The Contemporary Tax Journal

Volume 6
Issue 2 *The Contemporary Tax Journal Volume 6, No. 2 – Spring 2017*

Article 3

5-25-2017

Bringing the U.S. Tax Court Exam Out of Obscurity

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1. Introduction

The United States Tax Court is a specialized federal court with jurisdiction over most federal tax controversies. Other federal courts, such as District Courts and the Court of Federal Claims, also can hear tax cases, but the Tax Court is the only court in which a taxpayer can petition for relief from an IRS assessment before payment of the tax liability in dispute.[1] Before 1942, the Court was known as the "U.S. Board of Tax Appeals" where both attorneys and certified public accountants (CPAs) were authorized to practice.[2] The Revenue Act of 1942 renamed the court the Tax Court of the United States and Board members became known as "judges."[3] The Act also extended tax court practice to those other than CPAs and attorneys.[4] This provision was codified as Sec. 7452 of the I.R.C. and states, "No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling." However, the Tax Court later adopted a rule that all non-attorneys had to take an admission exam to be able to practice before it.[5] Attorneys do not have to take an exam and are admitted by application if they are members in good standing of the U.S. Supreme Court Bar, any high court bar, or any state bar association.[6] The Tax Reform Act of 1969 elevated the Tax Court from an independent agency in the executive branch to an Article I court and renamed it the "United States Tax Court."[7]

Although CPAs and Enrolled Agents (EAs) already hold a credential which tests tax expertise, the admission exam is no easy undertaking. The exam is a four-hour essay test given every other year and administered only in Washington, D.C. Only a small percentage of candidates pass the test, as discussed below.

Accountants who pass the exam obtain a unique credential, which distinguishes them from their colleagues. Further, they can fully represent their clients without having to refer clients on to tax attorneys with billing rates averaging $400 per hour.[8] Finally, in many cases adjudicated under the Tax Court Small Case procedure,[9] taxpayers act as their own representatives, proceeding pro se, presumably because they cannot afford attorneys. The large population of Small Case pro se petitioners could be an untapped client base for non-attorney Tax Court representatives. The issue is whether this potential career path is being communicated effectively to accounting students and whether accounting faculty should do more to inform students about non-attorney admission.

2. Literature review

Few articles outside of the trade press have been written on the issue of Tax Court practice by accountants. The limited coverage in academic literature generally is found in law review articles addressing

[1] Tax Ct. R. 13(a).
[2] Revenue Act of 1924, ch. 234, § 900(a), 43 Stat. 336.
[3] Revenue Act of 1942, ch. 619, § 504(a), 56 Stat. 798.
[4] 139 Revenue Act of 1942, ch. 619, § 504(b), 56 Stat. 957.
[5] Tax Ct. R. 2 (December 15, 1942 ed.), now Tax Ct. R. 200(a)(3).
[6] Tax Ct. R. 200(a)(2).
[7] Tax Reform Act of 1969, Pub. L. No. 91-172, § 951, 83 Stat. 730 (amending IRC §7441).
[8] http://businessoflawblog.com/2015/10/law-firm-billing-rates-2/.
[9] IRC §7463 authorizes taxpayers with disputes involving $50,000 or less to use simplified small tax case procedures.

unauthorized practice of law by CPAs. For example, a 2012 law review article explores the effect of the unauthorized practice of law rules on CPAs (Smith, 2012). Smith characterizes the Tax Court exam as one "mechanism" that has emerged to allow CPAs to circumvent State unauthorized practice of law (UPL) rules. CPAs who pass the exam may litigate tax cases in the Tax Court which, he notes, is "most certainly" the practice of law (Smith, 2012, p. 388). Smith also points out that CPAs are among the professionals "most profoundly affected by the unauthorized practice of law rules" because accounting services are "inextricably intertwined with the law…" (Smith, 2012, p. 376). Given the nature of tax practice as a multidisciplinary endeavor with elements of accounting, tax, legal, and business services, Smith questions whether the enforcement of UPL rules against CPAs protects the public or only protects attorneys. He concludes that CPAs' educational and licensing requirements ensure that they are technically proficient, competent, and ethically trained to a sufficient degree to protect the public. Finally, Smith urges that the American Bar Association (ABA) and state bar associations modify their existing rules to allow CPAs an exemption from UPL rules so that CPAs can offer integrated professional services to their clients.[10]

