

Tax Court Discussion and Tutorial



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Tax Court Petitions Available

Excerpt from the Tax Court Petition shows the various situations that Tax Court has jurisdiction over. We are going to limit this discussion to **Notice of Deficiency (NOD)**.

PETITION

1. Please check the appropriate box(es) to show which IRS NOTICE(s) you dispute:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Notice of Deficiency | <input type="checkbox"/> Determination of Worker Classification* |
| <input type="checkbox"/> Notice of Determination Concerning Collection Action | <input type="checkbox"/> Notice of Determination Concerning Your Request for Relief From Joint and Several Liability* |
| <input type="checkbox"/> Notice of Final Determination Not to Abate Interest* | |

*Please see the Court's Web site, www.ustaxcourt.gov, or information booklet for additional information if (1) you filed a claim for interest abatement or requested relief from joint and several liability, and the IRS has not made a determination, or (2) the petition involves a worker classification case.

NOD Required to Petition Tax Court

Our discussion will focus on

Notice of Deficiency

Received as a result of:

- CP2000 Notice
- Correspondence Audit
- Office Audit

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NOD Required to Petition Tax Court

Taxpayer **must** receive a

Notice of Deficiency

BEFORE a petition to Tax Court can be filed.

The NOD - often called the **Ticket to Tax Court**;

NOD is often called the **90-day letter** since the taxpayer generally has 90 days to respond.

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Redacted Notice of Deficiency



Department of the Treasury
Internal Revenue Service
Small Business and Self-Employed
801 Broadway MDP 12
Nashville TN 37203

CERTIFIED MAIL

TOMMY & TAMMY TAXPAYER
123 MAIN STREET
ATLANTA, GA 30305

Date:

JUL 15 2013

Taxpayer Identification Number:
123-44-5555

Form:
1040

Person to Contact:
S Hobson

Contact Telephone Number:
615-250-5457

Contact Fax Number:
615-250-5796

Employee Identification Number:
342199

Last Day to File a Petition With the
United States Tax Court:

92 Days

| Tax Year Ended: | December 31, 2010 | December 31, 2011 | |
|-------------------------------|-------------------|-------------------|---|
| Deficiency: | | | |
| Increase in tax | \$2,608.00 | \$5,526.00 | |
| Penalties or Additions to Tax | | | |
| IRC 6662(a) | 521.60 | 1,105.20 | 5 |

OCT 15 2013

SSLH Rule

Saturday, Sunday, Legal Holiday

Taxpayers have 90-ish days from the beginning date on the Notice of Deficiency to petition Tax Court.

The time period is counted from the initial date plus 90 days using the SSLH Rule.

In this example, the 90th day falls on a Sunday and the Monday is a Federal Holiday, Columbus Day. Thus, the last day to petition Tax Court is Oct 15, the 92nd day.

Redacted Notice of Deficiency



Department of the Treasury
Internal Revenue Service
Small Business and Self-Employed
801 Broadway MDP 12
Nashville TN 37203

CERTIFIED MAIL

TOMMY & TAMMY TAXPAYER
123 MAIN STREET
ATLANTA, GA 30305

July 15, 2013 + 90 days = Oct 13, Sunday
Oct 14 is a federal holiday (Columbus Day)
Oct 15, Tuesday is the 92nd day.

Date:

JUL 15 2013

Taxpayer Identification Number:

123-44-5555

Form:

1040

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| | | | |
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| Deficiency: | | | |
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| Penalties or Additions to Tax | | | |
| IRC 6662(a) | 521.60 | 1,105.20 | 7 |

When is a Notice of Deficiency Issued ?

NOD is issued when there is a dispute over the amount of a proposed tax Assessment.

Typical triggers for a Stat Notice
(Statutory Notice of Deficiency):

- CP2000 – Unagreed
- Audit - Unagreed

Tax Court established under Article I of the Constitution

The United States Tax Court is a Federal Trial Court of record established by Congress under Article I of the [U.S. Constitution](#). When the Commissioner of Internal Revenue has determined a tax deficiency, the taxpayer may dispute the deficiency in the Tax Court **before** paying any disputed amount.

Dispute Tax Liability BEFORE it is PAID.

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Origins of Tax Court

The court has its origins in the Bureau of Tax Appeals, an executive agency established in **1924** (43 Stat. 336, 338) to deal with the growing number and complexity of disputes over tax liability following the adoption and expansion of the federal income and profits taxes.

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Taxpayer Files A Tax Court Petition

The rule of the Tax Court is that the taxpayer sues the “Commissioner of Internal Revenue” with the taxpayer as “petitioner” and the Commissioner as “respondent”.

\$60 Filing Fee

Taxpayer = Petitioner

Commissioner = Respondent

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Who Can Assist a Taxpayer in Preparing a Petition ?

