

Tax Court Decisions: Briefing, Opinion, and Decision, Rule 155, and Supplemental Proceedings

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I. BRIEFING

- A. The form, content, and timing of briefs filed with the Tax Court are governed by Tax Court Rule 151. Briefs also are subject to the general style and form provisions of Tax Court Rule 23. All of these requirements are subject to modification by court order in a particular case.
1. Briefs are required after a trial is concluded unless the presiding judge directs otherwise. Tax Ct. R. 151(a).
 2. The trial judge will determine whether the post-trial briefs will be filed by the parties simultaneously or seriatim. In the absence of a contrary order, simultaneous opening briefs must be filed within 75 days after the conclusion of the trial and answering briefs are due 45 days thereafter. In the case of seriatim briefs, and absent an overriding court order, the opening brief is due 75 days after the trial, the answering brief is due 45 days thereafter, and the reply brief is due 30 days thereafter. Tax Ct. R. 151(b).
 3. The required format of a brief is that it include a table of contents and cited authorities, a statement of the case, numbered proposed findings of fact (or objections thereto in an answering or reply brief), a concise statement of the legal points relied upon, the legal argument, and the signature of counsel. Tax Ct. R. 151(e). Although not required by the Rules, a brief should also include a conclusion stating the relief requested from the Tax Court.

- B. The argumentative style of a brief depends upon the nature of the case and legal issues involved.
1. All relevant precedent should be discussed, whether favorable or adverse. Particular attention should be given to prior opinions of the trial judge that are on point.
 - a. Tax Court memorandum opinions are generally not binding precedent. *See, e.g., Nico v. Commissioner*, 67 T.C. 647, 654 (1977), *aff'd in part and rev'd in part*, 565 F.2d 1234 (2d Cir.). Nonetheless, a prior memorandum opinion of the trial judge should be addressed in a brief submitted to that judge. A memorandum opinion also can acquire importance if it has been the subject of appellate review.
 2. A party generally cannot raise a new issue on brief, *see, e.g., Sundstrand Corp. v. Commissioner*, 96 T.C. 226, 346-48 (1991), especially if it would surprise and prejudice the other party. *Seligman v. Commissioner*, 84 T.C. 191, 198 (1985), *aff'd*, 796 F.2d 116 (5th Cir. 1986).
 - a. A party must address all issues in its opening brief and may not reserve an argument for a reply brief such that the opposing party is disadvantaged by an inability to respond. *Hayden v. Commissioner*, 55 T.C.M. (CCH) 1290, 1294 n.13 (argument raised for first time in reply brief was not considered), *aff'd*, 889 F.2d 1548 (6th Cir. 1988).
- C. The object of any brief is to inform and persuade.
1. A brief should be both concise and thorough. It is more difficult to present an argument in fewer words, but the simplicity of an argument can render it more compelling. It is, in part, for this reason that many Tax Court judges limit the number of pages in post-trial briefs.
 2. The organization of a brief should reflect a logical argument that leads to the ultimate conclusion sought from the Court. Ideally, the opening brief should be a natural, albeit expanded, extension of the trial memorandum, and it should anticipate the arguments that are likely to be presented by the opposing party's initial brief.
 3. The brief should be free from grammatical and spelling errors.
 4. Proposed Findings of Fact should reference relevant portions of any factual stipulation and include citations to exhibits, the trial transcript or other sources relied upon as appropriate. Tax Ct. R. 151(e)(3).
 5. Statements in briefs unsupported by the record are not evidence and may be disregarded by the Court. Tax Ct. R. 143(c); *Appeal of Bradley*, 4 B.T.A. 1179 (1926).
 6. The answering or reply brief should set forth any objections to disputed proposed findings in the opponent's opening brief. Tax Ct. R. 151(e)(3). Otherwise, the Court may conclude that the an-

swering party conceded the point. *E.g., Jonson v. Commissioner*, 118 T.C. 106, 108 n.4 (2002), *aff'd*, 353 F.3d 1181 (10th Cir. 2003).