2.1. Expanded Practice Rights

This call for expanded practice rights for CPAs is echoed in a 2012 study of cases litigated in the Small Case Division of the U.S. Tax Court (Finnegan, Molloy, & Sternburg, 2012). The authors make a policy recommendation that CPAs and Enrolled Agents (EAs) be admitted to Small Case practice in the U.S. Tax Court without having to take the Tax Court exam (Finnegan et al., 2012, p. 40). Their argument for equal treatment with attorneys is based on several key points. First, the authors note that the CPA or EA who prepared the taxpayer's return is in the best position to present a taxpayer's claim before the court, both because of familiarity with the taxpayer's documentation and familiarity with the law (Finnegan et al., 2012, p. 39). In addition, the Finnegan study reveals that the average taxpayer success rate in Small Cases from 2001-2009 was a low 6 percent in winning on all issues, but that this percentage increased to 13 percent if the taxpayer had professional representation (Finnegan et al., 2012, p. 39). Finnegan et. al. suggest that taxpayers may have an overall better outcome if they have more access to representation and that the process would be more organized and efficient (Finnegan et al., 2012, p. 40).

A final point made by the Finnegan study is that the Tax Court exam may be unnecessary because it is "duplicative." The authors observe that CPAs and EAs already have passed "rigorous exams" to test their tax knowledge and go on to state that, "There is no need to require that they take another exam solely for purposes of representing their clients in this informal tax court." (Finnegan et al., 2012, p. 40).

2.2. Trade and professional publications

Articles in accounting news services and professional journals can be divided into two categories: those that explain Tax Court practice and urge other practitioners to become qualified (Johnson, 2013), and those that give an account of taking the Tax Court exam and offer advice on how to pass (Bell, 2007; Gregory, 2007). Johnson (2013) notes that few non-attorney tax professionals attempt the Tax Court exam and speculates that most are unaware of it. Johnson urges that "…college business professors, accounting firm partners, tax resolution firms and the various professional organizations get the word out to their associates, partners, employees and members" that this opportunity is available.

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[10] Most European countries allow accountants to engage in a law practice and to affiliate with a law firm, which is referred to as "multidisciplinary practice." For more details, refer to *Multidisciplinary Practices: Changing the Global View of the Legal Profession* (2000) by Harrison K., Journal of International Law, published as University of Pennsylvania Journal of International Economic Law Volume 21, Issue 4 http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1369&context=jil. Also see *Jack of All Trades: Integrated Multidisciplinary Practice, or Formal Referral System – Emerging Global Trends in the Legal and Accounting Professions and the Need for Accommodation of the MDP* (Winter 2002, p. 235) by Zolner E., Northwestern Journal of International Law & Business, Volume 22, Issue 2.

Sherrill (Gregory) Travato, an Enrolled Agent, U.S. Tax Court authorized practitioner, and author of a Tax Court exam preparation course, urges non-attorneys to take the exam to provide the "highest level of service" to clients (Gregory, 2007, p. 22). She also notes that IRS Appeals Officers will consider hazards of litigation in their assessment of a taxpayer's case if they know the taxpayer's representative can take a case to the Tax Court (Gregory, 2007, p. 22). Richman (2015) explains that the exam procedures and the pass rates for non-attorneys only recently have been released by the Court (Richman, 2015, p. 1181). He conveys criticism of the exam by CPAs who have taken it but echoes the point that, despite the difficulty of getting admitted, CPAs who have this credential believe it was worth the effort (Richman, 2015, pp. 1182-1184).

