

2002 PRACTICE AND PROCEDURE (60 Minutes)

Question P-1 (2 minute/s) Taxpayer has received an Internal Revenue Service (“IRS”) notice of deficiency with respect to income tax for 2001. Taxpayer timely files a petition with the Tax Court to contest the asserted deficiency. After Taxpayer files the petition, Taxpayer becomes the subject of a jeopardy assessment and levy. Taxpayer files a timely petition with the Tax Court to challenge the jeopardy proceeding. Discuss whether the Tax Court may review the jeopardy assessment and levy.

Question P-2 (3 minute/s) Determine whether the Tax Court has jurisdiction in each of the following situations.

(a) The IRS mailed to Taxpayer a notice of deficiency that did not provide a date in the section entitled “Last Day to File a Petition with the United States Tax Court” as required by §3463(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206. Taxpayer received the notice of deficiency within several days of its mailing, but Taxpayer did not file a petition with the Tax Court until 56 days after expiration of the 90 day period prescribed by §6213(a). Briefly discuss whether the Tax Court has jurisdiction with respect to the petition.

(b) The IRS issues to Taxpayer a notice of deficiency asserting an income tax deficiency for 2000, and Taxpayer properly petitions the Tax Court and asserts that Taxpayer overpaid tax for 2000. If the Tax Court finds that, instead of an underpayment for 2000, Taxpayer has overpaid income tax for 2000, does the Tax Court have jurisdiction to determine an overpayment and order that it be refunded?

(c) Taxpayer was charged with the crime of tax evasion, and in 2001, Taxpayer executed a plea agreement in which Taxpayer agreed to file delinquent Federal income tax returns and report specific amounts of income. In 2002 the IRS received the delinquent returns, assessed the tax liabilities reported on the delinquent returns, and thereafter sent Taxpayer a notice of deficiency asserting additions to tax for fraudulent failure to file under §6651(f), Taxpayer petitioned the Tax Court in response to the deficiency notice. Discuss whether the Tax Court has jurisdiction with respect to the §6651(f) penalty.

Question P-3 (3 minute/s) Discuss whether a petitioner using a private delivery service can utilize the §7502 “timely-mailing-is-timely-filing” rule.

Question P-4 (1 minute/s) Taxpayer is physically present in the United States at all relevant times. During 2002, Taxpayer receives a deficiency notice that was properly addressed and mailed to Taxpayer at an address in a country other than the United States. Taxpayer prepares a petition that arrived in the Tax Court in a properly addressed envelope bearing a postmark indicating that it was mailed during 2002 from a country other than the United States. The foreign country postmark was dated prior to the last date on which the Petition could be timely filed, and the envelope was

received by the Tax Court after the last date on which the Petition could be timely filed. Can Taxpayer rely on the §7502 “timely-mailing-is-timely-filing” rule with respect to the Petition to establish jurisdiction in the Tax Court? State YES or NO and briefly explain.

Question P-5 (3 minute/s) Taxpayer is physically present in the United States at all relevant times. On March 11, 2002, the IRS mailed a notice of deficiency (bearing the date of March 11, 2002) to Taxpayer regarding Taxpayer's 2000 income tax liability. The notice states that the last day on which a petition may be filed is June 12, 2002. Taxpayer received the notice on March 15, 2002. What is the last day on which Taxpayer timely can file a petition with the Tax Court? The following 2002 calendar may be of use to you:

	SUN	MON	TUES	WED	THURS	FRI	SAT
MARCH						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						
APRIL		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				
MAY				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	
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						

Question P-6 (6 minute/s) Describe the pleading and the contents of the pleading that must be filed by or on behalf of a taxpayer to initiate a Tax Court proceeding. Also explain what must accompany the pleading.

Question P-7 (1 minute/s) What is the effect of a Tax Court petition that is silent with respect to an issue raised in the deficiency notice?

Question P-8 (2 minute/s) Describe the preferred pre-trial discovery process in the Tax Court.

Question P-9 (2 minute/s) Taxpayer received a deficiency notice and filed a petition with the Tax Court. Taxpayer attended (prior to the trial of the case) a stipulations of facts conference with counsel for the IRS in which Taxpayer stipulated to purchasing certain machinery on December 30, 1999.

(a) What is the effect of Taxpayer's stipulation?

(b) What may Taxpayer do if Taxpayer subsequently discovers that the machinery actually was purchased on January 30, 2000?

Question P-10 (2 minute/s) Prior to trial in the Tax Court, the IRS serves upon Taxpayer a request for admission.

(a) Describe the possible consequences to Taxpayer as to matters in controversy in the case if Taxpayer fails to respond to the request.

