

TAX SECTION

State Bar of Texas

OFFICERS:

Alyson Outenreath (Chair)
Texas Tech University
School of Law
1802 Hartford Ave.
Lubbock, Texas 79409-0004
806-742-3990 Ext. 238
806-742-1629 (fax)
alyson.oudenreath@ttu.edu

David E. Colmenero (Chair-Elect)
Meadows, Collier, Reed, Cousins,
Crouch & Ungerman, LLP
901 Main Street, Suite 3700
Dallas, Texas 75202
214-744-3700
214-747-3732 (fax)
dcolmenero@meadowscollier.com

Stephanie S. Schroeffer (Secretary)
Norton Rose Fulbright
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
713-651-5591
713-651-5246 (fax)
stephanie.schroeffer@nortonrosefulbright.com

Catherine C. Scheid (Treasurer)
Law Offices of Catherine C. Scheid
4301 Yoakum Blvd.
Houston, Texas
713-840-1840
713-840-1820 (fax)
ccs@scheidlaw.com

COUNCIL MEMBERS:

Term Expires 2016

Ira Lipstet (Austin)
Melissa Willms (Houston)
Henry Talavera (Dallas)

Term Expires 2017

Lora G. Davis (Dallas)
Robert C. Morris (Houston)
Charolette F. Noel (Dallas)

Term Expires 2018

Sam Megally (Dallas)
Jaime Vasquez (San Antonio)
Chris Goodrich (Houston)

CLE Committee Chair

J. Michael Threet (Dallas)

Government Submissions

Robert Probasco (Dallas)
Henry Talavera (Dallas)

Leadership Academy Program

Daniel Baucum (Dallas)
Christi Mondrik (Austin)

Pro Bono Committee Chair

Juan F. Vasquez, Jr. (Houston/San Antonio)

Publications Editor

Michelle Spiegel (Houston)

Ex Officio

Andrius R. Kontrimas (Houston)
Immediate Past Chair
Professor Bruce McGovern (Houston)
Law School Representative
Abbey B. Garber (Dallas)
IRS Representative
Sarah Pai (Austin)
Comptroller Representative

Andrius R. Kontrimas
Kevin J. Thomason
Cindy Ohlenforst
Jack R. Dugan
Thomas P. Marinis, Jr.
David G. Glickman
Robert C. Taylor

Elizabeth A. Copeland
Clinton Eugene Wolf
John Brusniak
Kathryn Gundy Henkel
W. John Glancy
Lawrence B. Gibbs
R. Gordon Appleman

Tina R. Green
William P. Bowers
R. Brent Clifton
William H. Caudill
Donald J. Zahn
A. T. Blackshear, Jr.
Charles W. Hall

Mary A. McNulty
R. David Wheat
Alan Edward Sherman
John R. Allender
Richard A. Massman
Cecil A. Ray, Jr.

Patrick L. O'Daniel
Jasper G. Taylor III
William David Elliott
Henry D. DeBerry III
Michael L. Cook
James A. Williams

Tyree Collier
Robert V. Gibson
George William Scofield
Peter Winstead
Gerald W. Haddock
Thomas Brorby

Daniel Micciche
William H. Hornberger
Michael G. Frankel
Stanley L. Blend
Gerald W. Ostarch
Robert E. Davis

FORMER CHAIRS OF SECTION

November 6, 2015

Via email to Notice.Comments@irsounsel.treas.gov

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2015-72)
Room 5203
P.O. Box 7602
Ben Franklin Station
Washington, D.C. 20044

RE: Comments on IRS Notice 2015-72 Regarding Proposed
Revenue Procedure to Update Rev. Proc. 87-24

Dear Sirs:

On behalf of the Tax Section of the State Bar of Texas, I am pleased to submit the enclosed response to the request of the Internal Revenue Service in Notice 2015-72 for comments on the proposed revenue procedure which would update Rev. Proc. 87-24, 1987-1 C.B. 720, regarding practices for the administrative appeals process in cases docketed in the United States Tax Court.

THE COMMENTS ENCLOSED WITH THIS LETTER ARE BEING PRESENTED ONLY ON BEHALF OF THE TAX SECTION OF THE STATE BAR OF TEXAS. THE COMMENTS SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS. THE TAX SECTION, WHICH HAS SUBMITTED THESE COMMENTS, IS A VOLUNTARY SECTION OF MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

1414 Colorado Street, Austin, TX 78701
(512) 427-1463 or (800) 204-2222

THE COMMENTS ARE SUBMITTED AS A RESULT OF THE APPROVAL OF THE COMMITTEE ON GOVERNMENT SUBMISSIONS OF THE TAX SECTION AND PURSUANT TO THE PROCEDURES ADOPTED BY THE COUNCIL OF THE TAX SECTION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED AND THE COMMENTS REPRESENT THE VIEWS OF THE MEMBERS OF THE TAX SECTION WHO PREPARED THEM.

We commend the Internal Revenue Service for the time and thought that has been put into preparing the proposed revenue procedure included in IRS Notice 2015-72, and we appreciate being extended the opportunity to participate in this process.

Respectfully submitted,

A handwritten signature in black ink, reading "Alyson Outenreath". The signature is fluid and cursive, with a long horizontal flourish at the end.

