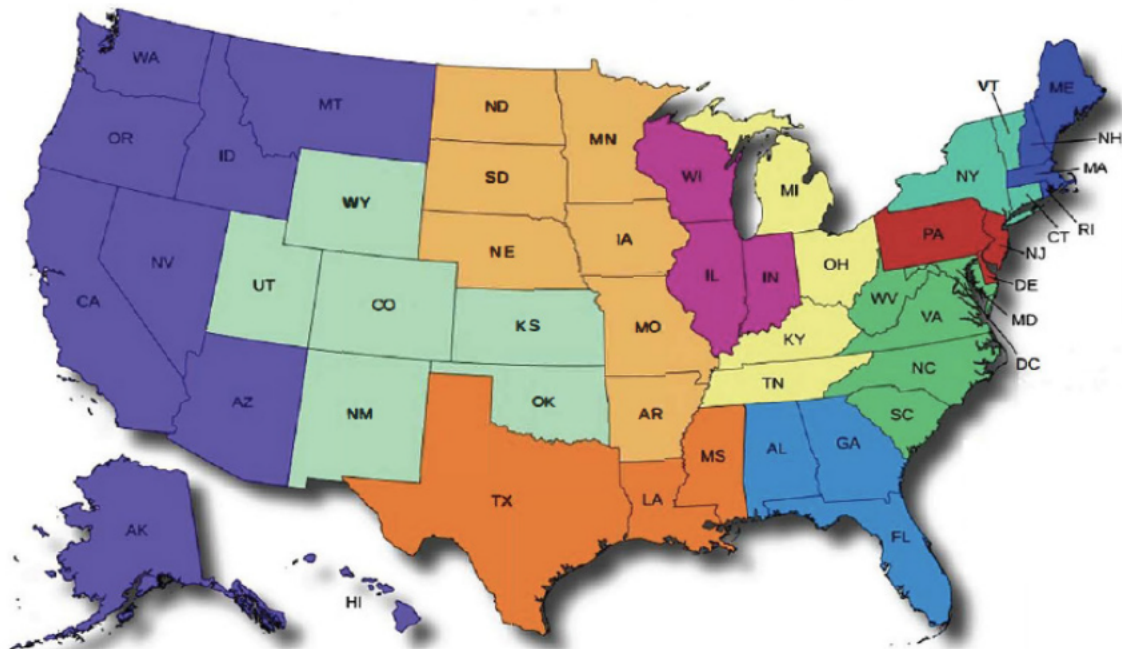
Opinions Issued

When a case is tried, the judge generally issues a written opinion within one year. In FY 2021, 320 opinions were issued: 308 relating to regular cases and 12 relating to small cases.

Appealed Cases

Regular tax cases generally are appealable to the United States court of appeals for the circuit where the individual petitioner resides or the corporate petitioner has its principal place of business. The Tax Court follows decisions of a court of appeals that are “squarely in point” if appeal of the case would lie to that court.²⁰ Tax Court decisions in small tax cases are not appealable. The table below provides the number of Tax Court cases appealed during FY 2021 according to the circuit to which the cases were appealed.

CASES APPEALED DURING FISCAL YEAR 2021													TOTAL
1 ST	2 ND	3 RD	4 TH	5 TH	6 TH	7 TH	8 TH	9 TH	10 TH	11 TH	D.C. and Federal		
0	4	5	0	8	6	6	9	30	4	8	6	86	



²⁰ See *Golsen v. Commissioner*, 54 T.C. 742, 757 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971) (the “Golsen rule”).

Taxpayer Representation

Tax Court practitioners include attorneys and nonattorneys who satisfy certain requirements, including passing an exam that the Court administers, generally, every other year. In FY 2021, taxpayers were self-represented (pro se) in 81 percent of the cases filed.

