

MOST LITIGATED ISSUES

OVERVIEW

IRC § 7803(c)(2)(B)(ii)(XI) requires the National Taxpayer Advocate to identify in her Annual Report to Congress the ten tax issues most litigated in federal courts. A variety of courts share concurrent jurisdiction over federal tax litigation. They include Article I (*i.e.*, special courts created by Congress) and Article III (*i.e.*, constitutional) courts. Litigation generally includes an automatic right of appeal to the U.S. Courts of Appeals,¹ although some taxpayers elect to give up their appeal rights and pursue binding but less formal proceedings.² The taxpayer's choice of judicial forum depends on many factors, including whether the taxpayer is required to prepay the tax before litigation, the court's procedures, the burden of proof, and the controlling precedent. Tax litigation takes place in:

- The U.S. Tax Court;
- U.S. District Courts;
- U.S. Courts of Appeals;
- The U.S. Court of Federal Claims;
- U.S. Bankruptcy Courts; and
- The U.S. Supreme Court.

The U.S. District Courts and the U.S. Court of Federal Claims have concurrent jurisdiction over tax matters in which (1) the tax has been assessed and paid in full³ and (2) the taxpayer has filed an administrative claim for refund.⁴ The U.S. District Courts, along with the bankruptcy courts in very limited circumstances, provide the only forum in which a taxpayer can request a jury trial.⁵ Bankruptcy courts can adjudicate tax matters not adjudicated before filing a bankruptcy case.⁶

Congress created the Tax Court as a forum where taxpayers can bring suit to contest IRS proposed assessments and determinations without prepayment.⁷ It has jurisdiction over a variety of issues, including deficiencies, certain declaratory judgment actions, appeals from administrative hearings, relief from joint and several liability, and determination of employment status.⁸ The Tax Court is a “prepayment” forum, which is one major advantage for taxpayers as their case can be adjudicated on the merits without paying the disputed tax in advance.⁹ In fiscal year (FY) 2022, about 98 percent of all tax-related litigation was adjudicated in the Tax Court.¹⁰

To identify the top ten Most Litigated Issues, TAS used commercial legal research databases to locate and review published opinions involving a substantive civil tax issue decided on the merits in federal courts during the FY 2022 period from October 1, 2021, through September 30, 2022 (the reporting period).¹¹

We also reviewed the issued Statutory Notices of Deficiency (SNDs) regarding which petitions were filed with the U.S. Tax Court (Tax Court) during the reporting period. An SND, also called a notice of deficiency, a 90-day letter, or ticket-to-Tax Court, is a legal notice in which the IRS Commissioner determines a taxpayer's tax deficiency. IRC § 6212 requires the IRS to issue a notice of deficiency before assessing additional income tax, estate tax, gift tax, and certain excise taxes unless the taxpayer agrees to the additional assessment. A notice of deficiency also starts the 90-day period in which the taxpayer can file a petition with the U.S. Tax Court.¹²

METHODOLOGY

Our analysis identified 368 court opinions, with a large portion, 177 opinions, issued by the Tax Court in the reporting period.¹³ We also reviewed 191 court opinions from other federal courts, including from U.S. District Courts, U.S. Courts of Appeals, the U.S. Court of Federal Claims, U.S. Bankruptcy Courts, and the U.S. Supreme Court.¹⁴ The total number of opinions is a 20 percent increase from the 306 cases we identified last year.

The second part of our analysis used data provided by the IRS Independent Office of Appeals (Appeals) to review petitions seeking judicial review in the Tax Court from 28,807 petitions submitted by taxpayers in FY 2022 to identify the issues appearing most frequently.¹⁵ Only a small fraction of petitions result in a trial or court ruling on the merits. Of the 29,254 cases closed in the Tax Court in FY 2022,¹⁶ more than 99 percent were resolved without a ruling on the merits.¹⁷ We identified the issues in the SND to determine the unagreed audit issues.¹⁸ Our research team extrapolated the data for our analysis using information from the Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History table for FY 2022, and the Examination Operational Automation Database.

Defining the Issues

In our analysis of court opinions, we define tax “issues” that lead to litigation by subject matter, such as gross income, filing status and dependents, and itemized deductions, although each subject may include many IRC sections. In our analysis of Tax Court petitions, we grouped issues based on Standard Audit Index Number (SAIN) codes, which are tracking numbers the IRS uses to provide a consistent numbering system for examination workpapers.¹⁹ For this report, we revisited the most inclusive categories and narrowed the definitions we have used in past reports. We believe this will provide more nuanced, useful data to readers. Other issue categories are narrowly defined but frequently occur along with other underlying issues. We discuss those issues separately from the top ten Most Litigated Issues. The accuracy-related penalty (IRC § 6662), the frivolous issues penalty (IRC § 6673), and Collection Due Process (CDP) (IRC §§ 6320, 6330) are the subject of much litigation, although rarely without another underlying issue.

TOP TEN ISSUE CATEGORIES IN TAX COURT PETITIONS AND OPINIONS

We reviewed all Tax Court opinions issued during the reporting period that ruled on the merits of a substantive tax issue to identify the top ten Most Litigated Issues in the Tax Court. We identified the issues before the court and whether the litigant was an individual or business taxpayer. Tax Court cases involving individual taxpayers outnumbered business taxpayers 131 to 46 cases.

FIGURE 3.1, Top Ten Tax Court Opinions Issued for Individual Taxpayers During FY 2022²⁰

Ranking	Issue Category	Tax Court Opinions Discussing Issue
1	Gross Income (IRC § 61 and related Code sections)	17
2	Schedule A Deductions (IRC §§ 211-224)	15
3	Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)	14
4	Innocent Spouse Relief (IRC § 6015)	10
5	Adjusted Gross Income (AGI) Exclusions and Deductions	7
6	Whistleblower Award Determinations (IRC § 7623(b)(1))	7
7	Charitable Contribution Deductions (IRC § 170)	5
8	Fraud Penalty (IRC § 6663)	4
9	Alimony and Separate Maintenance Payments (IRC § 71)	3
10	Foreign Earned Income Exclusion (IRC § 911)	3

FIGURE 3.2, Top Ten Tax Court Opinions Issued for Business Taxpayers During FY 2022²¹

Ranking	Issue Category	Tax Court Opinions Discussing Issue
1	Sole Proprietorship Related Schedule C Income	20
2	Corporate Income (Excluding COGS) or Expenses	10
3	Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)	10
4	Gross Income (IRC § 61 and related Code sections)	9
5	Charitable Contribution Deductions (IRC § 170)	8
6	Passive Activity (Schedule E) Income and Expenses	5
7	Schedule A Deductions (IRC §§ 211-224)	5
8	Fraud Penalty (IRC § 6663)	5
9	Employment Tax Issues	4
10	Partnership Income (Excluding Cost of Goods Sold) or Expenses	4

TOP TEN ISSUES PETITIONED TO THE TAX COURT

We identified the top ten issues petitioned to the Tax Court to provide insight into the matters that taxpayers bring before the Tax Court and to let us compare those issues to the top ten issues that required a court ruling to resolve. We analyzed the issues appearing on the SND to determine the unagreed issues in each petition.²² Figure 3.3 shows this year’s most petitioned issues to the Tax Court from most to least.²³

FIGURE 3.3, Top Ten Individual Taxpayer Issues Petitioned to the Tax Court in FY 2022²⁴

Ranking	Issue Category	Total Petitions to the Tax Court
1	Gross Income (IRC § 61 and related Code sections)	21,215
2	Statutory Adjustment ²⁵	5,897
3	Filing Status and Dependents	1,739
4	Payments and Credits	1,456
5	Family Status Related Credits	1,364
6	Earned Income Tax Credit (EITC)	1,224
7	Schedule A Itemized Deductions Under IRC §§ 211-224	1,162
8	Passive Activity (Schedule E) Income and Expenses	973
9	Federal Income Tax Withholding	956
10	Taxes and Other Credits	675

FIGURE 3.4, Top Ten Business Taxpayer Issues Petitioned to the Tax Court in FY 2022²⁶

Ranking	Issue Category	Total Petitions to the Tax Court
1	Sole Proprietorship Trade or Business Expense	2,834
2	Sole Proprietorship Gross Income	1,223
3	Corporate or Partnership Trade or Business Expense	371
4	Corporate or Partnership Gross Income	297
5	Schedule K-1 Flow-Through Items	74
6	Charitable Contributions	41
7	Farming and Agriculture Activities – Trade or Business Expenses	34
8	Balance Sheet – Assets	33
9	Balance Sheet – Stockholder Equity	25
10	Balance Sheet – Liabilities	24

Gross Income (IRC § 61 and Related Code Sections)

As required under IRC § 7803(c)(2)(B)(ii)(XI), TAS has tracked the most litigated tax issues for the last 20 years, and controversies involving gross income or unreported income have been at or near the top of this list since the first report.²⁷ This year, it was the number one issue among those litigated in the Tax Court with 17 substantive opinions issued in cases with individuals and ten with business taxpayers where corporate income was at issue. This issue was also the largest category of cases with individual taxpayers (21,215) who petitioned the Tax Court.²⁸ The second highest total among business taxpayers was sole proprietorship gross income (1,223), and the fourth highest total among business taxpayers was corporate or partnership gross income (297) for taxpayers who petitioned the Tax Court.²⁹

Schedule A Deductions (IRC §§ 211-224)

Itemized deductions reported on Schedule A of IRS Form 1040 were frequently the subject of litigation for individual taxpayers and were among the ten most litigated issues for the sixth time since the National Taxpayer Advocate's 2000 Annual Report to Congress.³⁰ In FY 2022, we identified 15 decisions in which itemized deductions were litigated in the Tax Court.³¹ Additionally, in FY 2022, taxpayers petitioned the Tax Court in 1,162 cases where itemized deductions were an issue during the examination, making it the seventh most common issue petitioned to the Tax Court in FY 2022.³²

Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)

We identified and reviewed 14 opinions involving individuals and ten opinions involving businesses contesting the imposition of penalties and additions to tax for failure to timely file a tax return, failure to pay an amount shown as tax on a return, or underpayment of estimated taxes.

Sole Proprietorships and Schedule C Income and Expenses

This litigation typically focuses on applying well-settled legal principles and statutes and regulations to taxpayers' particular facts and circumstances. We identified and reviewed 20 business cases where this category of issues was litigated in the Tax Court. Taxpayers petitioned the Tax Court in 2,834 instances where sole proprietorships' trade or business expenses were at issue during the examination in FY 2022.³³ This category ranked top among petitioned issues for business taxpayers and ranks high for issues found in opinions issued by the Tax Court. Trade or business deductions have been among the most litigated issues since TAS has tracked such activity.³⁴

Innocent Spouse Relief (IRC § 6015)

We identified ten opinions issued in the Tax Court during the reporting period where taxpayers challenged an IRS determination on innocent spouse relief under IRC § 6015. A taxpayer may seek relief from liability arising from a joint return if the taxpayer can prove the taxpayer's spouse or former spouse should be held solely liable under IRC § 6015. IRC § 6015 provides three ways for a taxpayer to obtain partial or full relief from a tax liability arising from a return filed jointly with a spouse or ex-spouse. IRC § 6015(b) provides complete relief for deficiencies arising from a jointly filed return. IRC § 6015(c) provides limited relief from a joint liability for spouses who are divorced, separated, widowed, or not living together by allocating the liability between the spouses. If relief is unavailable under IRC § 6015(b) or (c), subsection (f) provides a third opportunity for "equitable" relief from both deficiencies and underpayments. The issue does not appear within our analysis of petitions to the Tax Court because the IRS does not record denial of innocent spouse relief as the underlying issue in an SND; rather, it issues a notice of determination regarding innocent spouse claims.

Adjusted Gross Income Exclusions and Deductions

We identified seven cases involving individual taxpayers where the taxpayer claimed a portion of his or her income could be excluded from the calculation of AGI and not subject to federal income tax. For example, these cases may involve a claimed net operating loss. In other cases, taxpayers argued that income was excludable under IRC §§ 121 and 132(a)(1). Some taxpayers in this category also claimed deductions for casualty losses.