7. Any matters that the trial judge has identified as areas of particular concern should be specifically addressed in the brief.

II. OPINION

A. Code § 7459(a) requires the Tax Court to issue a report and a decision in all Tax Court proceedings “as quickly as practicable.” Code § 7459(b) requires that the report include findings of fact and an opinion or a memorandum opinion. This statutorily prescribed “report” is the opinion that is published in the official reports of the Tax Court. Code § 7462.

1. The report is typically prepared in draft by the trial judge and submitted to the Chief Judge. The draft report will constitute the report of the Tax Court 30 days after the report is made, unless the Chief Judge orders that it be reviewed by the full Court. Code § 7460(b).
2. If the Chief Judge decides that the draft is satisfactory, the report will be adopted as the report of the Tax Court. The Chief Judge must also decide whether a proposed report is to be published in the Official Tax Court Reporter or should be released as a memorandum opinion or a summary opinion.
3. The factors considered by the Chief Judge in determining whether full court review is appropriate include: (1) whether the case presents an issue of first impression; (2) whether the case presents recurring issues of fact having broad interest; or (3) whether the proposed opinion overrules a prior Tax Court decision. *See* Theodore Tannenwald, *Tax Court Trials: An Updated View from the Bench*, 47 *Tax Law.* 587, 600-01 (1994); Mary Ann Cohen, *How to Read Tax Court Opinions*, 2000 *Houston Bus. & Tax L.J.* 1.
4. There is no requirement that the trial judge write the opinion, and it sometimes occurs that the trial judge writes a dissenting opinion in a court-reviewed opinion. *See, e.g., A.E. Staley Manufacturing Co. v. Commissioner*, 105 T.C. 166 (1995), *rev'd*, 119 F.3d 482 (7th Cir. 1997).
5. The statutory authority of the Chief Judge to determine whether a case warrants full court review is discretionary and cannot be reviewed on appeal. *Sisto Financial Corp. v. Commissioner*, 149 F.2d 268, 269-70 (2d Cir. 1945).
6. The parties will not be advised that a case is referred for full court review prior to the issuance of the opinion.

B. Oral/Bench Opinions

1. Code § 7459(b) permits the Tax Court to provide for oral statement of findings of fact or opinion if the oral statement is recorded in the transcript. Tax Ct. R. 152.
2. Oral opinions may not be relied upon as precedent, but may be relevant for the purposes of establishing the law of the case, res judicata, collateral estoppel and other similar judicial doctrines. Tax Ct. R. 152(c).

III. POST-TRIAL MOTIONS

A. Tax Court Rule 161 allows a party to file a motion for reconsideration of findings or opinion.

1. Absent permission of the Court, the motion must be filed within 30 days after service of the opinion.
2. The motion may include a request for new or further trial.
3. Grounds for such a motion include newly discovered evidence or an intervening change in substantive law, but not matters that could have been advanced during the trial. *See Westbrook v. Commissioner*, 68 F.3d 868, 879-80 (5th Cir. 1995).
4. The motion cannot be joined to or made part of any other motion. Tax Ct. R. 163.
5. A ruling on such a motion is within the discretion of the Tax Court and generally will not be allowed absent a showing of unusual circumstances, prejudice, or substantial error. *See Ware v. Commissioner*, 92 T.C. 1267 (1989).
6. Rule 161 does not specifically call for the reconsideration of orders. Presumably, motions to reconsider orders can be filed under the general power to file motions under Rule 50(a).
7. If a decision has been entered, the decision should be vacated to file the motion for reconsideration under Rule 161.