3. Rules for admission to practice

The Tax Court rules state that applicants must be of "good moral and professional character and possess the requisite qualifications to provide competent representation before the Court."[11] All non-attorneys must pass an exam to be admitted to practice[12] while attorneys do not have to take the exam.[13] Both attorneys and non-attorneys must meet the other requirements, which include completing an application and paying a fee of $35. The attorney application is two pages and asks for information on bar admission.[14] The non-attorney application is more extensive and requires details of the applicant's educational background, professional licensing, and a statement as to the specific training and experience which qualifies the applicant to provide competent representation.[15] Non-attorneys have the added requirement that two current members of the Tax Court Bar must sponsor them.[16]

4. Details of the exam

4.1. What is covered

The U.S. Tax Court exam is only offered every other year in even-numbered years in Washington, D.C., so applicants must travel there to take the test. The nonrefundable test fee is $75.

The exam consists of four parts: (1) the Tax Court Rules of Practice and Procedure (25%), (2) substantive Federal tax law (40%), (3) the Federal Rules of Evidence (25%), and (4) legal ethics (10%), including the American Bar Association's Model Rules of Professional Conduct.[17]

4.2. Structure and Grading

The examination is a half-day, essay test requiring four hours of continuous writing. Applicants must achieve a grade of at least 70% on each part to pass. According to one exam training center, the total possible score is 960 points, and partial credit is given for partially correct answers.[18] The U.S. Tax Court will not confirm the total point score. (personal communication, July 15, 2016). The Tax Court also has indicated that it is up to the examiner whether to give partial credit for a partially correct answer. (personal communication, July 15, 2016).

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[11] Tax Ct. R. 200(a)(1).
[12] Tax Ct. R. 200(a)(3).
[13] Tax Ct. R. 200(a)(2).
[14] http://www.ustaxcourt.gov/forms/Admission_Attorney_Form_30.pdf.
[15] https://www.ustaxcourt.gov/forms/Admission_Nonattorney.pdf
[16] Tax Ct. R. 200(c).
[17] https://www.ustaxcourt.gov/forms/Admission_Nonattorney.pdf.
[18] http://www.cpatrainingcenter.com/tax_court_exam.asp

4.3. Most frequently tested subjects

Although it is difficult to determine which subjects will be tested on any one exam, the following subject areas have been consistently tested on the 2008-2014 exams:[19]

Table 1
Most frequently tested areas of 2008-2014 Tax Court exams

Exam section	Subject
Tax Practice and Procedure	General jurisdiction
	Discovery
	Interrogatories
	Petitions
	Joinder of issues
	Small case procedure
	Due process hearing
Substantive Tax Law	Capital gains v. ordinary income
	Deductions
	Filing status/penalties
	Innocent spouse
	Exclusion/inclusion of income
Federal Rules of Evidence	Impeachment
	Business records
	Hearsay
Legal Ethics	Conflict of interest
	Attorney as witness
	Making false statements of fact or law to tribunal
	Offering false evidence

Note that it is commonly believed that the test includes new tax issues from recent Tax Court cases in the substantive tax law and practice and procedures sections. (Bell, 2007; Starkman, 2012; Richman, 2015).

4.4. Details of the 2014 exam

A more in-depth look at the details of the most recent exam reveals the level of difficulty of the test. The 2014 exam contains 73 questions to be answered over four hours, or 240 minutes. This is an average of 3.29 minutes per question. The following is a description of each part:

Part One, Tax Court Rules of Practice and Procedure: This section has 23 questions over 5 pages, and applicants are allotted 60 minutes for completion. Each question has a recommended time limit. For example, Question P-1 is allotted 10 minutes, with one minute allowed for each of the 10 subparts. This is a fast pace to read the question, give an answer, and offer an explanation.

[19] Past exams are available for a small copy charge from the U.S. Tax Court.

