

**DESCRIPTION OF H.R. 5349,
THE “TAX COURT IMPROVEMENT ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for September 17, 2025, of H.R. 5349, the “Tax Court Improvement Act.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5349, the “Tax Court Improvement Act”* (JCX-40-25), September 15, 2025. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. Authorization of Subpoenas Before Hearings to Facilitate Settlements

Present Law

The United States Tax Court (“Tax Court”) has authority to issue subpoenas to, among other things, compel “the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing.”² The Tax Court has interpreted this provision to mean that it may sign a subpoena requiring a third party to produce materials only at a scheduled hearing or deposition, but not otherwise in the course of pretrial discovery.³

Description of Proposal

The proposal authorizes the Tax Court to sign subpoenas requiring any litigating party or any third party to produce books, papers, documents, electronically stored information, or tangible things from any place in the United States for purposes of discovery or evidence, whether or not in connection with a scheduled hearing.

Effective Date

The proposal is effective on the date of enactment.

² Sec. 7456(a)(1).

³ See Tax Court Rules of Practice and Procedure Rule 147(a)(1)(B) (“Any command to produce documents, electronically stored information, or tangible things must be included in a subpoena commanding attendance at a deposition, hearing, or trial.”); Order, *Johnson v. Commissioner*, No. 17324-18 (T.C. Dec. 26, 2019). The Tax Court may be unable to unilaterally liberalize its third-party subpoena authority by amending Rule 147, due to the plain meaning of the term “hearing.” See “Hearing,” *Black’s Law Dictionary* (11th ed. 2019) (“A judicial session, usu. open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying . . .”).

B. Authorization of Special Trial Judges to Hear Additional Cases and Address Contempt

Present Law

Special trial judge case assignments

The chief judge of the Tax Court is authorized to appoint special trial judges.⁴ The chief judge may assign special trial judges to hear the following types of proceedings:⁵ (1) declaratory judgment proceedings, (2) certain cases where the amount in dispute does not exceed \$50,000 for any taxable year, period, or event, and the taxpayer elects special procedures and lack of appeal rights,⁶ (3) deficiency cases in which neither the deficiency for any taxable year, period, or event nor the amount of any claimed overpayment exceeds \$50,000, (4) collection due process cases to review a lien or levy action,⁷ (5) proceedings to determine whether an individual is an employee for purposes of an employer's employment tax liabilities, if the amount of tax in dispute does not exceed \$50,000 for each tax period at issue and the taxpayer agrees to special procedures,⁸ (6) appeals of an Internal Revenue Service (IRS) whistleblower award determination,⁹ and (7) any other proceeding designated by the chief judge. However, with respect to proceedings designated by the chief judge but not specifically enumerated, a special trial judge may not independently render the Tax Court's decision.¹⁰ Rather, one of the Court's presidentially appointed judges may adopt the special trial judge's recommendation.

Punishment for contempt of the court

The Tax Court is authorized to punish with a fine or imprisonment the following types of contempt of the court: obstruction of justice, misbehavior of the Tax Court's officers in their official transactions, and disobedience of or resistance to its orders.¹¹ Special trial judges are not specifically authorized to order punishment for contempt of the court.

Description of Proposal

The proposal authorizes the Tax Court's special trial judges to hear any proceeding within the Tax Court's jurisdiction if the parties so consent and if such hearing is authorized by

⁴ Sec. 7443A(a).

⁵ Sec. 7443A(b).

⁶ See sec. 7463.

⁷ See secs. 6320, 6330.

⁸ See sec. 7436(c).

⁹ See sec. 7623(b).

¹⁰ Sec. 7443A(c).

¹¹ Sec. 7456(c).

rules to be promulgated by the Tax Court for the purpose of implementing the proposal. The proposal provides that a special trial judge may independently render the Tax Court's decision in any such proceeding.

The proposal authorizes special trial judges to order punishment for contempt of the court of the sort presently punishable by the Tax Court. However, the punishment ordered by a special trial judge may not exceed the maximum fine or prison term for a Class C misdemeanor. Currently such maximum penalties are \$5,000 for a fine¹² and 30 days for imprisonment.¹³ The proposal is not to be construed to limit a special trial judge's authority to order sanctions under any other statute or statutorily authorized Tax Court rule.¹⁴

Effective Date

The proposal is generally effective on the date of enactment. The authorization of special trial judges to hear proceedings and render the Tax Court's decision in cases where the parties consent and the Tax Court's rules so provide is effective upon the Tax Court's adoption of such rules.

¹² 18 U.S.C. sec. 3571(b)(6).

¹³ 18 U.S.C. sec. 3581(b)(8).