Whistleblower Award Determinations (IRC § 7623(b)(1))

Whistleblower award determinations under IRC § 7623(b)(1) made our list for the second consecutive year. We identified seven opinions issued in the Tax Court where individuals challenged an IRS determination on issuing whistleblower awards during the reporting period. The IRS Whistleblower Office pays monetary awards to eligible individuals if the IRS uses information from the whistleblower to take judicial or administrative action – an audit or investigation resulting in the collection of proceeds.³⁵ Final determinations of the IRS Whistleblower Office regarding awards under IRC § 7623(b) may, within 30 days of such determination, be appealed to the Tax Court.³⁶ In FY 2021, the Whistleblower Office made 179 awards to whistleblowers totaling over \$36 million, which included 20 post-petition whistleblower awards awarded under IRC § 7623(b).³⁷

Charitable Contribution Deductions (IRC § 170)

We identified five opinions in individual cases and eight in business cases issued during the reporting period on the deductibility of charitable contributions under IRC § 170. Again this year, most of these cases arose due to the increased IRS focus on curtailing abuse in the syndicated conservation easement arena, including by designating syndicated conservation easements as a listed transaction and aggressively auditing taxpayers.³⁸ In FY 2022, business taxpayers petitioned the Tax Court in 41 cases where charitable contributions were an issue and 438 total for individual taxpayer cases.³⁹

Passive Activities (Schedule E) Income and Expenses

We identified five cases where passive activity income and expenses reported on Schedule E were at issue before the Tax Court. Schedule E (Form 1040) is used to report income or loss from rental real estate, royalties, partnerships, S corporations, estates, trusts, and residual interests in Real Estate Mortgage Investment Conduits. Like business activities reported on Schedule C, taxpayers must keep records to support items reported on Schedule E, and unsubstantiated deductions can be the reason underlying the SND. Passive activities were the subject of an SND in 973 petitions during FY 2022.

Fraud Penalty (IRC § 6663)

We identified four cases with individual taxpayers and five with business taxpayers where the civil fraud penalty under IRC § 6663 was at issue. IRC § 6663(a) provides that “[i]f any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.” The IRS has the burden of proving by clear and convincing evidence that (1) an underpayment of tax exists and (2) the underpayment was due to fraud.⁴⁰ If the IRS establishes that any portion of the underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud and subject to a 75 percent penalty unless the taxpayer establishes by a preponderance of the evidence that some part of the underpayment is not attributable to fraud.⁴¹ The civil fraud penalty was the subject of an SND in 41 individual and six business petitions during FY 2022.

Filing Status and Dependents

The filing status and dependent issues category includes personal exemptions for individual taxpayers and spouses, dependent children, and other dependents, along with filing status. This category did not make the top ten list in our analysis of Tax Court opinions but ranked number three on individual taxpayer issues petitioned to the Tax Court with 1,739 petitions.

Family Status Related Credits

The family status related credits category includes the Child Tax Credit, Child and Dependent Care Credit, Additional Child Tax Credit, and the Adoption Credit. This category did not make the top ten list in our analysis of Tax Court opinions but ranked fifth on individual taxpayer issues petitioned to the Tax Court with 1,364 petitions. EITC, in its own category, ranked sixth on individual taxpayer issues petitioned to the Tax Court with 1,224 petitions by individual taxpayers in FY 2022.

OTHER ISSUES

This year, we tracked the issues litigated in federal courts and the Tax Court separately. We also analyzed the accuracy-related penalty under IRC § 6662, the frivolous issues penalty under IRC § 6673, and CDP litigation under IRC §§ 6320 and 6330 outside of the top ten issues framework. As the penalties are not standalone issues, we did not include these in the top ten list of Most Litigated Issues. Likewise, due to the unique nature of CDP, it is discussed separately.

Accuracy-Related Penalty (IRC § 6662(b)(1)-(2))⁴²

We identified 24 total opinions issued by the Tax Court for individual and business taxpayers during the reporting period where taxpayers litigated the negligence or substantial understatement parts of the accuracy-related penalty. In FY 2022, 1,050 individual and 91 business taxpayers petitioned the Tax Court where the accuracy-related penalty for negligence or substantial understatement of tax was an issue during the examination.⁴³

Supervisory Pre-Assessment Penalty Approval Under IRC § 6751(b)(1)

IRC § 6751(b)(1) provides: “No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.”⁴⁴ IRC § 6751(b)(2) carves out two categories of exceptions from this supervisory approval requirement: (i) the additions to tax for failure to file a tax return or pay the tax due (IRC § 6651) and the additions to tax for failure to pay sufficient estimated tax (IRC §§ 6654 and 6655) and (ii) any other penalty that is “automatically calculated through electronic means.”⁴⁵ IRC § 6751(b) protects taxpayers’ *right to a fair and just tax system* by ensuring that penalties are only imposed in appropriate circumstances and are not used as a bargaining chip to encourage settlement.⁴⁶ However, the phrase “initial determination of [an] assessment” is unclear. A “determination” is made based on the IRS’s investigation of the taxpayer’s liability and an application of the penalty statutes. An “assessment” is merely the entry of a decision on IRS records. Therefore, while a penalty can be determined and a penalty can be assessed, “one cannot ‘determine’ an ‘assessment.’”⁴⁷ Due to this ambiguity in the statute, an increasing number of courts have had to grapple with when written supervisory approval must be provided.⁴⁸ Thus, we continue to see litigation on this issue.⁴⁹

For the first time, we are creating the category Supervisory Pre-Assessment Penalty Approval Under IRC § 6751(b)(1) but listing it here in “other issues” because this type of issue arises in conjunction with other underlying issues in litigation. If it were to be included in the top ten list for opinions, this category would be tied for the tenth spot for opinions involving individual taxpayers as there were three opinions involving individual taxpayers during FY 2022. Similarly, if it were included in the top ten list for opinions involving business taxpayers, it would be tied for the fifth spot with eight opinions involving business taxpayers during FY 2022.

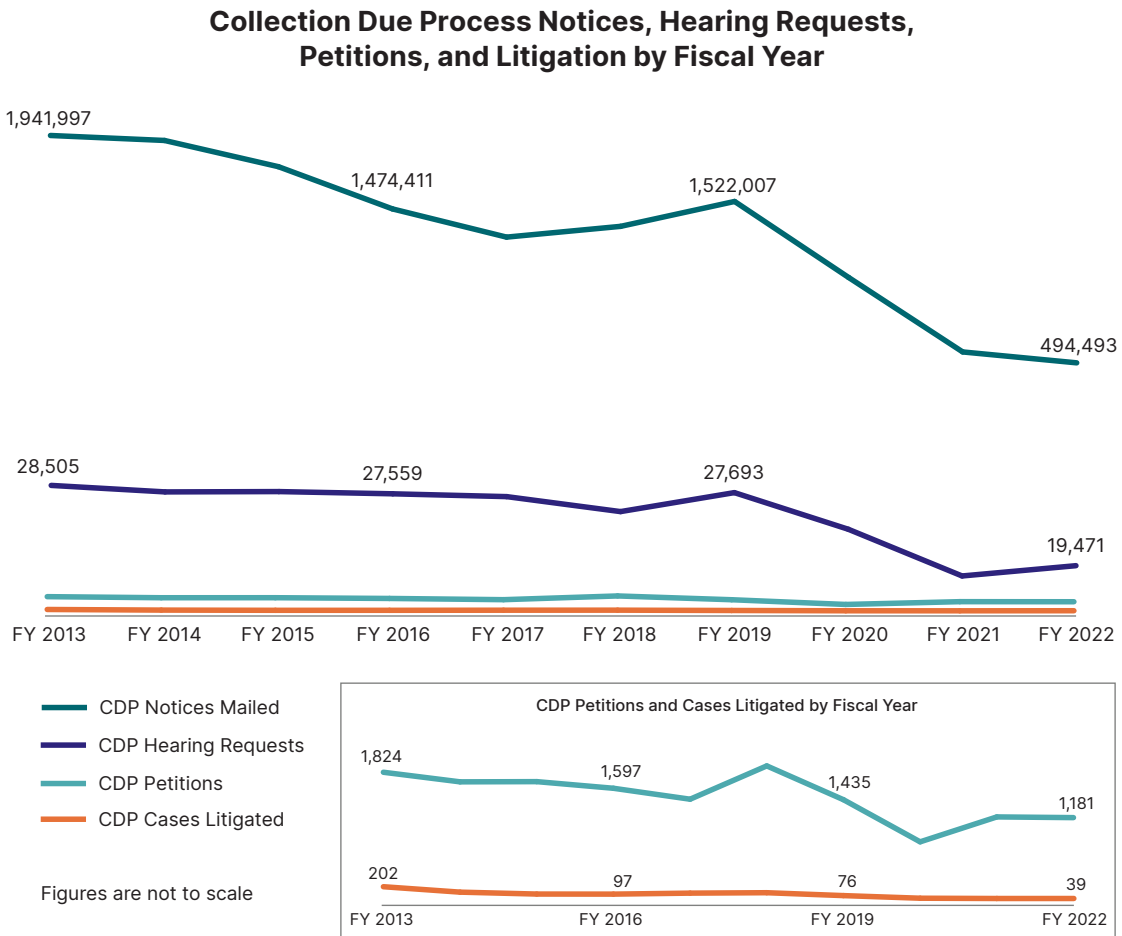
Frivolous Issues Penalty (IRC § 6673)

During the reporting period, the Tax Court decided seven cases involving the IRC § 6673 frivolous issues penalty. This penalty is imposed on a taxpayer maintaining a case primarily for delay, raising arguments considered frivolous by the courts, unreasonably failing to pursue administrative remedies, or filing a frivolous appeal.⁵⁰ Occasionally, when the IRS has not requested the penalty, and the facts are appropriate, the court has nonetheless raised the issue *sua sponte*.⁵¹ The Tax Court imposed a total of \$9,070,664 in frivolous issues penalties under IRC §§ 6673(a) and (b) on 457 taxpayers in FY 2022.⁵²

Collection Due Process Hearings (IRC §§ 6320 and 6330)

Our review of litigated issues found 39 substantive opinions issued on CDP cases in the Tax Court. Each year, only a small fraction of taxpayers exercise their right to request an administrative hearing or petition for judicial review. Figure 3.5 depicts the filing trends for CDP cases over the last ten years. We recorded a slight decrease in CDP petitions, with 1,181 in FY 2022, down from 1,191 petitions in FY 2021.⁵³ *Pro se* taxpayers continue to make up a majority of the total cases, with 928 of 1,181 cases having unrepresented taxpayers compared to 253 represented taxpayers in FY 2022.⁵⁴ This trend is also true of the ten-year average, where an average of 1,051 cases were *pro se* compared to an average of 482 involving represented taxpayers over a ten-year period, from FYs 2013 to 2022.⁵⁵

FIGURE 3.5⁵⁶



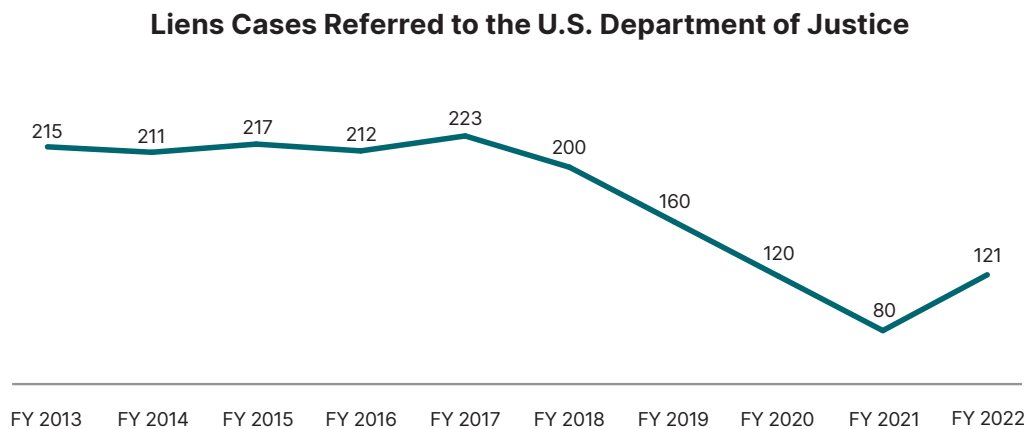
In FY 2022, 424,012 individual taxpayers received a CDP notice, a decline from the 563,975 individual taxpayers receiving a CDP notice in FY 2021.⁵⁷ In FY 2022, 70,481 business taxpayers received a CDP notice, down from 107,359 in FY 2021.⁵⁸ The IRS issued 494,493 CDP notices in FY 2022.⁵⁹ In FY 2022, 39 cases involving CDP were litigated.⁶⁰ CDP hearings continue to play a vital role in overall tax administration by allowing taxpayers to contest a lien or levy before (or soon after) the IRS takes the collection action.

