

PART ONE
PRACTICE AND PROCEDURE
(60 minutes)

**ANSWER THE QUESTIONS IN THIS PART OF THE
EXAMINATION IN ANSWER BOOK/S SEPARATE FROM
THE
ANSWER BOOK/S CONTAINING ANSWERS TO OTHER
PARTS OF THE EXAMINATION**

Question P-1. (10 minute/s) Determine whether the Tax Court has jurisdiction in each of the situations below. State YES or NO as to each subpart of the Question.

(a) The Internal Revenue Service ("IRS") issues to Taxpayer ("TP") a statutory notice with respect to one taxable year. The notice determines an income tax deficiency and also additions to tax pursuant to Section 6662(a) and (b)(2). TP petitioned the Tax Court to dispute the deficiency amount and the additions to tax. Does the Tax Court have-jurisdiction as to the additions to tax?

(b) TP received from the IRS a timely notice of deficiency reflecting a determination that TP was liable for three additions to tax for one of TP's taxable years: one each under sections 6651 (a)(1), 6651 (a)(2), and 6655. The IRS did not determine, and the notice of deficiency did not assert, that TP had a deficiency in its Federal income tax for the year. TP timely petitioned the Tax Court with respect to the notice of deficiency, alleging in the petition that TP was not -liable for the additions to tax. The petition did not allege, and TP does not otherwise assert, that it overpaid its federal income tax for the taxable year to which the additions to tax relate.

(c) Does the Tax Court have jurisdiction to determine a deficiency that exceeds the amount of the deficiency determined in the IRS statutory notice of deficiency?

(d) The Tax Court determines that TP made an overpayment of tax with respect to the taxable year that was the subject of the statutory notice of deficiency. More than 150 days have elapsed since the Tax Court's decision became final, but the IRS has not refunded the overpayment. TP seeks a Tax Court order that the IRS refund the overpayment. Does the Tax Court have jurisdiction with respect to such an order?

(e) Does the Tax Court have jurisdiction to order a refund of any amount collected within the period during which the IRS is prohibited by statute from collecting by levy or through a proceeding in court?

(f) The IRS audited TP's Federal Insurance Contribution Act and income tax withholding returns for 1994-95 and its Federal Unemployment Tax Act tax return for 1995. The IRS then issued a determination notice concerning worker classification Under section 7436, asserting that certain of TP's workers were "employees" and that TP was not entitled to relief from that

classification under section 530 of the Revenue Act of 1978. TP filed a Tax Court petition. Does the Tax Court have subject matter jurisdiction as to TP's employment tax liability under section 7436?

(g) TP paid \$38,000 toward TP's 1993 federal income tax liability through withholding and an additional payment with TP's request for a filing extension. TP eventually filed the 1993 federal income tax return in 1997, and the return reported a total tax liability of only \$28,900. TP requested that the \$10,100 overpayment be applied to assessed tax liabilities for 1990 and 1991, and the IRS applied all of the overpayment to those assessed tax liabilities for 1990 and 1991. Later in 1997, the IRS issued a deficiency notice for 1993, determining a \$5,900 deficiency, and TP filed a petition with the Tax Court in response to the deficiency notice. TP eventually conceded the deficiency for 1993, but TP argued that the IRS improperly determined TP's 1990-91 tax liabilities so that a portion of the 1993 overpayment would be available to offset the agreed 1993 deficiency. Does the Tax Court have jurisdiction to decide whether the IRS properly assessed interest and penalties for 1990-91?

(h) In 1997, the IRS issued a deficiency notice to TP for years 1994-96. TP returned the notice to the IRS with an attached statement indicating that TP was not liable for federal income taxes (based on frivolous constitutional arguments). TP did not file a petition with the Tax Court with respect to the notice. In 2000, the IRS issued a final notice of intent to levy, which stated that TP could request a "Collection Due Process Hearing" with the IRS Appeals Office, and TP returned the final notice with the same statement of no liability. The IRS then issued a notice of determination informing TP that TP could not challenge the underlying liability because TP previously had received a deficiency notice. TP timely filed with the Tax Court a petition for review of respondent's determination letter. Does the Tax Court have jurisdiction to review such a determination pursuant to section 6330?

(i) In 1997, the IRS issued a deficiency notice to TP with respect to 1994 and 1995. TP received the notices but did not file a petition with the Tax Court, and then the IRS assessed the deficiencies. On February 1, 1999, a final notice of intent to levy and "Notice of Your Right to a Hearing" was sent to TP for the 1994-95 taxes. Although the notice provided information on appealing the levy, TP did not request a collection due process hearing within 30 days of the issuance of the notice. Afterwards, the IRS began a collection action under section 6330. On June 3, 1999, TP sent a collection appeal request to the IRS, and the IRS denied the request on September 30, 1999. TP then filed a petition with the Tax Court requesting review of the IRS action. Does the Tax Court have jurisdiction with respect to TP's petition?