B. Tax Court Rule 162 allows a party to file a motion to vacate or revise decision.

1. Absent permission of the Court, the motion must be filed within 30 days after entry of decision.
2. The Tax Court looks to Fed. R. Civ. P. 60 for guidance when a party seeks to vacate a decision. *Estate of Miller v. Commissioner*, T.C. Memo. 1994-25.
3. Tax Court Rule 162 requires a party to file a motion for leave to file a motion to vacate if the party fails to timely file the motion to vacate within the 30-day period. Whether the motion for leave to file a motion to vacate after the 30-day period will be granted is also generally within the sound discretion of the Court.

4. If the motion to vacate occurs after a decision becomes final (outside of the 90-day period), the Tax Court generally is without jurisdiction to entertain the motion. The Court is much more limited in its ability to vacate a decision after it is final than when the decision has not yet become final. So even if a decision is final, the Court always has jurisdiction to vacate a decision that is void because it lacked jurisdiction to enter the decision in the first place, it must freely exercise that discretion notwithstanding the time of the attack. *Brannon's of Shawnee, Inc. v. Commissioner*, 69 T.C. 999 (1978).
 5. The Tax Court may set aside a final decision based upon a fraud on the Court. A finding of fraud on the Court is justified only by the most egregious misconduct directed to the Court itself, such as bribery of a judge or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. *Dixon v. Commissioner*, 316 F.3d 1041 (9th Cir. 2003); *Drobny v. Commissioner*, 113 F.3d 670 (7th Cir. 1997), *affg.* T.C. Memo. 1995-209. The circuit courts have expressed disagreement concerning whether proof of fraud on the Court requires a showing that the alleged misconduct actually affected the outcome of the case to the taxpayer's detriment. The Seventh Circuit in *Drobny* held that such proof is required while the Ninth Circuit in *Dixon* held to the contrary.
 6. The Tax Court can correct clerical errors even after a decision becomes final. *Seven W. Enterprises, Inc. and Subsidiaries v. Commissioner*, ___ F.3d ___, 2013 U.S. App. LEXIS 14988 (7th Cir. 2013); *Michaels v. Commissioner*, 144 F.3d 495, 497 (7th Cir. 1998).
 7. The section 7502 timely mailing/timely filing rule applies to motions for leave to file a motion to vacate. *Manchester Group v. Commissioner*, T.C. Memo. 1994- 604, *revd.* 113 F.3d 1087 (9th Cir. 1997); *Stewart v. Commissioner*, 127 T.C. 109 (2006).
 8. The motion may include a request for new or further trial.
 9. The motion cannot be joined to or made part of any other motion. Tax Ct. R. 163.
- C. The granting of a motion to reopen the record to receive additional evidence is a matter within the discretion of the trial court. A court will not grant a motion to reopen the record unless, among other requirements, the evidence relied on is not merely cumulative or impeaching, the evidence is material to the issues involved, and the evidence probably would change the outcome of the case. *Butler v. Commissioner*, 114 T.C. 276, 287 (2000).

IV. CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS UNDER CODE § 7430 (OTHER THAN CODE § 7430(F)(2))

- A. Code § 7430 provides for the recovery of reasonable litigation and administrative costs, including:
1. Court costs;