TOP ISSUES IN OTHER FEDERAL COURTS

Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax (IRC §§ 7403 and 6321)

During the reporting period in FY 2022, we identified 19 opinions that involved civil actions to enforce liens under IRC §§ 7403 and 6321. This is a 37 percent decrease from the 30 opinions reported last year.⁶¹ In FY 2022, 121 federal tax lien cases were referred to the Department of Justice (DOJ) for enforcement and foreclosure, up 51 percent from the 80 cases referred in FY 2021.⁶² This is a slight upward tick in the trend in referrals to the DOJ since last year but not as high as the peak in FY 2017, as shown in Figure 3.6.

FIGURE 3.6⁶³



Summons Enforcement (IRC §§ 7602(a), 7604(a), and 7609(a))

During FY 2022, 43 proceedings to quash or enjoin enforcement of a summons were filed and 19 summons enforcement proceedings were filed for 62 summons enforcement cases that either were (1) newly filed by the DOJ Tax Division or (2) filed by third parties and received by the DOJ Tax Division.⁶⁴ The DOJ handles motions to quash summonses (the United States is listed as a defendant), and the U.S. Attorneys' Offices handle suits to enforce the summons (the United States is listed as a plaintiff).

SETTLEMENTS OF CASES PETITIONED TO THE TAX COURT

Both employees at the IRS Office of Chief Counsel, who represent the IRS in the Tax Court, and Appeals have the authority to settle cases on behalf of the IRS. Figure 3.7 shows the number of Tax Court cases settled by Appeals and the number settled by the IRS Office of Chief Counsel during the last ten fiscal years.

FIGURE 3.7⁶⁵

Tax Court Cases Settled by Appeals and IRS Chief Counsel, FYs 2013-2022

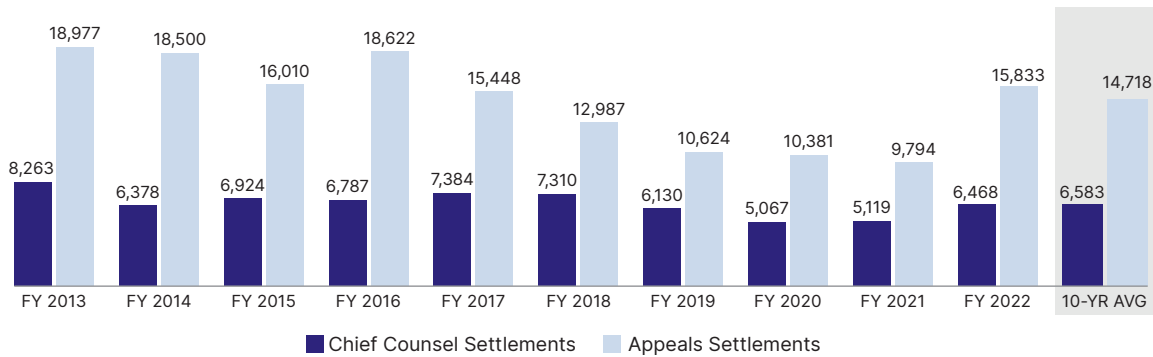


Figure 3.8 shows the ten-year average outcome of Tax Court petitions from FYs 2013 to 2022. The majority of petitions were settled by Appeals at 52.6 percent while the remainder was divided up by settlements by Chief Counsel (23.5 percent), then defaults and dismissals of cases (20.1 percent), and finally the trial/other dispositions (3.1 percent).

FIGURE 3.8⁶⁶

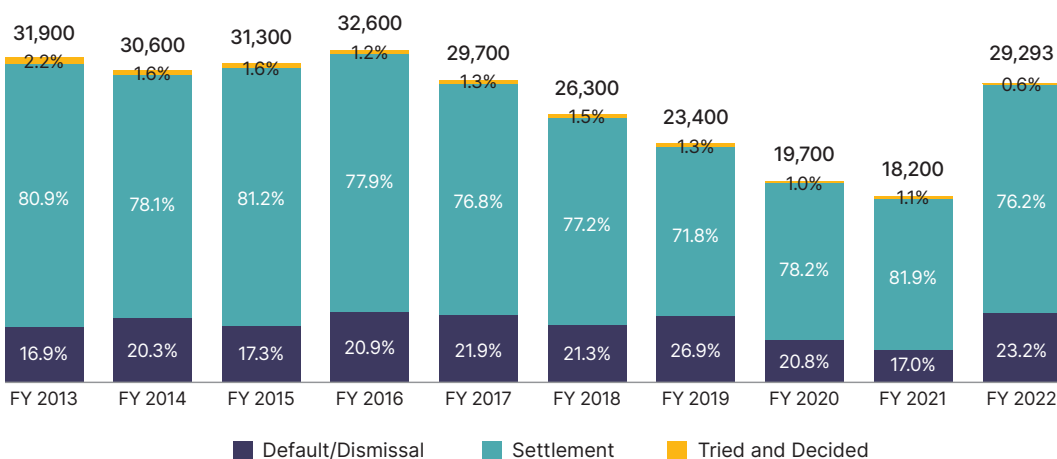
Outcomes of Tax Court Petitions, FYs 2013-2022



As Figure 3.9 illustrates, the vast majority of cases petitioned to the Tax Court (about 76 percent) in FY 2022 settled by agreement between the parties with about 22,300 cases settled by Appeals and Chief Counsel combined.

FIGURE 3.9⁶⁷

Cases Dismissed, Settled, and Tried in the Tax Court, FYs 2013-2022



The IRS Office of Chief Counsel continued to partner with Low Income Taxpayer Clinics (LITCs),⁶⁸ American Bar Association volunteer attorneys, and other *pro bono* organizations to offer “Settlement Days” in FY 2022. In FY 2022, the IRS Office of Chief Counsel held 50 Settlement Day events.⁶⁹ Four of these events were held in person, and 46 were conducted via video conferencing.⁷⁰ The IRS Office of Chief Counsel invited 217 taxpayers to Settlement Day conferences, 185 of whom attended.⁷¹ Of the 185 conferences, 120 resulted in settlement of the case.⁷² This is a settlement rate of 64 percent.⁷³ Those taxpayers whose cases were not resolved had the opportunity to obtain free legal advice from *pro bono* volunteers or LITCs and were in a better position to understand their cases and the process of litigating in the Tax Court.

ANALYSIS OF PRO SE LITIGATION

When a taxpayer appears before the court without a representative, it’s called appearing *pro se*.⁷⁴ In FY 2022, about 90 percent of cases petitioned to the Tax Court involved *pro se* taxpayers, and in about ten percent of the cases the taxpayers were represented.⁷⁵ Over the past ten years, an average of 83.5 percent of taxpayers appearing in Tax Court were not represented by counsel.⁷⁶ Self-represented taxpayers are disadvantaged in tax litigation as they are unfamiliar with the Tax Court’s Rules of Practice and Procedure, Federal Rules of Evidence, and the nuances of negotiating with the IRS. The dollars, along with the taxpayer’s income level, are two key determinants of whether a taxpayer obtains representation to navigate the litigation process. Hiring a representative can be expensive. Even if a taxpayer has the means to do so, the amount at issue may not justify the cost.

Figure 3.10 compares the ratio of Tax Court cases where taxpayers proceeded *pro se* to the cases where taxpayers appeared with a representative over the past ten fiscal years.

FIGURE 3.10⁷⁷

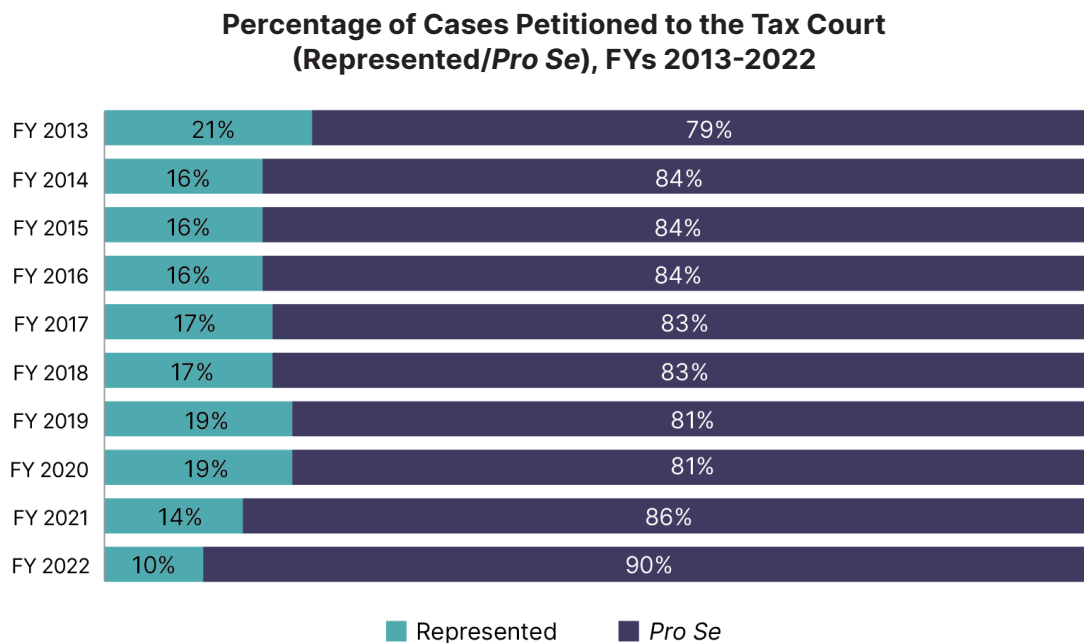
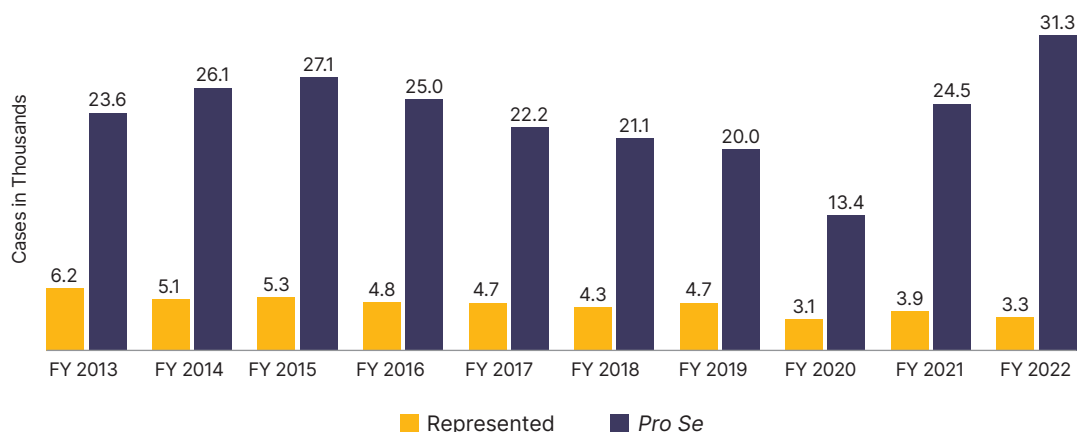


Figure 3.11 shows the number of Tax Court petitions over the past ten fiscal years, broken down by whether the taxpayers proceeded *pro se* or with a representative.

FIGURE 3.11⁷⁸Total Cases Petitioned to the Tax Court (Represented/*Pro Se*), FYs 2013-2022

Impact of Low Income Taxpayer Clinics on Tax Court Litigation

To provide more support to unrepresented petitioners, Congress enacted IRC § 7526 in 1998 to provide grants of up to \$100,000 per year for eligible low-income taxpayer clinics.⁷⁹ The Tax Court administers the Tax Clinics and Bar-Sponsored Calendar Call programs that provide advice and assistance to many low-income, self-represented taxpayers.⁸⁰ The Tax Clinics and Bar-Sponsored Calendar Call Program enables eligible taxpayers to receive free legal advice and representation at a trial session.