Part Two, substantive tax law: This section has 31 questions and candidates are allowed 96 minutes for completion. Quick computations are required for some questions. For example, Question S-5 (8 minutes) has 16 subparts where the candidate must give the amount that constitutes gross income to a taxpayer in 16 different scenarios. The suggested time limit is ½ minute for each subpart. Some questions call for a simple answer, such as whether $75 in free donuts from an employer is taxed to the employee in Question S-5(n). Most questions call for a narrative answer, applying the tax rules to brief fact situations. For example, Question S-8 on the 2014 exam gives candidates two minutes to answer the following question:

> TP owns residential real property that is TP's principal residence for income tax purposes. Close to the time TP acquired the real property, TP entered into a loan agreement with TP's mother in respect of the real property. The loan agreement transaction was commemorated in the "Home Equity Loan Agreement" and the "Home Equity Deed of Trust." The Home Equity Loan Agreement provides that TP's interest in the real property is specific security for the payment of the debt. The Home Equity Loan Agreement and the Home Equity Deed of Trust never were recorded in the official records of any jurisdiction. Under applicable state law, an unrecorded mortgage is invalid against third parties who do not have actual notice of it. TP made payments to TP's mother pursuant to the Home Equity Loan Agreement and claimed a §163(h)(3) qualified residence interest deduction with respect to the payments. Discuss whether TP is entitled to any deduction for §163(h)(3) qualified residence interest.

Part Three, Federal Rules of Evidence: This section contains 10 questions over three pages, and candidates are given 60 minutes or six minutes per question. These questions are longer narratives and represent scenarios where evidence is presented, one of the parties (either the IRS or the taxpayer) objects to the evidence, and the test-taker must answer how the Court should rule.

Part Four, legal ethics: This section of the exam has nine questions and covers 24 minutes. The questions are either two or three minutes in duration and call for "brief" explanations. Some of the questions involve standard ethical issues familiar to accountants and enrolled agents, such as conflicts of interest and clients providing false information, the subject of Circular 230 rules. Other questions test on concepts specific to law practice, such as when a representative can withdraw from representation. Thus, the legal ethics section is new material for non-attorneys that must be well understood to answer some of the more difficult questions on this section of the exam.

Candidates are allowed to use the Tax Court Rules of Practice and Procedure, the Internal Revenue Code, and the ABA Model Rules of Professional Conduct during the exam, but the pace of the test allows little time for looking up answers. No reference material is allowed for the most difficult section for non-attorneys, the Federal Rules of Evidence.

4.5. Grading and getting the results

The exam has evolved over the years, and the procedures for creating it were substantially changed in the mid-1990s when law professors took over from court personnel to create and grade the exam (Richman, 2015). Currently, a three-professor committee makes up the questions and grades the exams. Candidates can obtain a copy of their graded exam for $.50 per page, which shows the number of points they made on each question.[20] The Court does not release any model answers to the questions, so candidates have no way of knowing why they lost points or what kind of answers were expected from them (Richman, 2015; Starkman, 2012). This fact is particularly confounding when the exam includes such open-ended questions

[20] https://www.ustaxcourt.gov/forms/Admission_Nonattorney.pdf

as S-7 (4 minutes) on the 2014 exam: "Briefly discuss the essential elements of the federal income tax "hobby loss" rules." The exam instructions give the following guidance as to how the questions should be answered. "Clarity and conciseness of expression will be a significant factor in grading your examination."[21] Unsuccessful candidates have 60 days to request a copy of their exam and 90 days to notify the Court of any clerical errors in the grading. The Court also warns candidates that no post-examination hearings, personal interviews, or reexaminations are provided to failing applicants. If a candidate fails, they have to start the process over by submitting a new application to take the exam at the next scheduled date—two years later.

5. Statistics on pass rate

The number of candidates who pass is low, averaging only about 13 percent over the last 15 years. The Tax Court keeps no statistics based on the credentials of the candidates who take the examination, nor does the Court keep statistics regarding the pass rates of different sections of the exam. (personal communication, July 15, 2016.) The pass rates for the 2000 through 2014 exams are listed in the chart below provided by the Tax Court.[22]

Table 2
STATISTICAL INFORMATION: NON-ATTORNEY EXAMINATION

Year	Number of Examinees	Number Who Passed the Exam	Pass Rate
2000	102	17	16.67%
2002	47	7	14.89%
2004	72	4	5.56%
2006	58	6	10.34%
2008	54	8	14.81%
2010	83	8	9.64%
2012	77	11	14.28%
2014	126	23	18.25%