2. Reasonable expenses of expert witnesses;
 3. Reasonable costs of any study analysis, engineering report, test or project found by the court to be necessary for the preparation of the party's case; and
 4. Reasonable attorney's fees paid or incurred. *See* Code § 7430(c)(1)(B) (recoverable attorney's fees are limited to \$125 per hour, with annual indexing for inflation). For 2013, the recoverable attorney's fees are limited to \$190 per hour, unless a special factor justifies a higher rate. Rev. Proc. 2012-41, 2012-45 I.R.B. 539.
- B. A claim for litigation or administrative costs under Code § 7430 may not be raised in the petition, nor may it be the subject of pre-trial discovery or the trial of the case. Tax Ct. R. 233 and other Tax Court Rules referenced therein.
- C. Fees can be awarded when the Tax Court lacks jurisdiction over a case. *Dang v. Commissioner*, 259 F.3d 204, 2009 (4th Cir. 2001); *Hubbard v. Commissioner*, 89 T.C. 792, 798 (1987); *Weiss v. Commissioner*, 88 T.C. 1036, 1039 (1987).
- D. The parties may agree by stipulation to an award of fees under Code § 7430. Tax Ct. R. 231(a).
- E. In unagreed cases, a claim for fees under Code § 7430 must be made by motion filed within 30 days after either: (i) service of the written opinion by the Court; (ii) service of the transcript pages containing the bench opinion; or (iii) settlement of all other issues. Tax Ct. R. 231(a)(2) and (c).
1. The form and content of the motion and supporting affidavits is specified in Rule 231(b) and (d).
 2. Generally, the motion tracks the statutory requirements. Thus, to recover, a movant must aver and prove that it:
 - a. Is the "prevailing party" in a deficiency, liability, partnership, or revocation action commenced after February 28, 1983;
 - b. Exhausted all available administrative remedies within the IRS;
 - c. Did not unnecessarily protract the Tax Court proceeding; and
 - d. Is either: (i) an individual whose net worth did not exceed \$2 million at the time the action was commenced; (ii) any owner of an unincorporated business, or any partnership, corporation, or organization the net worth of which did not exceed \$7 million and which had not more than 500 employees at the time the action was commenced; (iii) a Code § 501(c)(3) organization which had not more than 500 employees at the time the action was commenced; or (iv) an agricultural cooperative association which had not more than 500 employees at the time the action was commenced.
 - i. The net worth limitations for individuals apply to trusts and estates, determined as of the decedent's death (for estates) and as of the last day of the trust taxable year in issue (for trusts).

- ii. Individuals filing a joint return are treated as separate individuals for purposes of applying the net worth limitations.
3. To constitute a “prevailing party,” a movant must have substantially prevailed with respect to the amount in controversy or with respect to the most significant issue or set of issues present.
4. Code § 7430(c)(4)(E) provides a special rule for “qualified offers.” *See* Treas. Reg. § 301.7430-7.
 - a. A taxpayer will be treated as a “prevailing party” if the movant makes a qualified offer to the IRS that is not accepted and the movant subsequently obtains a judgment in which the tax liability determined by the court is less than the amount of the qualified offer.
 - b. A qualified offer must be made in writing and must: (i) be made during the “qualified offer period” (which runs from the date of the notice of proposed deficiency permitting Appeals Office review until 30 days prior to the date the case is first set for trial); (ii) specify the offered amount of the tax liability (without interest unless interest is a contested issue); (iii) be designated as a “qualified offer;” and (iv) remain open from the date made to the earliest of the date of rejection, the date trial begins, or 90 days after the offer was made.
5. The Commissioner has the burden to prove that his position was “substantially justified” in the litigation. In addition, a rebuttable presumption of no substantial justification arises if the IRS does not follow its “applicable published guidance” in the administrative proceeding. Code § 7430(c)(4)(B).
6. The Tax Court Rules encourage settlement of these disputes by requiring detailed affidavits regarding factual underpinnings of “reasonable fees.” Tax Ct. R. 232(d).

V. DECISION

- A. The Tax Court’s decision that is entered in accordance with the report specifies the amount of deficiency or overpayment. Code § 7459(c).
- B. If no computations are required to determine the deficiency, liability or overpayment pursuant to opinion, e.g., because either the petitioner or the Commissioner has prevailed on all issues, the decision can be entered by Court immediately.
- C. When the Tax Court files or states its opinion or issues a dispositive order determining the issues in a case, entry of its decision may be withheld to permit the parties to submit computations showing the correct amount to be included in the decision.
- D. A Rule 155 computation package needs to be submitted within 90 days of service of the opinion or order unless the Tax Court directs otherwise.