Each year, LITCs provide crucial assistance to low-income taxpayers in U.S. Tax Court cases. For the taxpayers they help, paying for legal representation is not an option, and the LITCs' free assistance levels the playing field. The Tax Court can be an intimidating place, especially with complicated tax laws and facts difficult to convey or substantiate. Without representation, many taxpayers abandon their right to challenge a tax liability in court. However, with the assistance of LITC attorneys, students, and volunteers, taxpayers are able to exercise their rights and are afforded the opportunity to reach a fair and just outcome. LITCs provide access to justice and assistance that helps low-income taxpayers obtain much-needed refunds and protects their *right to pay no more than the correct amount of tax*.⁸¹

During 2021, 124 LITCs participated in the U.S. Tax Court Clinical Program. LITC practitioners litigated 1,477 cases in the Tax Court on behalf of low-income taxpayers and 45 cases in other federal courts.⁸² LITC practitioners assisted taxpayers in many cases without litigation, entering appearances in 1,010 cases, representing taxpayers in 465 cases that did not require an entry of appearance, and providing informal advice through consultation at the Tax Court in 445 cases.⁸³ In addition to the services LITCs provide through direct assistance, they help court proceedings run more smoothly, reduce litigation, and ease the administrative burden on the courts.

Considering the increase in the number of LITCs since the enactment of IRC § 7526 and that the \$100,000 limit on grant funding was not indexed for inflation and has never been raised, TAS recommends changes to the LITC Program that would allow for even more taxpayers to receive assistance in resolving their controversies with the IRS.⁸⁴ Across the LITC Program, many LITC practitioners helped clients when they were ready to give up. For example, a taxpayer was struggling to provide documentation that her children lived with her during the tax year, jeopardizing her entitlement to Head of Household filing status, EITC, and the Child Tax Credit.⁸⁵ With LITC representation, she successfully contested the \$7,800 assessment and negotiated a positive resolution with the Chief Counsel representative.⁸⁶ In another case involving

EITC, an LITC and TAS helped the parent of a disabled child obtain a \$3,000 frozen refund by helping the parent prove that the state payments reported on the parent's return were, in fact, wages for purposes of EITC.⁸⁷ Outside of the refundable credit context, LITCs helped taxpayers prevail in other factually and legally complex cases, such as one where an LITC helped a victim of a workplace injury demonstrate that the settlement he received from his employer was not taxable, or a case where an LITC helped a sexual assault survivor with Post-Traumatic Stress Disorder obtain an otherwise barred refund under the financial disability exception to the refund statute of limitations in IRC § 6511(h).⁸⁸ In these cases and many more, LITCs helped taxpayers achieve the fair and just result they deserved.

PUBLIC ONLINE ACCESS TO TAX COURT FILINGS

As we highlighted in this section, through its engagement with LITCs and *pro bono* lawyer organizations, the U.S. Tax Court provides unrepresented taxpayers greater access to legal representation and much-needed information and assistance. However, work remains to be done in improving access to information for all taxpayers, including full access to case dockets on par with what the Public Access to Court Electronic Records (PACER) system provides for dockets in other U.S. courts.

On December 18, 2020, the U.S. Tax Court announced use of its new online case management system, Docket Access Within A Secure Online Network (DAWSON).⁸⁹ Under this system, the Tax Court allows parties to a case to access case records online. However unlike PACER, DAWSON does not allow nonparties (*i.e.*, the public) online access to anything beyond opinions and orders.⁹⁰ To safeguard taxpayer privacy, DAWSON does not allow nonparties to access non-sealed briefs, pleadings, or motions.⁹¹

IRC § 7461 governs the accessibility and publication of documents that enter the Tax Court system.⁹² This section directs the Tax Court to make all non-sealed documents “public records open to the inspection of the public.” There is an exception to the general rule that allows for sealing or redacting of information on the docket when disclosure would involve trade secrets or other confidential information or when the taxpayer requests the return of evidence, under IRC § 7461(b).⁹³ Enacted in 1954 and last amended in 1984, IRC § 7461 was written long before lawmakers contemplated issues related to online access.⁹⁴

The Tax Court only makes non-sealed evidence, briefs, pleadings, and transcripts of proceedings available to nonparties who visit the Washington, D.C., Tax Court building in person, Monday through Friday (excluding federal holidays), between 8 a.m. and 4:30 p.m.⁹⁵ A nonparty who visits the building and who seeks to view the non-sealed documents on a particular docket can visit the Tax Court's record office on its ground floor (after clearing an identity check at the security office), which allows access to this unsealed information through a single desktop computer.⁹⁶ Printouts of non-sealed records must be requested from the Tax Court records department at a cost of 50 cents per page, with a maximum charge of \$3 per document.⁹⁷

A nonparty can also call the Tax Court records department and make a request for items on a particular docket by telephone; however, the nonparty would need to provide information about the specific document, date, and docket number for the request. Without first seeing the docket, the nonparty may be unable to provide the necessary information to request the correct records by phone.

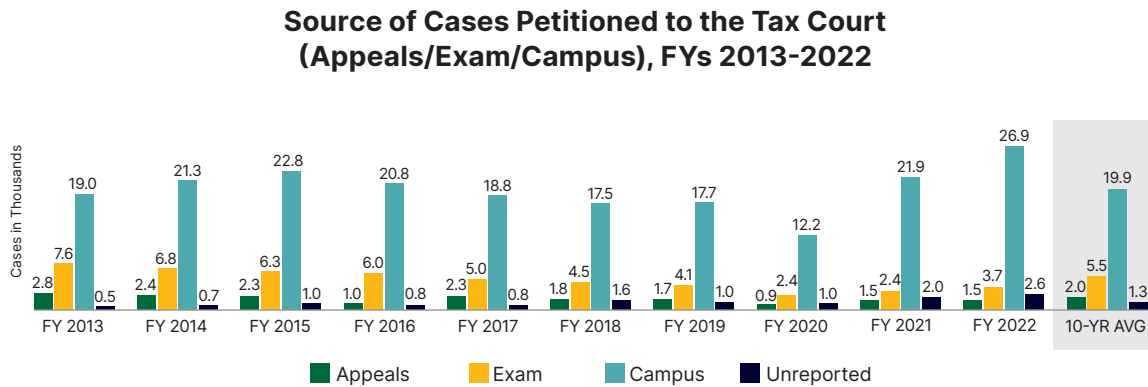
We appreciate the Tax Court's goal of protecting taxpayers' data and protecting all litigants from unnecessary disclosure of private data by limiting access to court records in an electronic format. However, we believe the Tax Court can provide access to non-sealed documents on dockets without violating privacy rights. We encourage the Tax Court to use DAWSON to increase public access to electronic filings (1) by considering using redacting software that would automatically redact certain types of sensitive or protected information, even when inadvertently included in a filing, and (2) by improving awareness and educational materials for unrepresented taxpayers so they know to alert the Tax Court before filing documents with the Tax Court if

they have a special need to redact information from publicly available filings. We believe that a balance can be achieved by allowing nonparties access to public materials while also preventing inadvertent disclosures of taxpayers’ sensitive information.

SOURCES OF CASES PETITIONED TO THE TAX COURT

Depending on the taxpayer’s actions after receiving a notice from the IRS, an IRS Service Center (Campus), Field Exam, or Appeals may issue an SND. The SND is the typical “ticket to Tax Court” and the document that starts the procedural clock for timely filing a petition. In a CDP case, taxpayers file a petition based upon a notice of determination from a CDP hearing. The notice of determination, like the SND, starts the period in which a taxpayer must file a petition with the Tax Court.⁹⁸ Figure 3.12 shows Tax Court petition filings over the last ten fiscal years based on the IRS function that issued the notice attached to each petition.

FIGURE 3.12⁹⁹



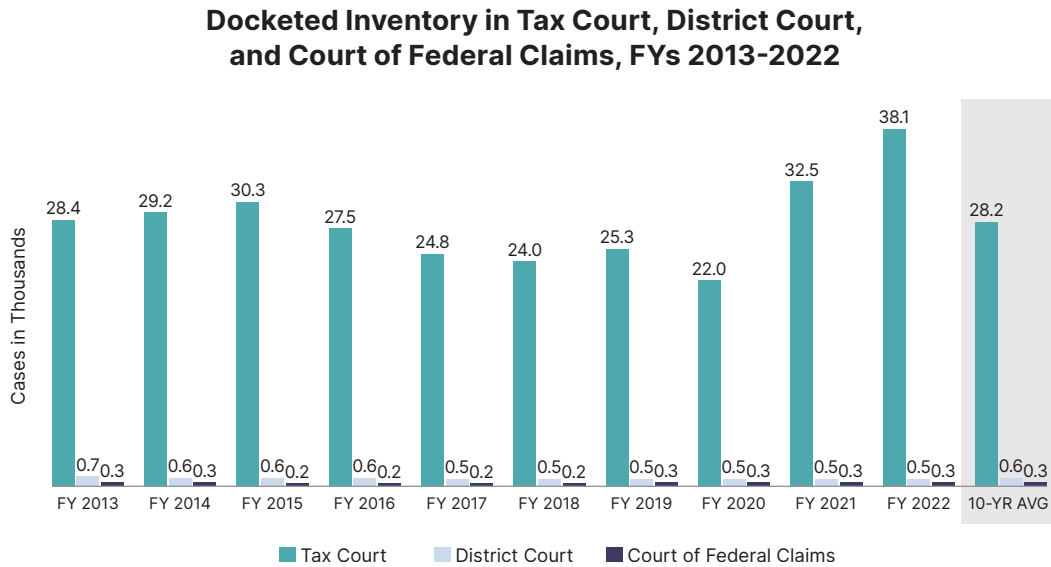
From FY 2021 to FY 2022, all categories saw a nearly 23 percent increase except Appeals, which stayed flat at about 1,500 cases resulting in a Tax Court petition. SNDs from the Campuses saw the largest real increase, with about 5,000 additional petitions compared to last year. About 19,900, or 72 percent, of petitions in the Tax Court, an average of a ten-year period, resulted from an SND being issued from a Campus, bypassing Appeals, as shown in Figure 3.12.¹⁰⁰

When the SND is issued from a campus, it is highly unlikely that a taxpayer has even spoken with an IRS employee. Even for taxpayers who seek interaction at the Examination or Appeals level, some have had difficulty reaching an IRS employee who could assist. Many faced delays when communicating with the IRS, and others encountered inflexible policies that represent a “take it or leave it” proposition.¹⁰¹ Many of those taxpayers missed an opportunity for achieving a resolution at the administrative level before seeking Tax Court review.

COMPARATIVE ANALYSIS

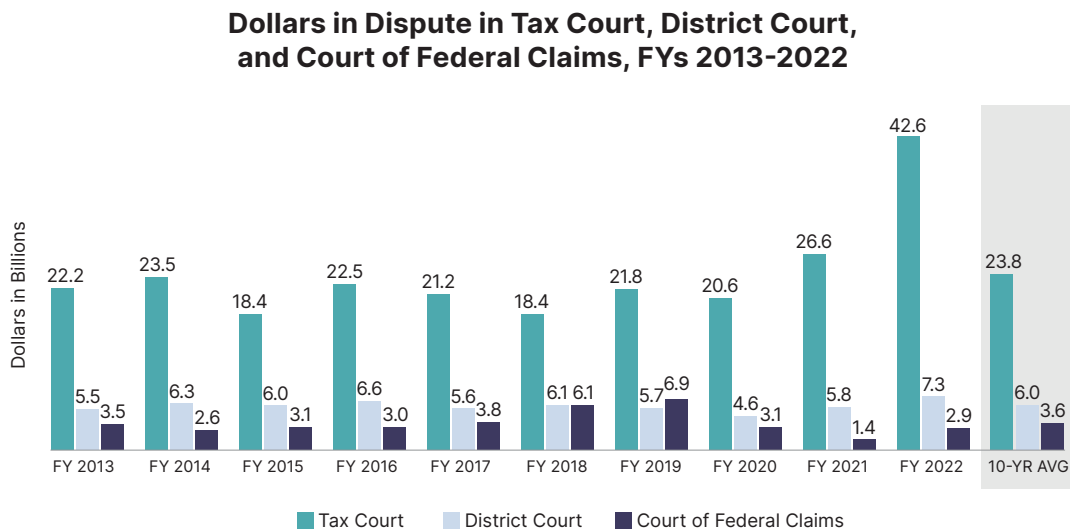
Comparing the number of docketed cases amongst the courts in which taxpayers may litigate federal tax disputes (*i.e.*, petitions filed), the Tax Court received at least 56 times as many cases as district courts and 94 times as many cases as the Court of Federal Claims in FY 2022, as illustrated in Figure 3.13. Figure 3.13 compares the number of docketed cases in inventory in the Tax Court, the Court of Federal Claims, and the district courts at the end of the past ten fiscal years and calculates a ten-year average.

