

CC-2015-006

June 30, 2015

Subject: Venue for Appeals from Decisions of the Tax Court **Cancel Date:** Effective until further notice

Purpose

This Notice provides guidance to Chief Counsel attorneys about appellate venue for collection due process, innocent spouse, interest abatement, and other non-deficiency cases in light of the decision in *Byers v. Commissioner*, 740 F.3d 668 (D.C. Cir. 2014).

Background

In 1966, Congress amended section 7482(b), which specifies venue for appellate review of Tax Court decisions. The amendment provided that, unless the parties stipulate otherwise, cases involving “redeterminations of tax liability” are appealable to the circuit in which the petitioner’s legal residence, principal place of business, or principle office or agency is located. The phrase “redetermination of tax liability” reflected the extent of the Tax Court’s jurisdiction at the time of the amendment: deficiency cases under section 6213 and transferee and fiduciary liability cases under section 6901. The flush language provided that the Court of Appeals for the District of Columbia may review Tax Court decisions in cases to which no subparagraph of section 7482(b)(1) applies.

Since 1966, Congress has expanded the Tax Court’s jurisdiction and, in doing so, added several case-specific venue provisions to section 7482(b).¹ See sections 7482(b)(1)(C)–(F) and

¹ Section 7482(b) currently provides:

(b) VENUE.—

(1) IN GENERAL.—Except as otherwise provided in paragraphs (2) and (3), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner,

(B) in the case of a corporation seeking redetermination of tax liability, the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any judicial circuit, then the office to which was made the return of the tax in respect of which the liability arises,

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(b)(3). But Congress has not added specific venue provisions for every new type of case within the Tax Court's expanded jurisdiction, including Collection Due Process (CDP) cases brought under section 6330, innocent spouse cases brought under section 6015, and abatement of interest cases brought under section 6404(h). Innocent spouse and interest abatement cases involve relief from liability and so arguably should not be categorized as redeterminations of liability. Depending on the issues raised in a CDP case, the case may or not involve liability. The argument has been made that some of these post-1966 categories of cases should be appealed to the D.C. Circuit under the flush language of section 7482(b)(1).

Notwithstanding the flush language, it has been the longstanding practice of taxpayers and the government to appeal CDP, innocent spouse, and interest abatement cases to the circuit of the petitioner's legal residence, principal place of business, or principal office or agency. The government has taken the position that Congress intended the same venue rules that apply to deficiency and transferee cases to apply to these newer categories of cases. Additionally, these cases generally involve the taxpayer's obligation to pay the underlying tax liability.

The Tax Court has also followed this approach. Under the rule established in *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971), the Tax Court follows the precedent of the circuit court to which the parties have the right to appeal. For non-liability

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- (C) in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer,
 - (D) in the case of an organization seeking a declaratory decision under section 7428, the principal office or agency of the organization,
 - (E) in the case of a petition under section 6226, 6228(a), 6247, or 6252, the principal place of business of the partnership, or
 - (F) in the case of a petition under section 6234(c)—
 - (i) the legal residence of the petitioner if the petitioner is not a corporation, and
 - (ii) the place or office applicable under subparagraph (B) is the petitioner is a corporation.

If for any reason no subparagraph of the preceding sentence applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court or as of the time the petition seeking a declaratory decision under section 7428 or 7476 or the petition under section 6226, 6228(a), or 6234(c) was filed with the Tax Court.

- (2) BY AGREEMENT.—Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary and the taxpayer by stipulation in writing.
- (3) DECLARATORY JUDGMENT ACTIONS RELATING TO STATUS OF CERTAIN GOVERNMENTAL OBLIGATIONS.—In the case of any decision of the Tax Court in a proceeding under section 7478, such decision may only be reviewed by the Court of Appeals for the District of Columbia.

cases, the Tax Court has consistently followed the precedents of the regional circuits rather than the D.C. Circuit.

In *Byers v. Commissioner*, the D.C. Circuit rejected the government's approach to venue in non-liability CDP cases. *Byers* involved a taxpayer who was precluded from challenging his underlying tax liability. The taxpayer petitioned the Tax Court under section 6330(d)(1) after the Office of Appeals issued a notice of determination sustaining a proposed levy. The Tax Court sustained the determination and the taxpayer filed an appeal in the D.C. Circuit. The government moved to transfer venue to the Eighth Circuit because the taxpayer's legal residence was in that circuit at the time he petitioned the Tax Court.

The D.C. Circuit denied the motion, holding that venue was proper in the D.C. Circuit under the plain language of section 7482(b)(1) because the taxpayer's tax liability was not at issue. The court acknowledged that some CDP cases might involve challenges to the tax liability as well as collection issues. In those cases, the court stated that it presumed venue would be in the appropriate regional circuit. *Byers*, 740 F.3d at 676. The court also acknowledged that it had "no occasion to decide . . . whether a taxpayer who is seeking review of a CDP decision on a collection method may file in a court of appeals other than the D.C. Circuit if the parties have not stipulated to venue in another circuit." *Id.* at 677.

Litigation Guidelines

The D.C. Circuit is the only court of appeals to have held that the proper venue for an appeal of a non-liability CDP case that is not enumerated in section 7482(b) is the D.C. Circuit. In litigating Tax Court cases, Chief Counsel attorneys should continue to assert the Office's longstanding position that, for purposes of the *Golsen* rule, venue generally lies in the circuit of the taxpayer's legal residence, principal place of business, or principal office or agency, regardless of whether the issues in the case involve liability.² In CDP cases in which liability is at issue, Chief Counsel attorneys should also argue, in the alternative, that under the rationale of *Byers*, venue lies in the regional circuit.

When evaluating appellate venue after a taxpayer files a notice of appeal, if the taxpayer appeals a non-liability case to the D.C. Circuit, and the case is not enumerated in section 7482(b), Chief Counsel attorneys should not recommend objecting to venue since *Byers* is controlling in the D.C. Circuit. If a taxpayer appeals a non-liability case to the proper regional circuit, Chief Counsel attorneys should likewise not object to venue as the taxpayer's choice of venue is consistent with our position.

These guidelines do not apply, however, to whistleblower cases under section 7623(b)(4) and disclosure cases under sections 6110(d)(3), (f)(3), (f)(4), or (h)(4). In whistleblower and

² Note that our Office's position is that issues raised in a CDP case concerning the validity of an assessment, the assessment or collection statutes of limitation, or other procedural requirements for administrative collection do not involve liability. See CC-2014-002, *Proper Standard of Review for Collection Due Process Determinations* (2014).

disclosure cases, the government has taken the position that venue lies in the D.C. Circuit. As these cases do not involve any issues bearing on the taxpayer's obligation to pay the underlying tax liability, they are distinguishable from the other categories of cases subject to Tax Court jurisdiction. Thus, in whistleblower and disclosure cases, Chief Counsel attorneys should continue to assert the government's position that venue lies in the D.C. Circuit.

If Chief Counsel attorneys have any questions about appellate venue, they should contact Branch 3 or 4 in Procedure & Administration.

/s/

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