The traditional answer seems to depend on whom you ask.

Since all the information necessary to file a Tax Court Petition is available with the exception of two questions, some will liken it to assisting a taxpayer to prepare a petition much like tax professionals prepare a tax return and transcribe the taxpayer’s information to the form.

Answers range from no one (Taxpayer Pro Se) to anyone to only a lawyer or USTCP EA or USTCP CPA.

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Who Can Assist a Taxpayer in Preparing a Petition ?

According to Tax Court Rule 33 (excerpt on the following slide), the signer of the petition has read the petition, understands it and believes it is well-grounded in fact.

Tax Court Rule 33 does NOT specify the preparer of the petition.

I interpret Tax Court Rule 33 to say that anyone can prepare the petition as long as the petitioner has read it and understands it before he signs it.

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Tax Court Rule 33 Signing of Pleading

33 (b) Effect of Signature: The signature of counsel or a party constitutes a certificate by the signer that the signer has read the pleading; that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

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Taxpayer Received Notice of Deficiency – Now What ?

The Notice actually has some good advice as the excerpt below illustrates:

If you wish to challenge this determination

If you want to challenge this determination in court before making any payment, you have 90 days from the date of this letter (150 days if this letter is addressed to you outside of the United States) to file a petition with the United States Tax Court to reconsider the deficiency.

You can get a copy of the rules for filing a petition and a petition form by writing to the following address:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

- The Tax Court has a simplified procedure for small tax cases when the dispute for each tax year is \$50,000 or less.
- If you use this simplified procedure, you cannot challenge the Tax Court's decision. You can get information on the simplified procedure for small cases from the Tax Court by writing to the court at the address above or from the court's internet site at www.ustaxcourt.gov.
- If you file a petition for multiple tax years and the dispute for any one or more of the tax years exceeds \$50,000, this simplified procedure is not available to you.

U.S. Tax Court Web Site

Google US Tax Court to get to their Web Site

Or go to: <https://www.ustaxcourt.gov>

U.S. Tax Court

United States Tax Court, 400 Second Street, NW, Washington, DC 20217 Telephone: 202-521-0700

Tuesday, October 2, 2018

Welcome

U.S. Tax Court Warning about Tax Scams:

The U.S. Tax Court has issued a warning about tax scams concerning unsolicited phone calls, emails, or other communications from individuals fraudulently claiming to be from the Tax Court, Internal Revenue Service (IRS), or other Federal government agencies and making demands such as for your appearance or immediate payment by money order, gift card, debit card, or other means to settle a tax debt. Please do not click links in any unsolicited messages purporting to be from one of these entities. See the [warning](#).

Now

- » In Memory of Judge David Laro. See the [Press Release](#).
- » Chief Judge Marilee S. Foley announced the retirement of Judge Carolyn P. Chuchi. See the [Press Release](#).
- » On September 6, 2018, the Court announced disciplinary action; see the [Press Release](#). For descriptions of prior disciplinary actions, please refer to [earlier press releases](#).
- » The Tax Court has issued a press release announcing the date and time of the 2018 written exam for admission to practice for applicants other than attorneys at law. See the [Press Release](#).
- » The Tax Court has announced interim and proposed amendments to its Rules of Practice and Procedure. See the [Press Release](#).

[Access](#)

NEED HELP?
TAXPAYER INFORMATION

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U.S. Tax Court Web Site

Tabs Include:

- Today's Opinions
- Opinions Search
- Orders
- Docket Inquiry
- Final Status Report
- eAccess
- Forms
- Judges
- Rules
- Press Releases
- Telephone Numbers
- Fees / Charges
- Taxpayer Information
- Clinics / Student Practice
- Calendar Call
- Help

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U.S. Tax Court Rules PDF

This 321 Page PDF is available for reference.

*Rules of
Practice & Procedure*

*United States
Tax Court*



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U.S. Tax Court Web Site

Google **US Tax Court** to get to their Web Site

Or go to: <https://www.ustaxcourt.gov>

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NEED HELP? TAXPAYER INFORMATION

U.S. Tax Court Web Site

Great Resources for Taxpayers wishing to file a petition.



Taxpayer Information: Introduction

Please direct any questions or comments regarding our Taxpayer Information section to info@ustaxcourt.gov.

- INTRODUCTION
- ABOUT THE COURT
- STARTING A CASE
- BEFORE TRIAL
- DURING TRIAL
- AFTER TRIAL
- GLOSSARY
- VIDEO



INTRODUCTION

This guide provides information, but not legal advice, for individuals who represent themselves before the Tax Court. It answers some of taxpayers' most the process of:

1. Filing a petition to begin your Tax Court case
2. Things that occur before trial
3. Things that occur during trial
4. Things that occur after trial
5. Definition of terms (Glossary)

Preparing a Petition

The information is readily available:

- Taxpayer(s) Name and Address
- Information from the Notice of Deficiency
 - Date of Notice of Deficiency
 - Office issuing the Notice of Deficiency
 - Tax Years
 - Requested Place of Trial
- Small or Regular Case
- 2 Questions

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Preparing a Petition

Tax Court Petition has a checkbox (Small or regular Case) & two questions which must be answered:

If small or regular Case is NOT checked, the case is automatically **regular** case.