FIGURE 3.13¹⁰²



While the Tax Court docket has the majority of cases, there is more money at stake in tax litigation in the district courts and the Court of Federal Claims. Comparing the dollars in dispute, Tax Court cases compare about 4:1 to district courts and about 7:1 to the Court of Federal Claims based on the ten-year average.¹⁰³ Figure 3.14 shows the dollars in dispute for the docketed case inventory in these courts over the past ten fiscal years.

FIGURE 3.14¹⁰⁴



Looking more closely at the Tax Court cases litigated during FY 2022, in nearly 84 percent of the cases, there was less than \$50,000 at stake.¹⁰⁵ About one percent of the total docketed Tax Court cases involved an amount in dispute of more than \$10 million, but that represents nearly 84 percent of all dollars in dispute in the Tax Court. Figure 3.15 shows the breakdown of FY 2022 Tax Court cases by dollars in dispute.

FIGURE 3.15¹⁰⁶

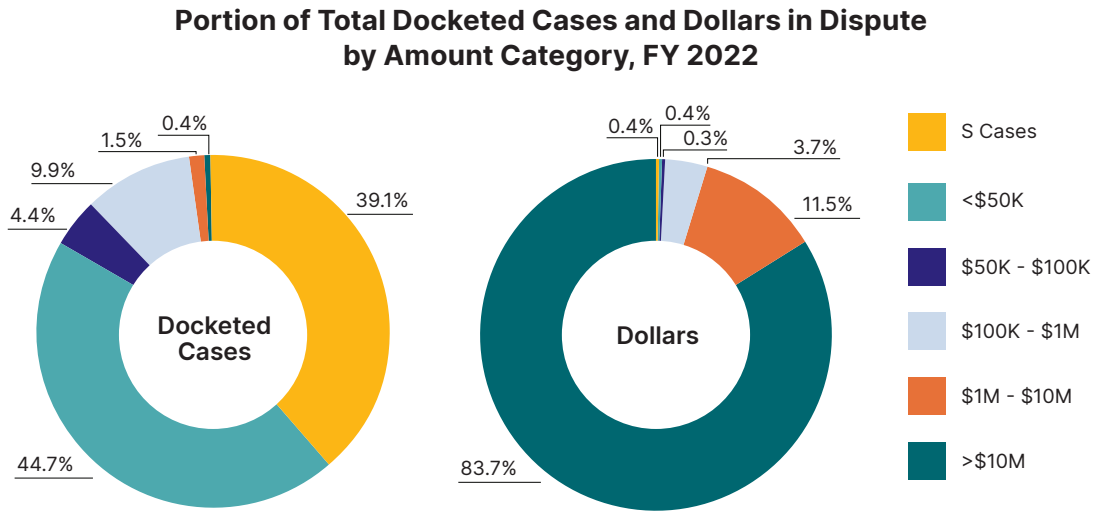
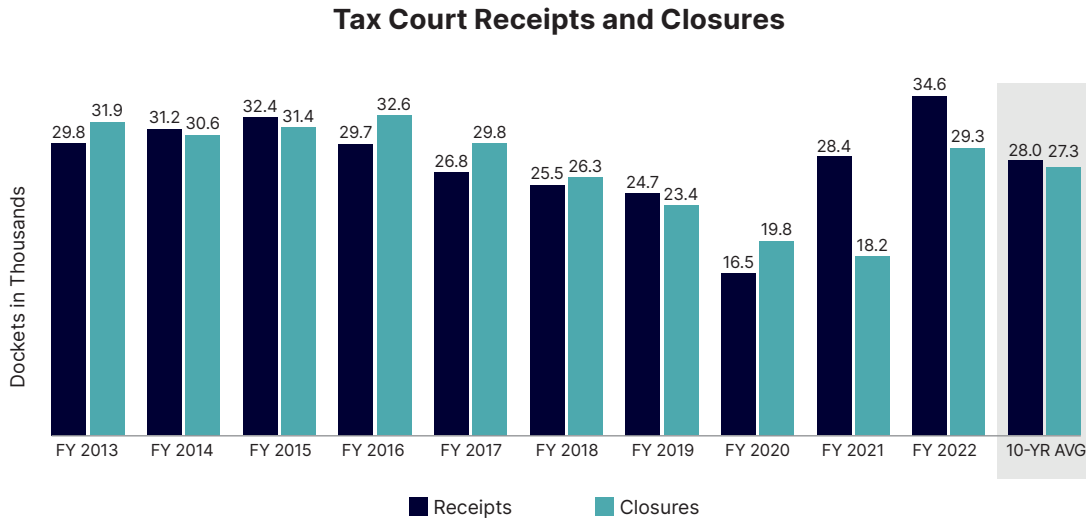


Figure 3.16 shows the Tax Court receipts and closures of cases over a ten-year period. This data shows how receipts and closures fell to all-time lows in FY 2020 but increased in 2021 and again in 2022. In FY 2022, the receipts were the highest in the ten-year period, and closures were highest since FY 2017.

FIGURE 3.16¹⁰⁷

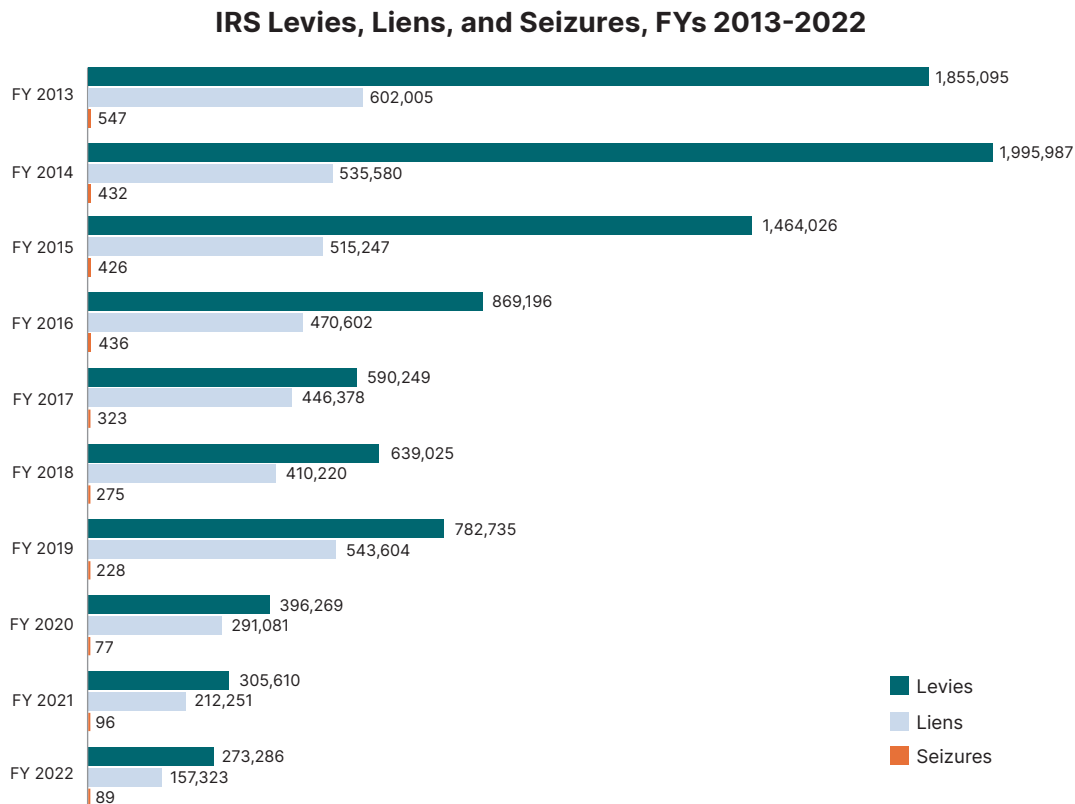


Tax Court cases begin with a taxpayer filing a petition to the Court.¹⁰⁸ However, in a U.S. district court, both taxpayers and the IRS, or the DOJ acting on behalf of the United States, can initiate proceedings as part of enforcement actions.

The DOJ, on behalf of the United States, files suit for actions for the IRS including summons enforcement actions to produce books, papers, records, or other data or to give testimony as required by the summons.¹⁰⁹ The DOJ may bring a civil action to enforce a federal tax lien and to foreclose on taxpayer property, including a personal residence, to satisfy an outstanding tax liability.¹¹⁰ If the United States proves the lien is valid, the court will typically issue an order of sale that (1) authorizes the United States to foreclose on the taxpayer’s subject property and (2) describes how the proceeds of sale should be distributed. Taxpayers can initiate a suit

in a U.S. district court to oppose those enforcement actions or to sue for a refund.¹¹¹ The number of U.S. district court cases has declined on par with the number of Tax Court cases during the last ten years, following a similar decline in IRS collection enforcement actions. Figure 3.17 shows the number of levies, liens, and seizures during the past ten fiscal years.

FIGURE 3.17¹¹²



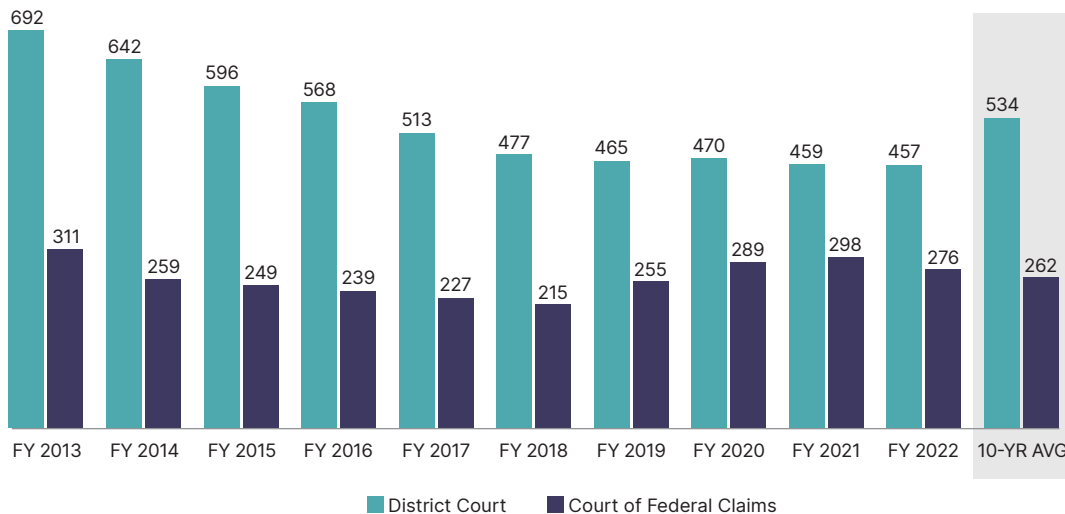
REFUND LITIGATION

The IRC permits taxpayers to file suit for refund under IRC § 6511. IRC § 7422(a) requires that taxpayers file a timely claim with the IRS before suing for refund.¹¹³ Taxpayers may file a refund suit if a timely filed claim for refund is disallowed in full or part or if the IRS does not act on a claim for refund within six months after the claim is filed.¹¹⁴ When IRS findings result in claim disallowance, the taxpayer is generally allowed to appeal administratively. If an agreement is not reached during the examination or the appeals process (if protested), a statutory notice of claim disallowance (claim disallowance) is issued explaining the taxpayer’s right to file a refund suit.¹¹⁵ IRC § 6532 imposes a general two-year time limit for filing a refund suit, which can be extended upon written agreement between the taxpayer and the IRS. The mailing date of the claim disallowance begins this two-year period.¹¹⁶ A taxpayer may sue in a U.S. district court or the U.S. Court of Federal Claims under 28 U.S.C. § 1346(a)(1) to recover “any sum” that the taxpayer believes has been erroneously assessed or collected. In *Flora v. United States*,¹¹⁷ however, the U.S. Supreme Court held that, with limited exceptions, a taxpayer must have “fully paid” the assessment (called the “full payment rule”) before suing in these courts. The full payment rule impacts whether taxpayers have the financial means to file suit and/or hire an attorney to represent them. Equal access to justice should allow taxpayers who cannot pay what the IRS says they owe to challenge an adverse determination and have the same opportunities as wealthier taxpayers who can pay.¹¹⁸