These numbers show that 619 persons took the test over the period.[23] Of the 619, only 84 passed it, which is an average pass rate of 13.57% for the eight exams given over the period. The reasons for the low pass rate are unclear. It could be because those with no formal training in accounting, tax or law can take it. Another reason may be the testing on a subject foreign to tax practitioners, the rules of evidence. Despite this low pass rate, CPAs should not assume that they cannot pass the exam. Given that CPAs have specialized tax education and have already passed a rigorous professional exam, the pass rate for CPAs is likely to be much higher than that of uncredentialed tax preparers.

The exact number of attorneys versus non-attorneys currently admitted to practice before the Tax Court is difficult to determine. Richman (2015) reports that the Court says there are 250 non-attorneys and some 70,000 attorneys currently admitted to practice (Richman, 2015, p. 1181). He believes a more accurate number is 20,896 total practitioners including attorneys and non-attorneys based on the total number

[21] 2014 U.S. Tax Court Non-Attorney Admission Examination.
[22] http://www.ustaxcourt.gov/Non-attorney_Exam_Statistics.pdf.
[23] From the numbers released by the Tax Court, there is no way of knowing if the 619 were different individuals or whether any of the examinees were repeating the test.

registered to file electronically (Richman, 2015, p. 1181). It is clear that the number of non-attorneys admitted to practice before the Tax Court is low.

6. Commercial review courses

There are a number of commercial Tax Court exam review courses available to prospective candidates offering either a self-study or live program.[24] The price range is about $750 to $8,500, depending on duration of the course and whether it is live, online, or includes only self-study materials. All of the services offer some kind of comprehensive review. These exam preparation businesses are mostly run by CPAs and Enrolled Agents who were successful in completing the exam themselves. The evidence and legal ethics sections generally are taught by outside attorneys. Despite the availability of comprehensive review courses, most candidates are not successful.[25]

7. Review of textbook coverage of Tax Court exam and non-attorney representation

The most commonly used textbooks in undergraduate and graduate tax courses have little or no mention of the fact that accountants can practice before the Tax Court if they pass an exam. Most of these texts contain basic information on the Tax Court, IRS practice and procedure, and representation of taxpayers before the IRS. If Tax Court practice by accountants is mentioned at all, it is only briefly. Of the nine books identified below, only three include any reference to Tax Court practice by non-attorneys, Pratt & Kulsrud's "Federal Taxation" (2016), Everett, Hennig and Nichols' "Contemporary Tax Practice" (2013), and Saltzman's "IRS Practice and Procedure" (2013). A summary of textbook coverage appears below.

In the Spilker et al.'s "Taxation of Individual and Business Entities" (2016) book, there is no reference or discussion of the Tax Court exam or Tax Court practice by accountants.

In the CCH line of tax textbooks, including Smith, Harmelink and Hasselback's "Federal Taxation: Basic Principles" (2016) and "Federal Taxation: Comprehensive Topics" (2016), no references to the Tax Court exam and non-attorney representation are included.

The content of Hoffman, Maloney, Raabe and Young's "South-western Federal Taxation Comprehensive Volume" (2016) tracks other comprehensive tax textbooks, including chapters on IRS practice and procedure, sources of the tax law, tax practice considerations, all logical discussion points for the Tax Court exam. Like other texts, the Hoffman book contains no information on the Tax Court exam.

Pratt & Kulsrud's "Federal Taxation" (2016) includes a brief mention of accountants practicing in the Tax Court. Under Chapter 2, Tax Practice and Research, in the Tax Litigation section, the textbook states, "In most cases, tax litigation is conducted only by licensed attorneys. However, CPAs and others, including the taxpayer himself, can represent the taxpayer in certain situations." (Pratt and Kulsrud, 2016, p. 2-3). Under the heading, Taxation as a Professional Career (Pratt and Kulsrud, 2016, p. 2-5), the book has the following bullet point: "The tax specialist might represent an individual during the IRS examination or present oral and written arguments before an IRS appeals conference and (if qualified) before the U.S. Tax Court." The textbook has no discussion of how an accountant becomes qualified to represent taxpayers before the Tax Court.