¹⁴ See, e.g., Tax Court Rules of Practice and Procedure Rule 104(c) (providing that in certain cases where a party disobeys Court discovery orders, the Court may order certain sanctions, including payment of the other party's reasonable expenses caused by the disobedience).

C. Disqualification of Judges and Special Trial Judges

Present Law

The Tax Court is directed to prescribe rules establishing procedures for filing, investigating, and resolving complaints regarding the conduct of any judge or special trial judge.¹⁵ The Tax Court has issued Rules for Judicial Conduct and Disability Proceedings.¹⁶ However, no statute or Tax Court rule specifically requires Tax Court judges or special trial judges to recuse themselves in any particular situations.¹⁷ At least one court has indicated that parties litigating in the Tax Court may force recusal of a judge only in cases where the due process clause of the Constitution so requires.¹⁸

Description of Proposal

The proposal applies to the Tax Court's judges and special trial judges the mandatory recusal provisions applicable to U.S. district and appellate judges.¹⁹ Those provisions require judges to recuse themselves in any proceeding in which their impartiality might reasonably be questioned.²⁰ Those provisions also require judges to recuse themselves in the following circumstances, among others (and the litigating parties may not agree to waive recusal in such circumstances):²¹ (1) where they have a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (2) where they or a colleague previously worked on the matter in private practice; (3) where they worked on the matter as a government employee; (4) where they know that they, or their spouse or minor child residing in their household, have a financial interest in the controversy; and (5) where they, their spouse, or a person within the third degree of relationship to either of them (or such person's spouse) is a party to, lawyer in, or likely material witness in the proceeding. The provisions also require judges to inform themselves about their personal and fiduciary financial interests and to make a reasonable effort to inform themselves about the personal financial interests of their spouse and minor children residing in their household.²²

¹⁵ Sec. 7466.

¹⁶ The rules are available at <https://www.ustaxcourt.gov/jcdp/> (last visited September 12, 2025).

¹⁷ See *Nobles v. Commissioner*, 105 F.3d 436, 438 (9th Cir. 1997).

¹⁸ *Ibid.*

¹⁹ See 28 U.S.C. sec. 455.

²⁰ 28 U.S.C. sec. 455(a).

²¹ 28 U.S.C. sec. 455(b), (e).

²² 28 U.S.C. sec. 455(c).

Effective Date

The proposal is effective on the date of enactment.

D. Clarification of Tax Court Jurisdiction to Apply Equitable Tolling in Deficiency Cases

Present Law

The 90- or 150-day deadline for deficiency petitions

Once the IRS determines a deficiency in a taxpayer's liability for income tax, gift tax, estate tax, or certain excise taxes and mails a notice of deficiency to the taxpayer's last known address, generally the taxpayer has 90 days (150 days if the notice is addressed to a person outside the United States) to file a petition with the Tax Court to contest the deficiency determination.²³ If the taxpayer fails to file a petition in that period, the IRS may begin collection action for the unpaid liability, and generally the taxpayer's only remaining option for judicial review of the liability amount is to pay the asserted liability, file a claim for credit or refund with the IRS, and, if such claim is denied or is not acted upon within six months, file suit in a U.S. district court or the Court of Federal Claims.²⁴

Until recently, the Tax Court and the U.S. courts of appeal consistently held that the taxpayer's meeting of the 90- or 150-day deadline is a prerequisite for the Tax Court's jurisdiction over a deficiency dispute and that the deadline may not be extended even on grounds of equity—that is, the deadline is not subject to “equitable tolling.”²⁵ According to the Supreme Court: “[E]quitable tolling pauses the running of, or ‘tolls,’ a [period] of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action.”²⁶

In 2022, the Supreme Court ruled that the 30-day deadline for taxpayers to file a Tax Court petition to contest an IRS notice of determination to proceed with a lien or levy action²⁷ is not a jurisdictional deadline and is subject to equitable tolling.²⁸ The Supreme Court stated that

²³ Sec. 6213(a). There are at least four statutory exceptions to the 90- or 150-day rule. First, the 90- or 150-day period is extended, if necessary, so that the final day of the period does not fall on a Saturday, a Sunday, or a legal holiday in the District of Columbia. Sec. 6213(a). Second, a taxpayer may file a petition after the 90- or 150-day period if the filing date is on or before the deadline specified by the IRS in the notice of deficiency and that deadline is after the statutory deadline. Sec. 6213(a). Third, the running of the filing period is suspended while the taxpayer is precluded from filing a Tax Court petition due to an ongoing bankruptcy case, and for 60 days thereafter. Sec. 6213(f)(1). Fourth, the running of the filing period for a petition to contest certain excise tax deficiency determinations is suspended for any period during which the IRS extends the time allowed the taxpayer for correcting the tax-triggering event. Sec. 6213(e).