As shown in Figure 3.18, in FY 2022, 733 refund cases remained in inventory, down slightly from 757, the FY 2021 total. The U.S. District Courts presided over 457 of these cases, while 276 went before the U.S. Court of Federal Claims.¹¹⁹

FIGURE 3.18¹²⁰

Tax Refund Case Inventory Before the District Courts and Court of Federal Claims in FYs 2013-2022



CRIMINAL TAX VIOLATIONS

The Criminal Investigation (CI) Division is the IRS function charged with investigating criminal tax violations and other related financial crimes. CI initiates investigations, often in collaboration with other federal, state, local, and foreign law enforcement agencies, and refers cases to the DOJ for prosecution. During FY 2022, IRS CI referred to the DOJ 1,837 cases for prosecution.¹²¹ Of those cases, 789 were for tax crimes, including refund fraud, employment tax fraud, general tax fraud, and abusive tax schemes.¹²² The remaining 1,048 cases referred for prosecution were for non-tax crimes, such as money laundering, public corruption, corporate fraud, general fraud, and violations of the Bank Secrecy Act.¹²³

Of cases that were resolved in FY 2022, 1,564 of them resulted in a conviction, and the overall conviction rate for that period was nearly 96 percent.¹²⁴ During that period, 699 defendants were sentenced for tax crimes, and 792 were sentenced for non-tax crimes.¹²⁵ IRS CI identified \$5.7 billion in tax fraud and \$26.9 billion in other financial crimes during FY 2022.¹²⁶

According to U.S. Courts’ 2021 and 2022 Federal Judicial Caseload Statistics, there were 381 criminal tax fraud cases that began in U.S. District Courts in 2022,¹²⁷ an increase of 15 percent compared to 331 in 2021.¹²⁸ Furthermore, 370 of 396 (93 percent) of criminal tax fraud defendants were convicted or sentenced in U.S. District Courts in 2022.¹²⁹ Three hundred seventy of the 382 cases resulted in a guilty plea while the remainder of the cases saw criminal tax fraud defendants convicted via a bench or jury trial in 2022.¹³⁰ For comparison, in 2021, 249 of 256 (97 percent) of criminal tax fraud defendants pled guilty, and only seven were convicted or sentenced via a bench or jury trial.¹³¹

MOST LITIGATED ISSUES – NATIONAL TAXPAYER ADVOCATE RECOMMENDATIONS TO MITIGATE DISPUTES

The National Taxpayer Advocate recommends that Congress:

- Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.¹³²
- Amend IRC § 6751(b)(2)(B) to clarify that the exception for “other penalties automatically calculated through electronic means” does not apply to the penalty for “negligence or disregard of rules or regulations” under IRC § 6662(b)(1).
- Amend IRC § 7602(c) to clarify that the IRS must tell the taxpayer in a third-party contact notice what information it needs and allow the taxpayer a reasonable opportunity to provide the information before contacting a third party, unless doing so would be pointless (*e.g.*, because the taxpayer does not have the information the IRS needs) or an exception applies.¹³³
- Amend IRC § 7433(d)(3) to allow taxpayers who file an administrative claim with the IRS within two years from the date a right of action accrues to file a civil action in a U.S. district court (i) no earlier than six months from the date on which the administrative claim was filed and (ii) no later than two years from the date on which the IRS sends its decision on the administrative claim to the taxpayer by certified or registered mail.¹³⁴
- Amend IRC § 6532(a) to remove subsection (a)(4) and to provide that, where a taxpayer has submitted a written request for reconsideration of a disallowed claim by Appeals within two years of the mailing of a notice of claim disallowance, the time to bring a suit for refund shall not expire before the later of (1) the standard two-year period provided in IRC § 6532(a)(1) or (2) the date that is six months after the date of the Appeals closing letter.¹³⁵
- Amend IRC § 7403 to preclude IRS employees from requesting that the DOJ file a civil action in U.S. District Court seeking to enforce a tax lien and foreclose on a taxpayer’s principal residence, unless the employee has determined that (1) the taxpayer’s other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings, and (2) the foreclosure and sale of the residence would not create an economic hardship due to the financial condition of the taxpayer.¹³⁶
- Amend IRC §§ 7442 and 7422 to give the Tax Court jurisdiction to determine liabilities in refund suits to the same extent as the U.S. district courts and the U.S. Court of Federal Claims.¹³⁷
- Amend IRC § 6330(c)(2)(B) to allow taxpayers to raise challenges to the existence or amount of the underlying tax liability at a CDP hearing for any tax period if the taxpayer did not receive a valid notice of deficiency for such liability, or in a non-deficiency case, the taxpayer did not have an opportunity to dispute the liability in the U.S. Tax Court.¹³⁸
- Amend IRC § 6212 to require the IRS to issue a notice of deficiency before assessing any “assessable penalty.”¹³⁹

SIGNIFICANT CASES

This section describes a number of cases decided in FY 2022 that involve issues of general importance to federal tax administration.¹⁴⁰ These decisions are summarized below.

In *Boechler v. Commissioner*, the Supreme Court ruled that the time limit on filing a CDP petition is not jurisdictional.¹⁴¹

In a unanimous opinion, the Supreme Court ruled that the 30-day time limit on filing a petition for review of a collection due process determination in IRC § 6330(d)(1) is non-jurisdictional. The Court held further that, because the time limit to petition the Tax Court is non-jurisdictional, it is potentially subject to equitable tolling. The case involved a North Dakota law firm whose petition to the Tax Court was filed one day late. The Tax Court dismissed the petition for lack of jurisdiction, and the Eighth Circuit affirmed. Under *Boechler*, taxpayers filing CDP petitions will now have the opportunity to argue that special circumstances justify extending the deadline to petition and that their case should be heard notwithstanding the late filing.

The Ninth Circuit held in *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner* that written supervisory approval of penalties may occur after the proposed penalty is communicated to the taxpayer.¹⁴²

A divided three-judge panel of the Ninth Circuit held for the IRS in a case concerning IRC § 6751(b)'s written supervisory approval requirement. The case involved an IRC § 6707A penalty for failing to disclose participation in a reportable transaction. The penalty was initially proposed in a 30-day letter to the taxpayer. In response, the taxpayer submitted a protest and requested a hearing with Appeals. The supervisor of the Revenue Agent who prepared the 30-day letter executed a written approval of the IRC § 6707A penalty before sending the case to Appeals. Appeals ultimately agreed that the taxpayer was liable for the IRC § 6707A penalty, and the penalty was assessed. The majority found that the IRS complied with the requirements of IRC § 6751(b) because the supervisor approved the penalty determination before the penalty was assessed and while the supervisor still retained discretion about whether the penalty should be assessed. One judge dissented, arguing that, for the supervisory approval requirement to have any operative effect, supervisory approval should have been required before the 30-day letter was sent.

The Sixth and Eleventh Circuits reached different conclusions as to the validity of Treasury Regulations governing the donation of conservation easements.

The Sixth and Eleventh Circuits reached opposite conclusions about the validity of Treas. Reg. § 1.170A-14(g)(6)(ii), a provision of the regulations governing judicial extinguishment of a conservation easement and limitations on how proceeds from the sale of the property must be disbursed in the event of judicial extinguishment and sale of the property. In *Oakbrook Land Holdings LLC v. Commissioner*,¹⁴³ the Sixth Circuit affirmed the Tax Court's initial decision, finding that the regulation satisfied the procedural requirements of the Administrative Procedure Act, was not arbitrary and capricious, and was entitled to judicial deference. In *Hewitt v. Commissioner*,¹⁴⁴ the Eleventh Circuit found the same portion of the regulation invalid because, in issuing the regulation, the Treasury did not adequately respond to a "significant comment" specifically pertaining to the regulatory section at issue. These decisions create a clear circuit split as to the validity of Treas. Reg. § 1.170A-14(g)(6)(ii). The taxpayer in *Oakbrook* has appealed the decision to the Supreme Court, so the issue may be resolved next term.¹⁴⁵

In *Li v. Commissioner*, the D.C. Circuit narrows the Tax Court's jurisdiction over whistleblower cases.¹⁴⁶

The D.C. Circuit held that the Tax Court does not have jurisdiction to hear appeals from threshold rejections of whistleblower award requests. The claimant in *Li* submitted a whistleblower award claim providing vague and speculative information. The Whistleblower Office did not forward the information provided by the claimant for further action, and the IRS did not take any action against the target taxpayer. The court held there was no "award determination" for the Tax Court to review. Because the IRS simply rejected the claim, the Tax Court did not have jurisdiction to hear the claimant's appeal. In reaching this conclusion, the D.C. Circuit explicitly overruled the prior Tax Court decisions in *Cooper*¹⁴⁷ and *Lacey*,¹⁴⁸ which the Tax Court relied on in determining that it had jurisdiction to hear the claimant's appeal in *Li*.

In *Seaview Trading LLC v. Commissioner*, the Ninth Circuit found a partnership filed its return when it provided a delinquent copy of the return to a Revenue Agent during an audit.¹⁴⁹

In *Seaview Trading, LLC v. Commissioner*, a divided panel on the Ninth Circuit held that a partnership filed a valid return sufficient to begin the running of the statute of limitations on assessment when the partnership provided a copy of the partnership's Form 1065 to a Revenue Agent who requested it during audit. The majority held that a delinquent return could be treated as having been validly filed notwithstanding the fact that it was not submitted in the manner provided for in the relevant regulations. Although the taxpayer was a partnership, there is nothing in the court's reasoning or holding that would make the decision inapplicable to cases involving other types of taxpayers.