Alyson Outenreath, Chair
State Bar of Texas, Tax Section

COMMENTS ON IRS NOTICE 2015-72 REGARDING PROPOSED REVENUE
PROCEDURE UPDATING REV. PROC. 87-24

These comments on the proposed revenue procedure (“Comments”) are submitted on behalf of the Tax Section of the State Bar of Texas. The principal drafter of these Comments was Richard L. Hunn, Chair of the Tax Controversy Committee. The Committee on Government Submissions (COGS) of the Tax Section of the State Bar of Texas has approved these Comments. Mary McNulty reviewed the Comments and made substantive suggestions on behalf of COGS. Robert D. Probasco, Co-Chair of COGS, also reviewed these Comments.

Although members of the Tax Section who participated in preparing these Comments have clients who would be affected by the principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

Contact Person:

Richard L. Hunn
richard.hunn@nortonrosefulbright.com
(713) 651-5293
Norton Rose Fulbright US LLP
1301 McKinney, Suite 5100
Houston, TX 77010-3095

Date: November 6, 2015

These Comments are provided in response to the Internal Revenue Service's (the "IRS") request in Notice 2015-72 for comments on a proposed revenue procedure (the "Proposed Revenue Procedure") that would update Rev. Proc. 87-24, 1987-1 C.B. 720, regarding practices for the administrative appeals process in cases docketed in the United States Tax Court (the "Tax Court"). The Tax Section thanks the Internal Revenue Service for the opportunity to provide input in this process. We largely agree with the proposals contained in the Proposed Revenue Procedure and believe that they represent constructive recommendations to improve the Internal Revenue Service's procedures for handling administrative appeals of cases docketed in the Tax Court. However, there are certain areas where we recommend some changes to the proposed procedures, and we have provided our perspective and comments on those areas below.

Cases in Which the Notice of Deficiency Was Issued by Appeals

In those cases in which the notice of deficiency was issued by the IRS Office of Appeals ("Appeals"), we recommend that the language in section 2.01 of Rev. Proc. 87-24 which gives the IRS Office of Chief Counsel ("Counsel") the discretion to refer the case to Appeals also be included in the Proposed Revenue Procedure. This could be accomplished by adding that language, with some minor modifications, to the end of section 3.02 of the Proposed Revenue Procedure, as follows:

In other cases in which Appeals issued the statutory notice of deficiency or made the determination, Counsel in its discretion may refer the case to Appeals unless Counsel determines that there is little likelihood that a settlement of all or a part of the case can be achieved in a reasonable period of time.

This sentence would allow for other circumstances in which Counsel believes that a referral to Appeals would be beneficial. This could benefit the overall process by allowing for circumstances where a referral could conserve the parties' resources and result in a settlement.

Time Limits for Appeals' Jurisdiction Over Cases

For small tax cases (under I.R.C. § 7463), section 3.07 the Proposed Revenue Procedure would require Appeals to return the case to Counsel six months after the case is received by Appeals, or earlier, if necessary so that it is received by Counsel no later than three weeks prior to the date of the calendar call. This is similar to the procedure in section 2.03 of Rev. Proc. 87-24, which applies to "S" cases (i.e., small tax cases) or cases involving deficiencies of \$10,000 or less, and requires Appeals to return cases to Counsel after six months, or, if earlier, one month before calendar call for a regular case or 15 days before calendar call for an "S" case.

In our experience, the six-month time limit has not been followed in practice, and the vast majority of small tax cases are settled by Appeals well after they have appeared on a trial calendar. We recommend that the six-month time limit be deleted and that Appeals simply be required to return small tax cases to Counsel no later than three weeks prior to the date of the calendar call or earlier, as provided in Section 3.14 of the Proposed Revenue Procedure, if

Counsel requests that Appeals return the case (including settlement authority) to Counsel because needed for trial preparation.

For cases other than small tax cases, section 3.07 of the Proposed Revenue Procedure would require Appeals to return the case to Counsel when Appeals concludes that the case is not susceptible to settlement or within 10 days after the case appears on a trial calendar, whichever is sooner. This is analogous to section 2.02 of Rev. Proc. 87-24, which requires Appeals to return cases involving deficiencies of \$10,000 or more when no progress toward settlement is made or when the case appears on a trial calendar.

In our experience, most such cases in practice remain under Appeals consideration (i.e., per an extension of time for Appeals consideration as agreed with Counsel) and are settled well after the case appears on a trial calendar. In comments submitted on September 11, 2015, by Counsel to the Tax Court regarding its Rules of Practice and Procedure, Counsel recommended that notification of the placement of cases on a trial calendar be provided to the parties one month earlier, so that the notification is provided a full six months prior to the calendar call. (In our comments to the Tax Court, we agreed with that proposal.) We believe the Tax Court's adoption of such a proposal would allow for a one-month period of time after a case has been placed on a trial calendar for Appeals to settle the case before trial deadlines become imminent, and without Appeals having to arrange for an extension of time from Counsel. In the event the Tax Court adopts that proposal, we recommend that section 3.07 of the Proposed Revenue Procedure be modified to provide that in cases other than small tax cases Appeals be required to return the case when Appeals concludes that the case is not susceptible to settlement or within one month after the case appears on a trial calendar, whichever is sooner.

Section 3.07 provides that in all cases Counsel and Appeals may agree to extend the time for Appeals to consider a case if settlement appears reasonably likely. We agree with that provision.

Conclusion

We appreciate the opportunity to comment on the Proposed Revenue Procedure and to be a part of the IRS's efforts to update its procedures regarding administrative appeals of cases docketed in the Tax Court.