Limited Entry of Appearance

The Court implemented Limited Entry of Appearance (LEA) procedures beginning in September 2019. These procedures allow limited representation that constitutes a practitioner-client relationship in which, by advance agreement, the services provided to the taxpayer by a practitioner admitted to practice and in good standing are limited in scope and duration to less than full representation. The LEA procedures were modified on June 1, 2020, to address filing limited appearances in remote proceedings. In FY 2021, 36 LEAs were filed: 23 in regular cases and 13 in small cases. Since initial implementation, 75 LEAs were filed: 51 in regular cases and 24 in small cases.

LIMITED ENTRY OF APPEARANCE			
FISCAL YEAR	REGULAR CASES	SMALL CASES	TOTAL FILED
2019*	3	3	6
2020	25	8	33
2021	23	13	36

*The Limited Entry of Appearance procedures began in September 2019. Thus, FY 2019 includes only one month of data.

Low Income Taxpayer Clinics and Bar Sponsored Programs

Self-represented taxpayers may obtain legal assistance through LITC programs as well as bar sponsored programs operated by volunteers working through the tax sections of national, state, and local bar associations in several cities. The Court provides information as to the availability of these programs to every self-represented petitioner. The information is also available on the Court's website.

Currently, taxpayers have access to legal assistance through 133 LITC programs as well as bar sponsored programs operated by volunteers in 15 cities. The 133 participating LITCs comprise: 43 law schools, 2 non-law schools, and 88 legal service organizations. In some circumstances, such programs can assist petitioners outside their own geographic area.

The Court continued conducting remote proceedings during the pandemic to provide reasonable opportunities for taxpayers to appear before the Court with as little inconvenience and expense as practicable, as mandated under 26 U.S.C. section 7446. The Court adopted a new policy during FY 2021 that permits a party to request a remote trial. Remote proceedings expand the availability of assistance from LITC and bar sponsored programs by enabling them to assist self-represented petitioners in different geographic locations.

Other Legislative Proposals

Other legislative proposals submitted to Congress include the following fee proposals:

Filing Fee

The proposal amends 26 U.S.C. section 7451 to authorize the Court to impose a fee of \$100 for the filing of any petition. The proposal authorizes adjustment for inflation. The proposal also provides express statutory authority to waive the filing fee in certain circumstances.

Miscellaneous Fees

The proposal amends 26 U.S.C. section 7451 to provide express statutory authority for the Court to impose various fees, not in excess of the fees charged and collected by the clerks of the district courts.

Nonattorney Examination Fee

The proposal amends 26 U.S.C. section 7452 to provide express statutory authority for the Court to impose the nonattorney examination fee.

Transcript of Record

The proposal amends 26 U.S.C. section 7474 to delete the express statutory authority to impose a fee for copying, comparison, and certification of any record, entry, or other paper. The Court would impose such fees pursuant to the newly enacted miscellaneous fees statutory authority.

Practice Fee

The proposal repeals 26 U.S.C. section 7475, Practice Fee, and authorizes the transfer of all accumulated funds collected pursuant to section 7475 to the section 7473 special fund (offsetting collections fee fund), to be used for the operation and maintenance of the Court.

Disposition of Fees

The proposal amends 26 U.S.C. section 7473 to provide that all fees collected by the Tax Court, except for the judicial conference fees provided in section 7470A, shall be deposited into the offsetting collections fee fund established by 26 U.S.C. section 7473.

List of Judges

Presidentially Appointed Judges

<u>By Seniority</u>	<u>First Oath of Office</u>
Maurice B. Foley, Chief Judge	April 10, 1995
Joseph H. Gale	February 6, 1996
David Gustafson	July 29, 2008
Elizabeth Crewson Paris	July 30, 2008
Richard T. Morrison	August 29, 2008
Kathleen M. Kerrigan	May 4, 2012
Ronald L. Buch	January 14, 2013
Joseph W. Nega	September 4, 2013
Cary Douglas Pugh	December 16, 2014
Tamara W. Ashford	December 19, 2014
Patrick J. Urda	September 27, 2018
Elizabeth A. Copeland	October 12, 2018
Courtney D. Jones	August 9, 2019
Emin Toro	October 18, 2019
Travis A. Greaves	March 9, 2020
Alina I. Marshall	August 24, 2020
Christian N. Weiler	September 9, 2020

There are two vacancies as of the date of submission.