Endnotes

- 1 See IRC § 7482, which provides that the U.S. Courts of Appeals (other than the U.S. Court of Appeals for the Federal Circuit) have jurisdiction to review the decisions of the Tax Court. There are exceptions to this general rule. See 28 U.S.C. § 1294 (appeals from a U.S. district court are to the appropriate U.S. Court of Appeals); 28 U.S.C. § 1295 (appeals from the U.S. Court of Federal Claims are heard in the U.S. Court of Appeals for the Federal Circuit); 28 U.S.C. § 1254 (appeals from the U.S. Courts of Appeals may be reviewed by the U.S. Supreme Court).
- 2 For example, IRC § 7463 provides special procedures for small Tax Court cases (where the amount of deficiency or claimed overpayment totals \$50,000 or less) for which appellate review is not available.
- 3 28 U.S.C. § 1346(a)(1). See *Flora v. United States*, 362 U.S. 145 (1960), *reh'g denied*, 362 U.S. 972 (1960). See National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 95-96 (Legislative Recommendation: *Expand the Tax Court's Jurisdiction to Hear Refund Cases*).
- 4 IRC § 7422(a).
- 5 The bankruptcy court may only conduct a jury trial if the right to a trial by jury applies, all parties expressly consent, and the district court specifically designates the bankruptcy judge to exercise such jurisdiction. 28 U.S.C. § 157(e).
- 6 See 11 U.S.C. § 505(a)(1) and (a)(2)(A).
- 7 See IRC § 7441.
- 8 IRC §§ 6214, 7476-7479, 6330(d), 6015(e), and 7436.
- 9 IRC § 6213(a). For example, a taxpayer who wishes to contest the validity of an SND has the opportunity to do so in the Tax Court without needing to pay the disputed tax first; in contrast, if the taxpayer wanted to, the taxpayer could also pay the tax and file a suit for refund in another forum, such as a U.S. district court. The taxpayer must generally pre-pay the entire amount in dispute.
- 10 Data compiled by the IRS Office of Chief Counsel (Nov. 1 and Nov. 4, 2022). IRS, Counsel Automated Tracking System, TL-711 and TL-712. Does not include cases on appeal and declaratory judgments.
- 11 For the first time this year, we reviewed opinions issued from October 1, 2021, through September 30, 2022, which is the period referred to as fiscal year (FY) 2022. This marks a departure from prior Annual Reports to Congress, in which we analyzed opinions issued between June 1 and May 31.
- 12 Note that if the SND is addressed to a person outside of the United States, the period for filing a petition with the Tax Court is 150 days from the date of mailing instead of 90 days. See IRC § 6213(a).
- 13 Our analysis does not include cases on appeal and declaratory judgments.
- 14 Many cases are resolved before the court issues an opinion. Some taxpayers reach a settlement with the IRS before trial, while the courts dismiss other taxpayers' cases for a variety of reasons, including lack of jurisdiction and lack of prosecution. Courts can issue less formal "bench opinions," which are not published or precedential. We did not include bench orders and summary judgments in this report.
- 15 IRS response to TAS information request (Nov. 1, 2022) (showing cases petitioned to the Tax Court during FY 2022).
- 16 A fiscal year runs from October 1 to September 30 of the following calendar year.
- 17 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2022.
- 18 IRS response to TAS information request (Oct. 28, 2022). TAS matched this data to information from CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
- 19 See Internal Revenue Manual (IRM) 4.46.6.2.2, Standard Audit Index Number (SAIN) (Dec. 26, 2019).
- 20 In cases of a tie between categories, we listed them in alphabetical sequence. Some opinions resolved multiple substantive tax issues in the same opinion. We removed CDP hearings cases, accuracy-related penalties, and frivolous issues penalties from this list and separately discuss them under *Collection Due Process Hearings (IRC §§ 6320 and 6330)* and *Other Issues, infra*. The total number of individual and business issues in the top ten lists exceeds the total number of opinions we reviewed because if an opinion ruled on a Schedule C self-employment issue and another issue from the individual category, such as filing status, we included the opinion in both the individual and business tallies.
- 21 In cases of a tie between categories, we listed them in alphabetical sequence. Some opinions resolved multiple substantive tax issues in the same opinion. Similarly for this list, we removed CDP cases, accuracy-related penalties, and frivolous issues penalties and separately discuss them under *Collection Due Process Hearings (IRC §§ 6320 and 6330)* and *Other Issues, infra*.

Most Litigated Issues

- 22 IRS response to TAS information request (Oct. 28, 2022). TAS matched this data to information from CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
- 23 Our approach was calculated using IRS SAIN codes designed to consistently track issues for tax administration.
- 24 IRS response to TAS information request (Oct. 28, 2022). TAS matched this data to information from CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
- 25 Statutory adjustments are automatically generated adjustments due to the correct application of the tax law, such as the statutory eligibility requirements (e.g., maximum allowable income) for claiming credits.
- 26 IRS response to TAS information request (Oct. 28, 2022). TAS matched this data to information from CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
- 27 See, e.g., National Taxpayer Advocate 2000 Annual Report to Congress 65, 69, 152, <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/pub2104-2000.pdf>.
- 28 IRS response to TAS information request (Oct. 28, 2022); IRS, CDW, IMF Transaction History table for FY 2022.
- 29 *Id.*
- 30 This year and in previous years, charitable contribution deductions have been classified separately as a Most Litigated Issue category.
- 31 We excluded cases involving charitable deductions as they are counted under other categories. Cases involving charitable deductions are counted under *Charitable Contribution Deductions, supra*.
- 32 IRS response to TAS information request (Oct. 28, 2022); IRS CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
- 33 *Id.*
- 34 See, e.g., National Taxpayer Advocate 2000 Annual Report to Congress 70, <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/pub2104-2000.pdf>.
- 35 See IRS, Whistleblower Office, <https://www.irs.gov/compliance/whistleblower-office> (last visited Dec. 8, 2022).
- 36 See IRC § 7623(b)(4). See also IRM 25.2.2.8.2.2(7), IRC § 7623(b) Claims (May 28, 2020).
- 37 See IRS, Pub. 5241, Fiscal Year 2021 Annual Report IRS Whistleblower Office (Dec. 2021).
- 38 See IRS Notice 2017-10, 2017-4 I.R.B. 544, Syndicated Conservation Easement Transactions. Note that some courts have recently ruled that the IRS lacks the authority to identify a listed transaction in a notice such as Notice 2017-10, but Treasury and the IRS continue to defend Notice 2017-10.
- 39 IRS response to TAS information request (Oct. 28, 2022); IRS, CDW, IMF Transaction History table, and the Examination Operational Automation Database (Nov. 2022).
- 40 *Sadler v. Comm’r*, 113 T.C. 99, 102 (1999) (citation omitted); *Katz v. Comm’r*, 90 T.C. 1130, 1143 (1988) (citations omitted).
- 41 IRC § 6663(b).
- 42 IRC § 6662 also includes (b)(3) through (8), but because those types of accuracy-related penalties were not heavily litigated, we have analyzed only subsections (b)(1) and (2).
- 43 IRS response to TAS information request (Oct. 28, 2022); IRS, CDW, IMF Transaction History table, and the Examination Operational Automation Database (Nov. 2022).
- 44 IRC § 6751(b)(1).
- 45 IRC § 6751(b)(2).
- 46 See S. REP. No. 105-174, at 65 (1998).
- 47 *Chai v. Comm’r*, 851 F.3d 190, 218-19 (2d Cir. 2017) (quoting *Graev v. Comm’r*, 147 T.C. 460 (2016) (Gustafson, J., dissenting)).
- 48 See National Taxpayer Advocate 2019 Annual Report to Congress 149-157 (Most Litigated Issue: Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1_MLI_03_Accuracy.pdf; National Taxpayer Advocate 2018 Annual Report to Congress 447-457 (Most Litigated Issue: Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MLI_01_AccuracyRelatedPenalty.pdf.
- 49 For a legislative recommendation on this topic, see National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 70-72 (Legislative Recommendation: *Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*).
- 50 The Tax Court generally imposes the penalty under IRC § 6673(a)(1). Other courts may impose the penalty under IRC § 6673(b)(1). U.S. Courts of Appeals are authorized to impose sanctions under IRC § 7482(c)(4) or Rule 38 of the Federal Rules of Appellate Procedure, although some appellate-level penalties may be imposed under other authorities.
- 51 “*Sua sponte*” means without prompting or suggestion; on its own motion. BLACK’S LAW DICTIONARY (2nd ed.), <https://thelawdictionary.org/?s=sua+sponte> (last visited Dec. 16, 2022). For conduct that it finds particularly offensive, the Tax Court can choose to impose a penalty under IRC § 6673 even if the IRS has not requested the penalty. See, e.g., *Wells v. Comm’r*, T.C. Memo. 2019-134.
- 52 IRS, CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Dec. 18, 2022).
- 53 IRS, CDW, IMF Transaction History table (FYs 2013-2022). The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, Subtype DU.
- 54 The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, Subtype DU.
- 55 *Id.*
- 56 IRS, Counsel Automated Tracking System; IRS, CDW, IMF Transaction History table (FYs 2010-2021). There were 24 cases with a trial that had CDP issues during FY 2022. We identified 39 CDP case opinions issued during FY 2022. The 39 opinions include cases decided on summary judgment without a trial.
- 57 IRS, Counsel Automated Tracking System. On February 9, 2022, the IRS announced it will temporarily suspend certain notices that may account for part of the decline in CDP notices mailed in FY 2022. IRS, Press Release IR-2022-31, IRS Continues Work to Help Taxpayers; Suspends Mailing of Additional Letters (Feb. 9, 2022), <https://www.irs.gov/newsroom/irs-continues-work-to-help-taxpayers-suspends-mailing-of-additional-letters> (last visited Dec. 16, 2022).

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- 58 IRS, Counsel Automated Tracking System; IRS, CDW, IMF Transaction History table (FYs 2010-2022).
- 59 *Id.*
- 60 Data compiled by IRS Chief Counsel. IRS, Counsel Automated Tracking System, Subtype DU, as of September 30, 2022. These figures do not include cases on appeal.
- 61 National Taxpayer Advocate 2021 Annual Report to Congress 183, 189 (*Most Litigated Issues*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/10/ARC21_Most-Litigated-Issues.pdf.
- 62 Based on data provided by the DOJ to the IRS Office of Chief Counsel (Nov. 14, 2022).
- 63 *Id.*
- 64 Data provided by the DOJ to the IRS Office of Chief Counsel (Nov. 14, 2022). The Tax Division generally only has a record of summons enforcement cases if the IRS Office of Chief Counsel refers the matter to the Tax Division. Under the Justice Manual, the vast majority of summons enforcement cases are referred directly to U.S. Attorney Offices, and the Tax Division does not have a record of those matters. Similarly, the DOJ generally only tracks proceedings to quash a summons filed with taxpayers or third parties if the DOJ Tax Division's attorneys will be appearing in the case. Thus, the information does not reflect the total number of summons enforcement cases filed in FY 2022 but only those for which the DOJ Tax Division opened a matter.
- 65 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708D, TL-709. Inventory pending as of September 30, 2022. Does not include cases on appeal or declaratory judgments.
- 66 *Id.*
- 67 Data compiled by the IRS Office of Chief Counsel (Nov. 1 and Nov. 4, 2022). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2022. Does not include cases on appeal and declaratory judgments.
- 68 See IRC § 7526.
- 69 IRS response to TAS information request (Oct. 3, 2022).
- 70 *Id.*
- 71 *Id.*
- 72 *Id.*
- 73 *Id.*
- 74 "Pro se" means "for oneself; on one's own behalf; without a lawyer." BLACK'S LAW DICTIONARY (2nd ed.), <https://thelawdictionary.org/?s=pro+se> (last visited Dec. 16, 2022).
- 75 Counsel Automated Tracking System, TL-708A. Note that non-attorneys may be admitted to practice before the Tax Court provided they satisfy the requirements in the Tax Court Rules of Practice and Procedure, including passing a written examination.
- 76 *Id.*
- 77 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708A. Inventory pending as of September 30, 2022. Does not include cases on appeal or declaratory judgments. Totals may not add up to 100 percent due to rounding.
- 78 *Id.*
- 79 TAS administers and oversees the grant program through its LITC Program Office.
- 80 See U.S. Tax Court, Clinics & Pro Bono Programs, <https://www.ustaxcourt.gov/clinics.html> (last visited Dec. 8, 2022). The Tax Court continues to invite academic and non-academic tax clinics and bar-sponsored programs to consider participating and representing *pro se* taxpayers.
- 81 See IRC § 7803(a)(3)(C).
- 82 Email from Acting Director of the TAS LITC Program Office (Nov. 10, 2022).
- 83 *Id.*
- 84 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 145-147 (Legislative Recommendation: *Expand the Protection of Taxpayer Rights by Strengthening the Low Income Taxpayer Clinic Program*).
- 85 Email from Acting Director of the TAS LITC Program Office (Nov. 10, 2022).
- 86 *Id.*
- 87 *Id.*
- 88 *Id.*
- 89 See U.S. Tax Court, Press Release (Dec. 18, 2020), <https://ustaxcourt.gov/resources/press/12182020.pdf>; see also Keith Fogg, PROCEDURALLY TAXING BLOG, *DAWSON Continues to Evolve* (Feb. 3, 2022), <https://procedurallytaxing.com/dawson-continues-to-evolve/>.
- 90 See U.S. Tax Court, DAWSON, <https://ustaxcourt.gov/dawson.html> (last visited Dec. 8, 2022); see also Keith Fogg, PROCEDURALLY TAXING BLOG, *Protecting Tax Court Litigants and Revealing Records: A Conundrum for the Tax Court with a Simple Solution* (July 7, 2022), <https://procedurallytaxing.com/protecting-tax-court-litigants-and-revealing-records-a-conundrum-for-the-tax-court-with-a-simple-solution/>; Keith Fogg, PROCEDURALLY TAXING BLOG, *DAWSON Continues to Evolve* (Feb. 3, 2022), <https://procedurallytaxing.com/dawson-continues-to-evolve/>; Maggie Goff and Keith Fogg, TAX ANALYSTS, *Nonparty Remote Electronic Access to Tax Court Records* (May 4, 2020).
- 91 See U.S. Tax Court, DAWSON, <https://ustaxcourt.gov/dawson.html> (last accessed Oct. 27, 2022); see also Keith Fogg, PROCEDURALLY TAXING BLOG, *Protecting Tax Court Litigants and Revealing Records: A Conundrum for the Tax Court with a Simple Solution* (July 7, 2022), <https://procedurallytaxing.com/protecting-tax-court-litigants-and-revealing-records-a-conundrum-for-the-tax-court-with-a-simple-solution/>; Keith Fogg, PROCEDURALLY TAXING BLOG, *DAWSON Continues to Evolve* (Feb. 3, 2022), <https://procedurallytaxing.com/dawson-continues-to-evolve/>; Maggie Goff and Keith Fogg, TAX ANALYSTS, *Nonparty Remote Electronic Access to Tax Court Records* (May 4, 2020).
- 92 IRC § 7461.
- 93 IRC § 7461(b).
- 94 68A Stat. 887, Ch. 736 (1954); Pub. L. No. 98-369, div. A, title IV, § 465(a), 98 Stat. 825 (1984).