(j) TP was an officer of a corporation that failed to pay FICA and employee income tax withholdings to the government. The IRS determined that TP was liable for the "trust fund" amounts as a responsible person under section 6672 and initiated a collection action against TP. An IRS appeals office issued a determination notice rejecting TP's settlement offer, which had proposed monthly installment payments by TP, and the IRS notified TP that TP could file for a redetermination in federal district court. TP filed a Tax Court petition. Does the Tax Court have jurisdiction with respect to the petition regarding liability under section 6672?

Question P-2. (2 minute/s) TP is a United States citizen residing in (and physically present in) the United States at all relevant times. On June 12, 2000, the IRS mailed a notice of deficiency (bearing the date of June 12, 2000) to TP regarding TP's 1998 income tax liability. The Notice states that the last day on which a petition may be filed is September 12. TP received the notice on June 16, 2000. What is the last day on which TP timely can file a petition with the Tax Court? The following 2000 calendar may be of use to you:

	S	M	T	W	Th	F	S
June					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	
July							1
	2	3	4	5	6	7	8
	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					
August			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		
September						1	2
	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
	17	18	19	20	21	22	23
	24	25	26	27	28	29	30

Question P-3. (2 minute/s) Same facts as Question 2, except that the notice of deficiency does not state the last date on which the Petition may be filed.

- Is the notice of deficiency valid?
- Assuming that the notice is valid, what is the last day on which TP timely can file a petition with the Tax Court?

Question P-4. (8 minute/s) Explain the required contents of a Tax Court petition filed with respect to a taxpayer who is a natural person.

Question P-5. (1 minute/s) If a Tax Court petition is silent with respect to one or more issues raised in the deficiency notice, what is the effect?

Question P-6. (2 minute/s) With respect to papers filed with the Tax Court:

- Each document signed by taxpayer's counsel must contain the counsel's Tax Court bar number. State TRUE or FALSE.
- Counsel for taxpayer is a professional corporation. Describe the proper name (and signature) to be used on documents submitted to the Court by the professional corporation.

Question P-7. (4 minute/s) Section 6212(b) requires that the IRS statutory notice of deficiency be mailed to the last known address of the taxpayer. What is required of the IRS with respect to addressing the statutory notice of deficiency if the taxpayer has changed addresses between the time of filing the relevant return and the mailing of the notice of deficiency.

Question P-8. (2 minute/s) Under what circumstances may the statute of limitations be tolled/suspended as to a refund claim of a taxpayer?

Question P-9. (3 minute/s) Describe the situations, if any, under which a joint petition is permitted under the Tax Court Rules.

Question P-10. (1 minute/s) Describe the preferred pre-trial discovery process in the Tax Court.

Question P-11. (3 minute/s)

(a) Tax Court discovery may not be commenced before what date?

(b) Tax Court discovery must be completed by what date?

(c) If the completion date in (b) falls on a Saturday, Sunday, or legal holiday, by what date must discovery be completed?

Question P-12. (2 minute/s) Discuss whether the Tax Court may limit the extent to which a party may obtain discovery.

Question P-13. (2 minutes) The Tax Court Rules authorize the use of written interrogatories.

(a) May written interrogatories be used to elicit information from a nonparty witnesses in a Tax Court proceeding?

(b) Describe alternative methods of eliciting information from a nonparty witness.

Question P-14. (3 minute/s) Discuss whether a Tax Court petitioner may take depositions as a method of discovery in the Tax Court.

Question P-15. (2 minute/s) Prior to trial in the Tax Court, the IRS submits to TP a request for admission.

(a) Describe TP's duties of response to the request.

(b) Describe the various consequences and sanctions that may result from failing to comply with the request and failing otherwise to participate in pretrial discovery proceedings (including Court orders to comply).

Question P-16. (3 minute/s) The Tax Court Rules prescribe special procedures for "small tax cases." Describe briefly the essential elements of these small tax case procedures.

Question P17. (3 minute/s). TP receives a notice of deficiency concerning an income tax return. TP wants a person admitted to practice in the Tax Court to represent TP in the Tax Court proceeding.

(a) How may the person representing TP, "Counsel," indicate to the Tax Court that Counsel will represent TP before the Court?

(b) If TP initially decides to represent TP and files a petition, but later has a change of mind and asks Counsel to represent TP, how must Counsel notify the Court?

Question P-18. (7 minute/s) Discuss the requirements that must be satisfied to authorize the Tax Court to award to a petitioner attorneys fees and costs.