

PRESENTED AT

69th Annual Taxation Conference

December 1-2, 2021

Austin, TX

**The Good, the Bad & the UGLY in Tax Court Trials
In-Person vs. Virtual**

Hon. Elizabeth A. Copeland

Author Contact Information:
Hon. Elizabeth A. Copeland
United States Tax Court
400 Second Street, N.W.
Washington, D.C. 20217
(202) 521-0670

The Good, the Bad and the UGLY in Tax Court Trials

HONORABLE ELIZABETH A. COPELAND

United States Tax Court
Washington, D.C.

The University of Texas School of Law
69th Annual Taxation Conference

December 1-2, 2021

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	HISTORY	3
III.	TRAVEL	4
IV.	ADMISSION TO THE TAX COURT	6
V.	TRIAL CALENDARS.....	7
VI.	ISSUES	8
VII.	EXPANDING JURISDICTION	10
VIII.	OBTAINING JURISDICTION	11
IX.	TRIALS.....	13
X.	EXPERT WITNESSES	16
XI.	VIRTUAL TRIALS	18
XII.	BRIEFING	22
XIII.	DRAFTING & REVIEW OF AN OPINION	24
XIV.	COURT CONFERENCE.....	25
XV.	DAILY CIRCULATION.....	26
XVI.	PRO BONO OPPORTUNITIES	27

BASICS OF TAX COURT¹

Each year (with the exception of 2020, due to the COVID-19 pandemic) there are between 25,000 and 30,000 new cases filed in the United States Tax Court (hereinafter “Tax Court” or simply the “Court”) – the majority of which are settled. 2021 has been an unusual year in that the Court has received a greater influx of petitions than it has in previous years; as of July 23, 2021, the Court has received over 26,000 petitions.² However, the cases that are docketed in the Tax Court are only a small fraction – not even one-tenth of one percent of the millions of tax returns that are prepared and filed each year around the country.³

I. **BACKGROUND**

A Tax Court case generally begins when a taxpayer receives one of the following types of notices from the Internal Revenue Service (“IRS”), with the applicable number of days for the taxpayer to petition the Court noted:

1. a notice of deficiency,⁴ (90 days / 150 days for nonresidents)
2. notice of liability to a transferee or fiduciary,⁵ (90 days)
3. a notice of determination,⁶ (90 days or no action after 270/180 days)
4. a notice of intention to disclose a redacted ruling, determination letter, technical advice memorandum or Chief Counsel advice,⁷ (60 days)

¹ Drafted with the assistance of Adam Flick (IRS Office of Chief Counsel, Dallas, Texas) and Abbey Garber (Thompson & Knight, Dallas, Texas).

² See Press Release from the United States Tax Court (August 16, 2021).

³ Throughout this outline, all section references are to the Internal Revenue Code in effect as of the date of this outline, and all Rule references are to the Tax Court Rules of Practice and Procedure.

⁴ Rule 13(a)(1); Secs. 6212, 6213.

⁵ Rule 13(a)(2); Sec. 6901.

⁶ Rule 210(c); Secs. 7476, 7477, 7478, 7479 and 7428.

⁷ Rule 220(c); Sec. 6110.

5. a notice of final partnership administrative adjustment,⁸ (90 days)
6. a denial of an administrative adjustment request,⁹ (after 6 months from filing, but before 2 years expires from the date of filing)
7. a denial of an award for administrative costs,¹⁰ (90 days)
8. a notice of final determination not to abate interest,¹¹ (90 days / 150 days for nonresidents)
9. a determination of employment status,¹² (90 days)
10. a notice of partnership adjustment,¹³ (90 days)
11. a notice of adjustment [with respect to the non-partnership items on an oversheltered partner's tax return],¹⁴ (90 days / 150 days for nonresidents),
12. a denial of relief from joint and several liability on a joint return,¹⁵ (90 days from final determination letter or 6 months from the date the initial request was filed)
13. a notice of determination concerning collection action(s) under section 6320 and/or 6330,¹⁶ (30 days)
14. a final determination denying the taxpayer's claim for a whistleblower award,¹⁷ (30 days) and/or
15. a notice of denial of or revocation of a passport.¹⁸

Roughly 96 percent of all cases that involve a deficiency in income, estate, and gift tax in this country are filed in the Tax Court. The other 4 percent are filed in the United States (U.S.) District Courts and the U.S. Court of Federal Claims.

The Tax Court is independent of the Executive and Legislative branches. Its decisions

⁸ Rule 240(c); Sec. 6226.

⁹ Rule 240(c); Sec. 6228

¹⁰ Rule 270(c); Sec. 7430(f).

¹¹ Rule 280(b); Sec. 6404(h).

¹² Rule 290(b); Sec. 7436.

¹³ Rule 300(c); Sec. 6247

¹⁴ Rule 310(c); Sec. 6234

¹⁵ Rule 320(b); Sec. 6015

¹⁶ Rule 330(b); Secs. 6320, 6330

¹⁷ Rule 340(b); Sec. 7623

¹⁸ Sec. 7345

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: The Good, the Bad and the UGLY in Tax Court Trials: In-Person vs. Virtual

Also available as part of the eCourse

[2021 Taxation eConference](#)

First appeared as part of the conference materials for the
69th Annual Taxation Conference session

"The Good, the Bad and the UGLY in Tax Court Trials: A Luncheon Presentation with Judge
Elizabeth A. Copeland"