

PART ONE
PRACTICE AND PROCEDURE
(60 minutes)

Question P-1. (10 minute/s)

Determine whether the Tax Court has jurisdiction in each of the situations below. State YES or NO.

- (a) Taxpayer ("TP"), an estate of a decedent who died in September 1997, seeks a Tax Court determination of the estate's eligibility to elect to pay estate taxes in installments under IRC §6166. Does the Tax Court have subject matter jurisdiction?
- (b) TP, who provides tax advice to other persons, received from the Internal Revenue Service (IRS) a notice and demand for penalty pursuant to IRC §6694(a). TP petitioned the Tax Court to challenge the penalty. Does the Tax Court have subject matter jurisdiction?
- (c) The IRS issues to TP a statutory notice of income tax deficiency and also for additions to tax pursuant to IRC §6661(b)(2). TP petitioned the Tax Court to dispute the deficiency amount and the additions to tax. Does the Tax Court have subject matter jurisdiction as to the additions to tax?
- (d) TP files a petition with the Tax Court asserting a refund claim against the United States for overpaid income taxes. The IRS has not issued a statutory notice of deficiency to TP with respect to the taxable period as to which the refund claim is asserted. Does the Tax Court have subject matter jurisdiction?
- (e) The IRS issues a statutory notice of deficiency to TP, TP timely files a valid petition with the Tax Court, and the petition asserts that TP overpaid tax for the period in issue. Does the Tax Court have jurisdiction to determine an overpayment and order that it be refunded?
- (f) TP retains counsel in a Tax Court proceeding, and the counsel submits a proper petition to the Tax Court. Due to debilitating psychological problems, counsel for TP thereafter fails to prosecute the case or in any way participate in the proceeding. The IRS submits to the Tax Court a motion to dismiss for failure to properly prosecute; the motion is granted, and judgment in favor of the IRS is entered. On January 10, 1998, the Tax Court decision in favor of the IRS becomes final. On December 15, 1998, counsel for TP files with the Tax Court a motion to vacate the final decision. Does the Tax Court have jurisdiction to vacate the decision?
- (g) 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 180 days have elapsed since the Tax Court's decision was 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?
- (h) TP (a corporation) is contesting deficiencies asserted as to 1984, 1987, 1988, 1989, 1990, and 1991. All of the years properly are before the Tax Court. TP and the IRS eventually agree (pursuant to a Form 870-AD agreement) that certain earlier years (1984 and 1987) involved TP overpayments and that later years (1988-91) involved TP underpayments. In the Form 870-AD, TP reserved the right to challenge the interest calculations made by the IRS with respect to all years/periods covered by the agreement. The IRS refunded the overpayments with overpayment interest for 1984 and 1987, and issued notices of

tax due including interest at the underpayment rate for 1988-91. P paid the agreed underpayments relating to 1988 through 1991, together with interest at the underpayment rate. P maintains that it overpaid interest for 1988 through 1991 because the IRS improperly failed to offset, under IRC §6402, overpayments from 1984 and 1987 against the agreed underpayments for 1988 through 1991. TP filed a petition in the TC and asked for a determination that it had overpaid interest; in effect, it asked for offsetting of the overpayments and the underpayments. Does the Tax Court have jurisdiction to determine whether TP made an overpayment of interest because the IRS refused to offset the agreed earlier year overpayments against the later year underpayments?

- (i) The Commissioner has mailed to TP a notice of final determination not to abate interest under IRC §6404. May TP contest in the Tax Court the IRS decision not to abate?
- (j) In the case of a determination by the IRS of the value of any gift shown on a gift tax return, the IRS must mail the donor a final notice of the redetermined value of the gift. The donor files with the Tax Court a motion for a declaratory judgment regarding the value of a gift made in 1998. Does the Tax Court have jurisdiction?

Question P-2. (3 minute/s)

TP is a United States citizen residing in (and physically present in) the United States at all relevant times. On February 22, 1998, the IRS mailed a notice of deficiency (bearing the date of February 22, 1998) to TP regarding TP's 1996 income liability. TP received the notice on February 25, 1998. What is the last day on which TP timely can file a petition with the Tax Court?

Question P-3. (4 minute/s)

Describe the extent to which the Tax Court has jurisdiction with respect to whether a person performing services is an employee.

Question P-4. (8 minute/s)

Explain the required contents of a Tax Court petition.

Question P-5. (2 minute/s)

State the effect of the IRS not responding, in its answer pleading, to an allegation of the petition.

Question P-6. (3 minute/s)

State whether one or more than one petition must be filed in the following situations assuming that the taxpayers wish to invoke Tax Court jurisdiction:

- (a) Taxpayer receives (on the same day) three separate and timely statutory notices of deficiency for income taxes, one each for three different taxable years (1994-1997).

- (b) Wife and husband file their 1996 income tax return as married filing jointly. Wife and husband receive one statutory notice of deficiency for their joint 1996 income tax return.
- (c) Wife and husband file their 1996 income tax returns as married filing separate. Wife and husband each receive a statutory notice of deficiency for their separate 1996 income tax returns.

Question P-7. (2 minute/s)

Discuss the circumstances under which a petition may be amended to conform to the issues tried in a Tax Court case.

Question P-8. (3 minute/s)

Define and explain the doctrine of equitable recoupment.

Question P-9. (4 minute/s)

Pursuant to IRC §6212(b), the statutory notice of deficiency is to be addressed 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.

Question P-10. (2 minute/s)

Describe the preferred pre-trial discovery process in the Tax Court.

Question P-11. (3 minute/s)

State the periods within which formal discovery (if permitted) must be conducted in the Tax Court.

Question P-12. (2 minute/s)

Discuss the means by which a Tax Court petitioner may obtain from the IRS the name, qualifications, and subject matter of the expected testimony of all experts expected to testify for the IRS at a Tax Court trial.

Question P-13. (3 minute/s)

Define and explain the significance of the phrase "stipulation" in Tax Court proceedings.

Question P-14. (3 minute/s)

Briefly discuss the circumstances under which the Chief Judge of the Tax Court may appoint a Special Trial Judge.

Question P-15. (3 minute/s)

Discuss who may appear in Tax Court proceedings for the petitioner.

Question P-16. (1 minute/s)

Taxpayer, an attorney, represents him/herself in the Tax Court and prevails. State whether Taxpayer can recover, pursuant to IRC §7430, fees for the services rendered. State YES or NO.

Question P-17. (2 minute/s)

Describe the circumstances under which counsel, who has entered an appearance before the Tax Court, may withdraw from the representation (without substitution of other counsel).

Question P-18. (2 minute/s)

Explain the significance of the absence of a party or a party's counsel when a case is called for trial.