- E. When a computation is required, the procedure governed by Rule 155 is employed.
1. If the parties agree to the computation, the package can be jointly filed or filed by one of the parties, in triplicate, reflecting the agreed amounts and representing that figures shown are in accord with opinion. Tax Ct. R. 155(a).
 - a. Generally, the parties submit a stipulated decision as part of the computation package. If the parties include a signed stipulated decision, then that computation package needs to be submitted to the court in paper form rather than electronically filed.
 2. If the parties cannot agree to a computation, each party shall submit its computations to the Tax Court for resolution under Rule 155(b).
 - a. In accordance with Rule 155(b), the Clerk of the Tax Court will serve the opposing party with notice of the filing. The language in Rule 155(b) has created some confusion since some attorneys assumed that the Court's service of the notice of filing includes service of the unagreed computation itself, and failed to serve the other party with the computation. The September 18, 2009 Tax Court Press Release concerning various rule changes explains that old Rule 155(b) provided that "[t]he Clerk will serve upon the opposite party a notice of such filing accompanied by a copy of the computation." New Rule 155(b) provides that "[t]he Clerk will serve upon the opposite party a notice of such filing" At page 11 of the Press Release, the Court advises that "Rule 155(b) is amended to eliminate the requirement that the Clerk serve an unagreed computation on the opposite party."
 - b. The opposing party must file objections or an alternative computation. If the opposing party fails to do so, then the Tax Court may enter decision in accordance with the computation already submitted.
 - c. If both parties submit computations, the Court can at its discretion, afford an opportunity for the parties to be heard in argument. The Court will determine the correct amount and will enter its decision accordingly.
 - d. An unagreed Rule 155 proceeding is restricted to computational issues, and no argument will be permitted as to issues or matters disposed of by the Court's findings and conclusions or to any new issues. Tax Ct. R. 155(c). Examples of computational issues include section 481 adjustments, calculation of alternative minimum tax, and amount of earned income credit.
 3. The Tax Court may determine a deficiency greater than the amount contained in the deficiency notice only if the Commissioner has timely sought that greater amount. I.R.C. § 6214(a).

4. The starting point for the Rule 155 computation is the statutory notice of deficiency. The redetermined deficiency is computed based on matters agreed by the parties or ruled upon by the Tax Court. *JP Morgan Chase & Co. v. Commissioner*, 530 F.3d 634 (7th Cir. 2008).
 5. In the case of an overpayment, the computation shall also include the amount and date of each payment made by the petitioner.
 6. The Tax Court's rulings regarding Rule 155 computations are reviewed on appeal for abuse of discretion. *Powell v. Commissioner*, 581 F.3d 1267 (10th Cir. 2009).
- F. In an estate tax case, if the parties are unable to agree under Rule 155 as to the treatment of a deduction for expenses developing at or after trial, then either party may move under Rule 156 to reopen the case for further trial on that issue. *Estate of Kurihara v. Commissioner*, T.C. Memo. 1985-150 (allowance of attorneys fees at trial and on appeal contemplated by Rule 156).
- G. The Tax Court decision procedures do not provide for the resolution of disputes over the computation of interest due on a deficiency or overpayment prior to entry of the decision. Nevertheless, since agreed Rule 155 computations submitted as proposed decisions to the Court are, in part, settlement documents, the parties may account for and agree to interest computations in cases where underpayment interest may affect the amount of an overpayment available for refund. See *Estate of Smith v. Comm'r*, 123 T.C. 15 (2004) (assessed but unpaid underpayment interest that had been inadvertently excluded from the overpayment amount to which the parties stipulated could not be offset against the overpayment due the taxpayer), *rev'd*, 429 F.3d 533 (5th Cir. 2005) (statutory scheme specifically contemplates that Court may make final overpayment determination without incorporating final interest determination when it is clear that is what the parties intended).
- H. date of decision is the date on which the Tax Court's order specifying the amount of deficiency, liability or overpayments is entered in the Court's records. Code § 7459(c).