²⁴ See secs. 6213(a), 7422, 6532(a).

²⁵ See *Hallmark Rsch. Collective v. Commissioner*, 159 T.C. 126, 153–63 (2022).

²⁶ *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014).

²⁷ See sec. 6330(d)(1).

²⁸ *Boechler, P.C. v. Commissioner*, 596 U.S. 199 (2022).

a filing deadline is jurisdictional (and so cannot be equitable tolled) only if Congress “clearly states” that it is.²⁹

After the Supreme Court’s 2022 decision, the Tax Court reconsidered the 90- or 150-day deadline for deficiency petitions and reaffirmed its longstanding position that the deadline is jurisdictional.³⁰ However, the U.S. courts of appeal for the second, third, and sixth circuits have since reversed their precedent and held that the deficiency petition deadline is not jurisdictional and is subject to equitable tolling.³¹ Since the Tax Court follows the relevant precedent of the U.S. court of appeal to which the taxpayer’s case would be appealable,³² the Tax Court currently will consider a motion for equitable tolling when a petitioner misses the 90- or 150-day deficiency petition deadline and the petitioner’s case would be appealable to the second, third, or sixth circuits.

Effects of petition dismissal

Any dismissal by the Tax Court of a deficiency petition (for instance, due to the petitioner’s failure to state a legally cognizable claim or to prosecute the case) is generally treated by statute as the Tax Court’s decision that the taxpayer has a deficiency in the amount determined in the notice of deficiency.³³ The only exceptions are when (1) the Tax Court cannot discern from the record the deficiency amount determined by the IRS, or (2) the dismissal is for lack of jurisdiction.³⁴ Otherwise, a dismissal has *res judicata* effect, meaning that the taxpayer may not sue for a refund in a U.S. district court or the Court of Federal Claims after paying the disputed tax liability.³⁵ In effect, the taxpayer loses the ability to litigate the deficiency determination on the merits (unless the applicable U.S. court of appeal finds that the Tax Court’s dismissal was erroneous). The statutory rule precludes a taxpayer who receives a notice of deficiency and files a petition in the Tax Court from later choosing to pay the tax and litigate the matter in a different Federal court (for instance, in order to have the case tried by jury).³⁶

²⁹ *Ibid.* at 203.

³⁰ *Hallmark, supra*; *Sanders v. Commissioner*, 161 T.C. 112 (2023).

³¹ *Oquendo v. Commissioner*, No. 24-1205 (6th Cir. Aug. 25, 2025); *Buller v. Commissioner*, No. 24-1557 (2d Cir. Aug. 14, 2025); *Culp v. Commissioner*, 75 F.4th 196 (3d Cir. 2023).

³² See *Golsen v. Commissioner*, 54 T.C. 742, 757 (1970). Generally, a Tax Court decision is appealable to the circuit in which the petitioner’s legal residence at the time of filing the Tax Court petition was located. See sec. 7482(b).

³³ Sec. 7459(d).

³⁴ *Ibid.*

³⁵ See sec. 6512(a); *Hallmark, supra*, at 145.

³⁶ See, e.g., *Estate of Ming v. Commissioner*, 62 T.C. 519 (1974).

Description of Proposal

The proposal explicitly grants the Tax Court jurisdiction to toll the 90- or 150-day period for filing a petition contesting a notice of deficiency in cases where the Court determines that equitable tolling is warranted. Accordingly, when a deficiency petition is filed beyond the 90- or 150-day deadline and none of the other statutory exceptions apply, the Tax Court will consider a motion for equitable tolling, regardless of to which U.S. court of appeals its decision is appealable.

The proposal amends the statutory rule that any dismissal by the Tax Court of a deficiency petition is generally treated as the Tax Court's decision that the taxpayer has a deficiency in the amount determined in the notice of deficiency. The proposal exempts from this rule any dismissal by the Tax Court solely on the grounds that the Court has determined that equitable tolling does not apply to extend the 90- or 150-day deadline for filing the petition. Accordingly, a taxpayer who files a deficiency petition past the deadline and whose circumstances do not merit equitable tolling generally may still pay the disputed tax, sue for a refund in a U.S. district court or the Court of Federal Claims, and litigate the tax liability on the merits.

Effective Date

The proposal is effective for Tax Court petitions filed after the date of enactment. The proposal's amendment to the Tax Court's jurisdiction shall not be construed to create any inference regarding the Tax Court's jurisdiction over any petition filed on or before the date of enactment.