[24] www.taxcourtexam.com, www.cpatrainingcenter.com/tax_court_exam.asp, http://taxlawinstitute.com/exam-prep.shtml, http://classes.taxfacts.co, and http://www.maxtax.com/AboutUs.aspx.

[25] http://www.ustaxcourt.gov/Non-attorney_Exam_Statistics.pdf. Note that review course sponsors give their own statistics on passage by candidates who took their courses.

Of the two tax research textbooks used primarily in graduate accounting programs, only one has a comment on Tax Court practice by non-attorneys. CCH's book on tax research, Everett, Hennig and Nichols's "Contemporary Tax Practice" (2013) includes two brief mentions of non-attorney representation in the Tax Court. In Chapter 3, under the subheading of The Regular U.S. Tax Court, the text states, "The taxpayer must be represented by a licensed attorney or an individual who passes a special examination on the rules of evidence for the Tax Court." (Everett et al., 2013, p. 3005.03). Later in Chapter 3, under the subheading Factors to Consider in Choosing a Court, Other Factors, the text states in the context of a discussion of choice of forum, "The U.S. Tax Court may offer more opportunities for selecting representatives before the Court, as the Small Cases division does not require legal representation and the Tax Court allows individuals other than attorneys to try a case if they have passed a special Tax Court examination." (Everett et al., 2013, p. 3019.03).

Sawyers, Raabe, Whittenburg and Gill's "The Federal Tax Research" (2015) has an extensive discussion of what constitutes tax practice, but does not address the issue of accountants practicing before the Tax Court. The forthcoming 11th edition of Federal Tax Research (2017) will contain a brief description of the Tax Court exam and non-attorney practice before the Tax Court in Chapter 5. (personal communication, November 10, 2016)

Two other books used primarily in graduate courses on IRS practice and procedure were reviewed for Tax Court exam coverage. In Misey, Goller's "Federal Taxation, Practice and Procedure" (2014), footnote 31 in Chapter 10 references Tax Court Rule 200, which provides rules for admission, but does not mention non-attorney practice. (Misey et al., 2014, p. 263). Saltzman's "IRS Practice and Procedure" (2013) includes one sentence on non-attorney practice. In Chapter 1, IRS as an Administrative Agency, when describing the nature of the proceedings in a tax case, the authors state, "The Tax Court permits the appearance before the court of non-lawyers, who cannot practice before a federal district court." (Saltzman, 2013, p. 1-55).

8. Why the exam is here to stay

8.1. Rules of evidence and legal ethics

Finnegan et al. make the point that both CPAs and EAs have "already passed rigorous exams which have tested their tax knowledge." (Finnegan et al., 2012, p. 40) and go on to state, "There is no need to require that they take another exam solely for purposes of representing their clients in this informal [Small Case] tax court." (Finnegan et al., 2012, p. 40) That may be true, but from a lawyer's perspective, the rules of evidence and knowledge of legal ethics requirements are central to litigation and the practice of law. The Tax Court exam reflects this position, with 25% of the exam dedicated to the Federal Rules of Evidence and 10% of the exam on legal ethics. The U.S. Tax Court is run by attorneys, and it is implausible that they will change their position on allowing CPAs and EAs to practice before the Court without taking the exam, even in Small Cases. Although the Small Case procedures are more informal and the Tax Court rules allow a Judge more discretion in admitting evidence,[26] the Tax Court is a court of law and the rules of evidence apply[27] just like in other federal trial courts.

The legal ethics portion of the exam covers ethical issues specific to law practice and representing a client before a court of law. The Court is not likely to allow a representative of a taxpayer to appear before the Court without specific knowledge of these rules. As reported by Richman (2015), Judge John O. Colvin, a former chief judge and former chairman of the Tax Court's Committee on Admissions, Ethics, and

[26] Tax Ct. R. 174(b) states: "Conduct of Trial and Evidence: Trials of small tax cases will be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible."
[27] Tax Ct. R. 143.