VI. APPEALS FROM TAX COURT

- A. A decision of the Tax Court may be appealed to the United States Court of Appeals with appropriate venue. Such venue is determined at the time the petition is filed. When seeking redetermination of tax liability for an individual, it is the judicial circuit in which the taxpayer resides while for a corporation, it is the circuit in which the taxpayer has its principal place of business or principal office. Code § 7482(b)(1).
1. Flush language of section 7482(b) provides that if none of the specific paragraphs in subsection (b) apply then such decisions may be reviewed by the United States Court of Appeals for the District of Columbia.

2. Since the enactment of section 7482, many provisions have been added to the Code providing for causes of action that are not redeterminations of tax liability. This raises questions about whether the United States Court of Appeals for the District of Columbia is the appropriate court of appeals to review such actions. The United States may file a motion to transfer if an appeal is made to the United States Court of Appeals for the District of Columbia. *See Brown v. Commissioner*, WL 1364313 (D.C. Cir. 2002) (granting motion to transfer collection due process case appeal to the Sixth Circuit when taxpayer did not contest that the proper venue was the circuit in which he lived).
 3. The parties also can agree by written stipulation to permit review by another United States Court of Appeals. Code § 7482(b)(2).
- B. The notice of appeal must be filed with the clerk of the Tax Court within 90 days after the decision is entered. If a timely notice of appeal is filed by one party, then any other party may file a cross-appeal within 120 days after the decision is entered. Code § 7483; Fed. R. App. Proc. 13(a); Tax Ct. R. 190(a).
- C. A taxpayer who wishes to stay the collection of a deficiency while the case is on appeal must file an appeal bond to stay assessment and collection during the pendency of the appeal. Code § 7485(a). The appeal bond must be filed with the Tax Court with or before the notice of appeal in an amount determined by the court. *Id.* The amount of the bond is fixed by the Tax Court but may not exceed double the amount of the portion of the deficiency as to which the notice of appeal is filed. I.R.C. § 7485; Tax Ct. R. 192. The customary practice of the Tax Court is to make the bond equal to the tax liability plus penalties and interest calculated through the expected period of the appeal. *Barnes Theatre Ticket Service, Inc. v. Commissioner*, 50 T.C. 28 (1968), *aff'd on other grounds*, 408 F.2d 65 (7th Cir. 1969). For an appeal from a decision entered in a partnership proceeding brought under Section 6226 or 6228(a), 6247, or 6252 the amount of the bond must be based on the Tax Court's estimate of the aggregate of the partners' deficiencies unless otherwise stipulated by the parties. Code § 7485(b).

VII. SUPPLEMENTAL PROCEEDINGS AND SPECIAL JURISDICTION

- A. The Tax Court has jurisdiction to order refunds of overpayments determined in a Tax Court decision. Code § 6512(b)(2). It also has jurisdiction to hear a supplemental proceeding after its decision becomes final if the IRS fails to make the refund or credit determined by the Tax Court.
1. This supplemental proceeding is commenced by petitioner's motion under same docket number. The form and content of the motion is specified by Rule 260(b).
 2. The motion may not be filed prior to 120 days after the date the Tax Court's decision became final. In addition, the taxpayer must have made a written demand for refund from the Commissioner at least 60 days prior to seeking relief from the Tax Court. Tax Ct. R. 260(b)(4).