(b) Under the Tax Court Rules, what must be done to effect a timely response?

Question P-11 (4 minute/s) Describe the essential elements of §7491.

Question P-12 (4 minute/s) Describe the §7436 jurisdiction of the Tax Court.

Question P-13 (5 minute/s) Describe the essential elements of the §§6320 and 6330 "due process" rights of taxpayers.

Question P-14 (4 minute/s) With respect to §§6320 and 6330:

- a) Must an IRS officer sign and date the IRS Form 4340, Certificate of Assessments and Payments, in order to have a valid assessment of a taxpayer's liability for purposes of Tax Court §§6320/6330 jurisdiction? State YES or NO.
- b) The IRS mailed to Taxpayer-Husband a final notice of intent to levy as to Taxpayer-Husband's unpaid tax liabilities for specified years. On a later date, the IRS mailed to Taxpayer-Wife a final notice of intent to levy concerning Taxpayer-Wife's unpaid tax liabilities for specified years. Taxpayer-Husband and Taxpayer-Wife filed a joint request for an administrative hearing with the IRS Office of Appeals, but Taxpayer-Husband failed to file his request within the 30 day period prescribed in §6330. Despite Taxpayer-Husband's failure to file a timely request for an Appeals Office hearing, the IRS granted Taxpayer-Husband an "equivalent" hearing. Taxpayer-Wife was granted an administrative hearing pursuant to §6330. Thereafter the IRS issued (1) a "decision letter" to Taxpayer-Husband stating that the IRS would proceed with collection against him, and 2) a determination letter to Taxpayer-Wife stating that the IRS would proceed with collection against her and informing her of her right to challenge the

determination in Court. Taxpayer-Husband and Taxpayer-Wife filed a joint petition for review with the Tax Court. Does the Tax Court have jurisdiction with respect to Taxpayer-Husband? State YES or NO.

- c) Does an individual have the right to subpoena witnesses and documents in a §6330(b) IRS collection due process hearing? State YES or NO.
- d) Taxpayer filed income tax returns for three years and reported Taxpayer's wages as income. Taxpayer, contending that wages are not taxable, subsequently filed amended returns for those years reporting no income. The IRS assessed the §6702 frivolous return penalty for those years. After the IRS offered Taxpayer an opportunity to attend a prelevy hearing the IRS issued a notice of determination under §§6320 and/or 6330 that Taxpayer was responsible for the §6702 frivolous return penalty. Taxpayer filed a petition with the Tax Court to review the determination. The IRS contends that the Tax Court lacks jurisdiction under §6330(d)(1)(A). Does the Tax Court have jurisdiction? State YES or NO.
- e) May the Tax Court impose the §6673 penalty in a Lien and Levy Action if it appears that the action has been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such is frivolous or groundless? State YES or NO.
- f) Does the §6330 hearing proceeding suspend the applicable 10 year limitations period for collecting the taxpayer's federal income taxes? State YES or NO.
- g) Does the Tax Court have jurisdiction under §6330(d)(1)(A) to review the IRS determination to proceed with collection from a taxpayer of the addition to tax under §6651(a)(2). State YES or NO.
- h) Does the Tax Court have jurisdiction under §6330(d)(1)(A) to review the IRS determination to proceed with collection from a taxpayer of the §6672 amount? State YES or NO.

Question P-15 (7 minute/s) Discuss the requirements that must be satisfied to authorize the Tax Court to award to a petitioner attorneys fees and costs.

Question P-16 (3 minute/s) Section 6015 contains limitations applicable to a spouse's (or former spouse's) liability with respect to a joint return. Discuss the extent to which the Tax Court has jurisdiction with respect to these limitations.

Question P-17 (3 minute/s) Under §6015(c)(3)(C) an individual generally does not qualify for the §6015(c) election if the individual making the election had 'actual knowledge at the time such individual signed the return, of any item giving rise to a deficiency that is not allocable to the individual under §6015 (but this rule does not apply if the individual with actual knowledge establishes that the individual signed the return under duress). Discuss the burden of proof with regard to whether the individual

seeking the relief had actual knowledge of the time giving rise to the deficiency.

Question P-18 (3 minute/s) Explain the certifications regarding the contents of a petition that are implicit in taxpayer's counsel's signature on the petition.

Question P-19 (2 minute/s) Counsel had undertaken representation of Taxpayer and had made an entry of appearance before the Tax Court. Counsel's client (Taxpayer) had been uncooperative and had not paid Counsel's fee in advance of trial, as Taxpayer previously had agreed. How may Counsel withdraw from the representation?