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- 95 U.S. Tax Court Rules, Rule 27(b) (Oct. 26, 2020), <https://www.ustaxcourt.gov/rules.html>. The U.S. Tax Court Rule 27(b) grants parties and their counsel remote online access to the entire docket. However, the rule does not grant the public remote electronic access to parties case files on the docket but just to court opinions and court orders. See also Keith Fogg, PROCEDURALLY TAXING BLOG, *Protecting Tax Court Litigants and Revealing Records: A Conundrum for the Tax Court with a Simple Solution* (July 7, 2022), <https://procedurallytaxing.com/protecting-tax-court-litigants-and-revealing-records-a-conundrum-for-the-tax-court-with-a-simple-solution/>; Keith Fogg, PROCEDURALLY TAXING BLOG, *DAWSON Continues to Evolve* (Feb. 3, 2022), <https://procedurallytaxing.com/dawson-continues-to-evolve/>; Maggie Goff and Keith Fogg, TAX ANALYSTS, *Nonparty Remote Electronic Access to Tax Court Records* (May 4, 2020); see also U.S. Tax Court, *Guidance for Petitioners: About the Court*, https://ustaxcourt.gov/petitioners_about.html (last visited Dec. 8, 2022).
- 96 See Keith Fogg, PROCEDURALLY TAXING BLOG, *Protecting Tax Court Litigants and Revealing Records: A Conundrum for the Tax Court with a Simple Solution* (July 7, 2022), <https://procedurallytaxing.com/protecting-tax-court-litigants-and-revealing-records-a-conundrum-for-the-tax-court-with-a-simple-solution/>; Keith Fogg, PROCEDURALLY TAXING BLOG, *DAWSON Continues to Evolve* (Feb. 3, 2022), <https://procedurallytaxing.com/dawson-continues-to-evolve/>; Maggie Goff and Keith Fogg, TAX ANALYSTS, *Nonparty Remote Electronic Access to Tax Court Records* (May 4, 2020).
- 97 See U.S. Tax Court, *Transcript and Copies*, https://ustaxcourt.gov/transcripts_and_copies.html (last visited Dec. 8, 2022).
- 98 If a taxpayer receives an SND and wishes to have the Tax Court hear the case, he or she must file a petition with the Tax Court within 90 days of the date that the SND was mailed (or 150 days if the SND is addressed to a person outside the United States). See IRC § 6213. Note that if the last day of the 90 days (or 150 days) falls on a Saturday, Sunday, or legal holiday, the petition will be timely if filed on the next day that is not a Saturday, Sunday, or legal holiday. See IRC § 7503. See also IRC §§ 6320 and 6330 for the timeframes in which to petition the Tax Court for review of a CDP notice of determination.
- 99 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708B. This includes declaratory judgments. The unreported category includes cases where no statutory notice was attached to the petition. The petition data was provided by Appeals and the IRS Office of Chief Counsel. Data from the IRS Office of Chief Counsel included cumulative data on litigation in all jurisdictions of the United States. Data from Appeals only included data from petitions filed with the Tax Court.
- 100 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708B. This includes declaratory judgments. The unreported category includes cases where no statutory notice was attached to the petition.
- 101 See Most Serious Problem: *Appeals: Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals*, *supra*.
- 102 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708B.
- 103 *Id.*
- 104 *Id.* These dollar amounts may be affected greatly from year to year by frivolous, high-dollar lawsuits. Does not include cases on appeal and declaratory judgments.
- 105 Disputes involving \$50,000 or less can be selected for special, less formal proceedings under IRC § 7463. These are referred to as “small tax” or “S” cases. The Tax Court’s decision in a small tax case is nonreviewable and becomes final 90 days from the date the decision is entered. The Tax Court may remove the S case designation on its own motion or on the motion of any party in the case at any time before the commencement of trial. See T.C. Rules of Practice and Procedure, Rule 171.
- 106 Data compiled by the IRS Office of Chief Counsel (Nov. 1 and Nov. 4, 2022). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2022. Does not include cases on appeal or declaratory judgements. Totals may not add up to 100 percent because of rounding.
- 107 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2021. Does not include cases on appeal or declaratory judgments.
- 108 IRC § 6213(a), (c).
- 109 IRC § 7604(b) (providing that if any taxpayer or third party is summoned to appear, testify, or produce records, the U.S. District Court for the district in which the taxpayer resides or is found has jurisdiction to compel the taxpayer or third party to appear, testify, or produce the records).
- 110 IRC § 7403.
- 111 Refund suits will be discussed separately in this section.
- 112 IRS Data Book FY 2010 through IRS Data Book FY 2020 (Table 25 Delinquent Collection Activities, Fiscal Years); IRS, Activity Report 5000-24 (Oct. 11, 2022); IRS, Activity Report 5000-25 (Oct. 3, 2022).
- 113 See generally IRC § 7422(a).
- 114 See IRC § 6532(a)(1). See also IRM 4.10.11.2(1), Claims for Refund (Sept. 4, 2020).
- 115 IRM 4.10.11.2.16(1), Claims for Refund – Post Examination Appeal Rights (Sept. 29, 2022).
- 116 *Id.* IRM 4.10.11.2.16(2), Claims for Refund – Post Examination Appeal Rights (Sept. 29, 2022). For a discussion of the refund jurisdiction of the district courts and the U.S. Court of Federal Claims, see Chief Counsel Directives Manual (CCDM) 34.1.1, Jurisdiction of the District Courts (Apr. 22, 2021), and CCDM 34.2.1, Jurisdiction of the Court of Federal Claims (Aug. 11, 2004).
- 117 *Flora v. United States*, 362 U.S. 145 (1960).
- 118 See *Flora v. United States*, 362 U.S. 145 (1960), *reh’g denied*, 362 U.S. 972 (1960). See National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 96-98 (Legislative Recommendation: *Repeal Flora: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*); National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 94-95 (Legislative Recommendation: *Expand the Tax Court’s Jurisdiction to Hear Refund Cases and Assessable Penalties*).
- 119 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-712. This includes declaratory judgments.
- 120 *Id.*
- 121 IRS Criminal Investigation, Annual Report 2022, Publication 3583 (Nov. 2022), at 4, <https://www.irs.gov/pub/irs-pdf/p3583.pdf>.

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- 122 *Id.* at 5.
- 123 *Id.* at 6.
- 124 *Id.* at 4.
- 125 *Id.* at 5-6.
- 126 *Id.* at 4.
- 127 U.S. Courts' 2022 Federal Judicial Caseload Statistics, Table D-2, U.S. District Courts – Criminal Defendants Commenced (Excluding Transfers), by Offense. Data is from the 12-month period between March 31, 2021, and March 31, 2022.
- 128 U.S. Courts' 2021 Federal Judicial Caseload Statistics, Table D-2, U.S. District Courts – Criminal Defendants Commenced (Excluding Transfers), by Offense. Data is from the 12-month period between March 31, 2020, and March 31, 2021.
- 129 U.S. Courts' 2022 Federal Judicial Caseload Statistics, Table D-4, U.S. District Courts – Criminal Defendants Disposed of, by Type of Disposition and Offense. Data is from the 12-month period between March 31, 2021, and March 31, 2022.
- 130 *Id.*
- 131 U.S. Courts' 2021 Federal Judicial Caseload Statistics, Table D-4, U.S. District Courts – Criminal Defendants Disposed of, by Type of Disposition and Offense. Data is from the 12-month period between March 31, 2020, and March 31, 2021.
- 132 For further discussion, see National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 70-72 (Legislative Recommendation: *Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*).
- 133 For further discussion, see National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 143-144 (Legislative Recommendation: *Require the IRS to Specify the Information Needed in Third-Party Contact Notices*).
- 134 For further discussion, see National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 56-57 (Legislative Recommendation: *Extend the Time Limit for Taxpayers to Sue for Damages for Improper Collection Actions*). While a claim for damages under IRC § 7433(d)(3) is pending at the administrative level, the two-year period for filing suit in a U.S. district court continues to run. If a taxpayer files an administrative claim during the final six months of the two-year period the taxpayer has to sue, the taxpayer may be forced to file suit in a U.S. district court before the IRS has an opportunity to render a decision on the administrative claim (or else will forfeit the right to do so). This legislative recommendation would eliminate the need to file suit until the IRS has fully considered the claim. If the claim is settled, it would eliminate the need for litigation.
- 135 For further discussion, see National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 104-106 (Legislative Recommendation: *Extend the Deadline for Taxpayers to Bring a Refund Suit When They Have Requested Appeals Reconsideration of a Notice of Claim Disallowance But the IRS Has Not Acted Timely to Decide Their Claims*). If the IRS issues a notice of claim disallowance, the statute of limitations for filing a refund suit runs even if a request for reconsideration is made to Appeals. This discourages taxpayers from seeking administrative resolution of disputed issues because of the risk that their refund claims could become time-barred while the issue is being considered by Appeals. It encourages unnecessary litigation by requiring taxpayers to sue to protect the refund statute of limitations in cases that otherwise could be resolved administratively. This legislative recommendation would toll the statute to file suit while Appeals considers the request to reconsider the notice of claim disallowance.
- 136 For legislative language generally consistent with this recommendation, see Small Business Taxpayer Bill of Rights Act of 2015, H.R. 1828, 114th Cong. § 16 (2015); Small Business Taxpayer Bill of Rights Act of 2015, S. 949, 114th Cong. § 16 (2015); and Eliminating Improper and Abusive IRS Audits Act of 2014, S. 2215, 113th Cong. § 8 (2014).
- 137 For further discussion, see National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 95-96 (Legislative Recommendation: *Expand the Tax Court's Jurisdiction to Hear Refund Cases*).
- 138 For further discussion, see National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 32-33 (Legislative Recommendation: *Provide That "An Opportunity to Dispute" an Underlying Liability Means an Opportunity to Dispute Such Liability in the U.S. Tax Court*).
- 139 For further discussion, see National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 26-28 (Legislative Recommendation: *Provide That Assessable Penalties Are Subject to Deficiency Procedures*).
- 140 When identifying the ten most litigated issues, TAS analyzed federal decisions issued during the fiscal year period beginning on October 1, 2021, through September 30, 2022. For purposes of this section, we used the same period.
- 141 *Boechler v. Commissioner*, 142 S.Ct. 1493 (Apr. 21 2022) (*reversed and remanded*).
- 142 *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner*, 29 F.4th 1066 (9th Cir. 2022) (*reversed and remanded*).
- 143 *Oakbrook Land Holdings, LLC v. Commissioner*, 28 F.4th 700 (6th Cir. 2022).
- 144 *Hewitt v. Commissioner*, 21 F.4th 1336 (11th Cir. 2021).
- 145 See Petition for Writ of Certiorari, *Oakbrook Land Holdings v. Commissioner*, 28 F.4th 700 (6th Cir. 2022).
- 146 *Li v. Commissioner*, 22 F.4th 1014 (D.C. Cir. 2022).
- 147 *Cooper v. Commissioner*, 135 T.C. 70 (2010).
- 148 *Lacey v. Commissioner*, 153 T.C. 146 (2010).
- 149 *Seaview Trading, LLC v. Commissioner*, 34 F.4th 666 (9th Cir. 2022) (*rehearing en banc granted on Nov. 10, 2022*).