3. A Tax Court overpayment enforcement order may be appealed in the same manner as a Tax Court decision, but only as to the matters determined in the enforcement order.
- B. The Tax Court has jurisdiction under section 7481(d), to reopen a Tax Court estate tax decision to give effect to an administrative expense deduction for certain interest payments by an estate attributable to an election under section 6166 to make installment payments of the federal estate tax.
1. Relief under section 7481(d) is conditioned on the filing of two motions. The estate-petitioner, pursuant to Rule 157, must file a motion prior to the Tax Court decision becoming final requesting the Court to retain its official case file pending completion of any anticipated supplemental proceeding. *See* Tax Ct. R. 262(f). A second motion, pursuant to Rule 262, must be filed along with a proposed form of decision after the estate tax decision has become final. The jurisdiction of the Tax Court to reopen the decision is available only after all of the section 6166 installments have been paid.
 2. These proceedings are generally resolved without a hearing unless one is requested and there is a bona fide factual dispute that cannot be resolved otherwise.
 3. Section 7481(d)(2)(A) is no longer available with regards to interest paid on the federal estate tax under a section 6166 installment plan because that interest is no longer deductible for estate tax purposes. The Taxpayer Relief Act of 1997, P.L. 105-34, added section 2053(c)(1)(D) precluding a deduction for interest payable under section 6601 on any unpaid portion of the estate tax extended pursuant to section 6166. Section 2053(c)(1)(D) is generally effective for estates of decedents dying after December 31, 1997.
 4. Section 7481(d)(2)(B) remains available with regard to “interest on any estate, succession, legacy or inheritance tax imposed by a State on such estate during the period of the extension of time for payment under section 6166.” Section 7481(d)(2)(B).
 5. A Tax Court order under section 7481(d) may be appealed in the same manner as a Tax Court decision.
- C. The Tax Court has jurisdiction under Code § 7481(c) to redetermine interest assessed by the Commissioner with respect to deficiencies determined by Tax Court or to redetermine interest on an overpayment determined by the Tax Court. Code § 7481(c) applies to both overpayments of interest by the taxpayer and underpayments of interest by the government.
1. This supplemental proceeding is commenced by motion filed by petitioner and must be commenced within one year after the Tax Court decision becomes final.
 2. The motion to redetermine interest is filed under the same docket number as in the case that redetermined the deficiency and must contain, among other things, a statement setting forth the

petitioner's contentions regarding the correct amount of interest and a schedule detailing the computation of that amounts and a statement regarding the discussions that petitioners has had with the Commissioner regarding the interest dispute. Tax Ct. R. 261(a), (b).

3. For a motion to redetermine interest on a deficiency, the petitioner must have paid the both entire deficiency and interest assessment. Tax Ct. R. 261(b).
4. For a motion to redetermine interest on an overpayment, the motion must include a statement that the Court has determined that the petitioner has made an overpayment. Tax Ct. R. 261(b)(2)(A).
5. The Commissioner must file a written response within 60 days specifically addressing each of the contentions and the computations made by petitioner and attaching a schedule detailing the computation of interest claimed to be owed to or due from the Commissioner. Tax Ct. R. 261(c).
6. These proceedings are generally resolved without a hearing unless there is a bona fide factual dispute that cannot be resolved otherwise. Tax Ct. R. 261(d).
7. A Tax Court order under Code § 7481(c) may be appealed in the same manner as a Tax Court decision.
8. As an alternative to pursuing interest issues in the Tax Court, a taxpayer may file suit in a refund forum seeking the refund of deficiency interest assessed under Code § 6601 and paid to the IRS or seeking the payment from the IRS of additional interest allowable on an overpayment under Code § 6611.
 - a. Before filing suit for a refund of excessive deficiency interest, the taxpayer must pay the deficiency interest and, within two years of such payment or within the period of limitations for assessments as extended by agreement plus six months, file a claim for refund. After filing a timely claim for refund, the taxpayer may file suit in a refund forum at the earlier of the date the refund claim is denied or six months after the refund claim is filed. Suit may be filed no later than two years after the refund claim is disallowed. Code §§ 6511(a), (c)(1), 6532(a)(1), 7422; *Alexander Proudfoot Co. v. United States*, 454 F.2d 1379 (Ct. Cl. 1972).
 - b. A suit for statutory interest on an overpayment must be filed within six years from when the overassessment is scheduled. 28 U.S.C. § 2401(a), 6407; Rev. Rul. 57-242, 1957-1 452.

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