Discipline, maintains that practitioners representing taxpayers before the Tax Court must have knowledge beyond that of CPAs and EAs. They must also know the Court's procedural, evidentiary, and ethical rules (Richman, 2015, p. 1182).

8.2. Legislative attempts to waive exams for CPAs

It also is unlikely that Congress will act to dispense with the Tax Court exam in Small Cases. Although there were several attempts in the 1980s and 1990s to revise Section 7463 to allow Small Case practice by CPAs and EAs, those provisions never were enacted (Starkman, 2012).[28] Although there are several bills pending in Congress to change the Small Case procedure in the Tax Court, none of them include a provision to allow CPAs and EAs to practice before the Court without taking the exam.[29]

9. Why a representative of any kind gives a better result

9.1. Case results show need for representation

In a majority of Small Cases, taxpayers have no representation and proceed pro se. The chart below, created from an analysis of Tax Court Summary opinions in RIA Checkpoint, shows that taxpayers were represented in Small Cases only 13.26% of the time over the 15-year period from 2001-2015.

Table 3
Tax Court summary opinions, 2001-2015, with percentage of taxpayer representing themselves indicated

Year	Case #	Pro Se	%
2001	189	162	84.18%
2002	158	133	84.39%
2003	173	146	93.75%
2004	176	165	92.59%
2005	189	175	93.40%
2006	197	184	86.98%
2007	215	187	86.59%
2008	164	142	88.44%
2009	199	176	83.15%
2010	178	148	85.19%
2011	135	115	81.89%
2012	127	104	83.33%
2013	108	90	79.13%
2014	115	91	82.67%
2015	75	62	82.67%

[28] Tax Law Simplification and Improvement Act of 1983, H.R. 3475, 98th Congress (1983-1984); Tax Reform Act of 1984, H.R. 4170, 98th Congress (1983-1984); and To Amend the Internal Revenue Code of 1986 to provide that certified public accountants and enrolled agents may represent taxpayers in certain Tax Court cases involving $10,000 or less, H.R. 1485, 102nd Congress (1991-1992).
[29] Small Business Taxpayer Bill of Rights Act of 2015 (Introduced 04/15/2015), S.949 — 114th Congress, Sponsor: Sen. Cornyn, John [R-TX]; Small Business Taxpayer Bill of Rights Act of 2015 (Introduced 04/15/2015), H.R.1828 — 114th Congress (2015-2016), Sponsor: Rep. Thornberry, Mac [R-TX-13]; An original bill to amend the Internal Revenue Code of 1986 to improve access and administration of the United States Tax Court (Introduced 04/14/2015), S.903 — 114th Congress (2015-2016), Sponsor: Sen. Hatch, Orrin G. [R-UT].

Total	2398	2080	86.74%

Finnegan et al. (2012) compiled data on pro se taxpayers in Small Cases from 2001 through 2009 and found that only 11 percent of taxpayers were represented. (Finnegan et al., 2012, p. 39). Their study reports that only 6 percent of taxpayers who represented themselves in Small Cases won on all issues compared to 13 percent if the taxpayer was represented by counsel (Finnegan et al., 2012, p. 39). Finnegan et. al. speculate that the pro se taxpayers …"did not understand the merits of their cases or how to properly prepare for their day in court." (Finnegan et al., 2012, p. 39). It is clear from these data that taxpayers who are represented in Small Cases are more successful. It also is clear that unrepresented taxpayers are at a disadvantage going up against IRS attorneys, who have both tax knowledge and litigation experience.

9.2. Opportunities to dispose of case on preliminary matters

Perhaps the biggest advantage of allowing more CPAs and EAs to represent taxpayers in the Tax Court is that it could greatly increase the ability of taxpayers to resolve cases before litigation. While CPAs and EAs can represent the taxpayer before the IRS Office of Appeals,[30] the Appeals Office knows those professionals cannot go before the Tax Court unless they are specially admitted. In evaluating cases, the IRS Appeals Office must consider the hazards of litigation.[31] The risks are much higher when taxpayers are represented. Thus, taxpayer appeals may not be as effective if the Appeals officer knows that the taxpayer's representative cannot take the case any farther.