Senior Judges on Recall

<u>By Seniority</u>	<u>First Oath of Office</u>
Mary Ann Cohen	September 24, 1982
Thomas B. Wells	October 13, 1986
John O. Colvin	September 1, 1988
James S. Halpern	July 3, 1990
Juan F. Vasquez	May 1, 1995
Michael B. Thornton	March 8, 1998
L. Paige Marvel	April 6, 1998
Joseph R. Goeke	April 22, 2003
Mark V. Holmes	June 30, 2003
Albert G. Lauber	January 31, 2013

Special Trial Judges

<u>Chief STJ, then by Seniority</u>	<u>Date of Appointment</u>
Lewis R. Carluzzo, Chief STJ	August 7, 1994
Peter J. Panuthos	June 12, 1983
Daniel A. Guy, Jr.	May 31, 2012
Diana L. Leyden	June 20, 2016
Adam B. Landy	December 6, 2021
Eunkyong Choi	December 6, 2021

Designated Trial Session Cities

ALABAMA Birmingham (L) Mobile (L)	ILLINOIS Chicago (L) Peoria* (L)	MISSOURI Kansas City (L) St. Louis (L,B)	SOUTH CAROLINA Columbia (L)
ALASKA Anchorage (L)	INDIANA Indianapolis (L)	MONTANA Billings* (L) Helena (L)	SOUTH DAKOTA Aberdeen* (L)
ARIZONA Phoenix (L)	IOWA Des Moines (L)	NEBRASKA Omaha (L)	TENNESSEE Knoxville (L) Memphis (L) Nashville (L)
ARKANSAS Little Rock (L)	KANSAS Wichita* (L)	NEVADA Las Vegas (L) Reno (L)	TEXAS Dallas (L,B) El Paso (L,B) Houston (L,B) Lubbock (L,B) San Antonio (L,B)
CALIFORNIA Fresno* (L,B) Los Angeles (L) San Diego (L,B) San Francisco (L)	KENTUCKY Louisville (L)	NEW MEXICO Albuquerque (L)	UTAH Salt Lake City (L)
COLORADO Denver (L)	LOUISIANA New Orleans (L) Shreveport* (L)	NEW YORK Albany* (L) Buffalo (L) New York (L,B) Syracuse* (L)	VERMONT Burlington* (L)
CONNECTICUT Hartford (L)	MAINE Portland* (L)	NORTH CAROLINA Winston-Salem (L)	VIRGINIA Richmond (L) Roanoke* (L)
DISTRICT OF COLUMBIA (L)	MARYLAND Baltimore (L,B)	NORTH DAKOTA Bismarck* (L)	WASHINGTON Seattle (L) Spokane (L)
FLORIDA Jacksonville (L,B) Miami (L,B) Tallahassee* (L,B) Tampa (L,B)	MASSACHUSETTS Boston (L)	OHIO Cincinnati (L) Cleveland (L) Columbus (L)	WEST VIRGINIA Charleston (L)
GEORGIA Atlanta (L)	MICHIGAN Detroit (L)	OKLAHOMA Oklahoma City (L)	WISCONSIN Milwaukee (L)
HAWAII Honolulu (L)	MINNESOTA St. Paul (L)	OREGON Portland (L)	WYOMING Cheyenne* (L)
IDAHO Boise (L) Pocatello* (L)	MISSISSIPPI Jackson (L)	PENNSYLVANIA Philadelphia (L) Pittsburgh (L)	

* Denotes city where only small tax cases may be heard

L - City served by Low Income Taxpayer Clinic(s)

B - City served by bar sponsored program



United States Tax Court

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