Once the taxpayer's case is put before the Court by filing a petition, there is another opportunity to dispose of the case before trial. After filing, the District Counsel and taxpayer exchange documents and start the stipulation process.[32] Then, a Branerton Conference[33] —a pre-trial conference without the Judge--will be held before trial. The Court mandates these pre-trial conferences before it will hear the case. Sometimes the taxpayer can negotiate a settlement at the Branerton stage. For example, the taxpayer's representative might convince the District Counsel that the case would produce bad precedent, a concept unknown by many taxpayers. At each stage of the process of resolving disputes with the IRS, the parties are encouraged to negotiate and avoid litigation. A taxpayer is in a much better position to prevail or at least obtain a compromise if he or she is represented by a competent tax professional who understands how to navigate and negotiate these preliminary matters. In addition, CPAs and EAs who have prepared the taxpayer's return or at least reviewed the revenue reports are in the best position to present the documentation necessary to substantiate the taxpayer's claims (Finnegan et. al., 2012) and to articulate favorable law. If a taxpayer has no representation at all, the IRS has much less incentive to negotiate, and the taxpayer is at a disadvantage going up against an attorney on the other side.

In summary, it is clear that taxpayers would be better off with a representative when presenting their cases to the IRS. It also is clear that, for the foreseeable future, CPAs and EAs will not be able to represent taxpayers beyond the Appeals stage if they do not pass the Tax Court exam. Therefore, it is important that something be done to expand the number of CPAs and EAs practicing before the U.S. Tax Court.

10. Conclusions and suggestions

10.1. Conclusions

[30] 31 CFR pt.10, 1985-2 C.B. 742.
[31] IRM 8.6, Conference and Settlement Practice.
[32] Rev. Proc. 2016-22, 2016-15 I.R.B. 577, Rev.Proc.87-24, 1987-1 C.B. 720. The stipulation process is a negotiation between the taxpayer and the IRS that results in a formal written document in which the taxpayer and the IRS representative agree to facts and documents that are not in dispute.
[33] Branerton Corp. v. Commissioner, 64 T.C. 191 (1975).

Despite calls to relax the Tax Court practice rules for non-attorneys, this change is unlikely to happen given that the Tax Court Judges have not shown any intention to do so. Further, attempts to have Congress legislate this change continue to fail. Given that the Tax Court exam will continue to be required, the issue becomes how best to increase the number of accountants eligible to practice before the Tax Court.

Accounting graduates have the potential to practice before the Tax Court and to serve clients that otherwise would not have representation. Textbooks are not effectively communicating this information to accounting students. Therefore, it is up to accounting faculty to inform their students about Tax Court practice by non-attorneys.

10.2. Suggestions for informing accounting students about Tax Court practice

Below are methods that can be used to educate students about the opportunity to serve as a Tax Court representative for their clients.

- Include an explanation of non-attorney representation and the U.S. Tax Court exam in appropriate tax courses.
- Arrange a visit to the Tax Court for students. The U.S. Tax Court sits in numerous cities across the country at different times during the year.[34]
- Give students a mock Tax Court exam, at least on the substantive tax law questions, to help them become familiar with the test. Note that answers to the questions are not released, so educators will need to formulate their own correct answers.

Both taxpayers and the accounting profession would be well served by increasing taxpayer representation in the U.S. Tax Court. Taxpayers could get better results, and accountants could offer a more full-service practice. The difficulty of the exam and unfamiliarity with some subjects covered should not deter accounting students from attempting to gain this credential. The CPA exam is very rigorous as well and has a low pass rate of less than 50%.[35] Including information on the Tax Court exam in college accounting programs would help lead students to this important career path.

[34] For a list of cities and dates, see https://www.ustaxcourt.gov/dpt_cities.htm.
[35] https://www.aicpa.org/BecomeACPA/CPAExam/PsychometricsandScoring/PassingRates/Pages/default.aspx.

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