The Two Questions:

5. Explain why you disagree with the IRS determination in this case:
6. State the facts upon which you rely:

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Preparing a Petition

Tax Court Petition Forms are available at:
https://www.ustaxcourt.gov/forms/Petition_Kit.pdf

Complete and mail Entire Package to:

**UNITED STATES TAX COURT
400 SECOND STREET N.W.
WASHINGTON, D.C. 20217**

Must BE Timely Mailed

**Has to be MAILED (Postmarked) by the
last day to file petition with the US Tax Court
(usually 90 days from the date on NOD).**

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Preparing a Petition

Petition Package Includes:

Petition (T.C. Form 2) - 2 pages

Name, Address, Issuing Office, Tax Year(s), etc.

Statement of Taxpayer Identification Number
(T.C. Form 4)

The Request for Place of Trial (T.C. Form 5)

\$60 filing Fee – Personal Check, Money Order, etc.
made out to: **Clerk, United States Tax Court**

A Copy of the ENTIRE **REDACTED** Notice of
Deficiency (90-Day Letter) the IRS sent the Taxpayer.

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What Should I say in my Petition ?

From the Tax Court Web Site:

Line 5 of the petition asks you to tell the Court why you disagree with the IRS determination in your case. You should list clearly and concisely the errors you believe the IRS made in the notice of deficiency. List each issue separately.

Keep it simple:

IRS auditor did not allow ordinary and necessary business expenses.

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What Should I say in my Petition ?

From the Tax Court Web Site:

On Line 6 of the petition you should briefly state the facts on which you rely to support your position.

6. State the facts upon which you rely:

Keep it simple:

Taxpayer has compelling documentation to prove ordinary and necessary business expenses.

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Small Case or Regular Case

Tax Court Petition has a selection Checkbox
(small or regular case) Strategy (always leave blank ?)

4. SELECT ONE OF THE FOLLOWING:

If you want your case conducted under small tax case procedures, check here: (CHECK
If you want your case conducted under regular tax case procedures, check here: ONE BOX)

NOTE: A decision in a "small tax case" cannot be appealed to a Court of Appeals by the taxpayer or the IRS
If you do not check either box, the Court will file your case as a regular tax case.

Regular case allows for more than \$50K for any year.
Regular case can be appealed.
Regular case generally attracts a more experienced Appeals Officer.

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Suggested Simple Answers

Scenario: Taxpayer reported 1099-C Cancellation of Debt on Form 982 – not taxable by reason of insolvency. AUR cannot "see" Form 982
Taxpayer did **NOT** respond to CP2000 notice.

5. Explain why you disagree with the IRS determination in this case:

Taxpayer does NOT agree with the additional tax.

6. State the facts upon which you rely:

Taxpayer filed a complete and accurate return which should result in NO CHANGE; Cancellation of Debt was not taxable via insolvency provision of Form 982.

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Who Can Assist a Taxpayer in Preparing a Petition ?

There is a strong case to be made that someone knowledgeable should assist the taxpayer since a significant number of petitions are not complete or correct – Typical errors include:

- Omitting the Notice of Deficiency
- Not redacting the Notice of Deficiency
- Missing \$60 payment to the Clerk, US Tax Court
- Missing signatures on some pages of the petition.
- Include copies of tax returns and documentation
(Does NOT belong in the Petition Package)

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Taxpayers can file a Tax Court Petition Pro Se

Taxpayers can file a Tax Court Petition and represent themselves before the court.

The system is very accommodating to Pro Se Petitioners and offers a significant amount of information on the Low Income Tax Clinics available.

Tax Court judges are extremely accommodating to Pro Se Taxpayers.

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Taxpayers files a Tax Court Petition

Tax Court response:

Tax Court issues a **Docket Number**
(Think Tracking Number)

Tax Court response agrees with the facts:
Name, Tax Year, Etc. Items 1 through 4

Tax Court DENIES everything else
(automatically) – See Typical Response on
following page.

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Typical Tax Court Response

ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1. Admits.
2. Admits.
3. Admits.
4. Neither admits nor denies, as no allegations of fact have been made.
5. Denies for lack of sufficient knowledge or information.
6. Denies for lack of sufficient knowledge or information.
7. Denies generally each and every allegation of the petition not herein specifically admitted, qualified or denied.

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Tax Court Response (Continued)

Tax Court issues a Docket Number
(Think Tracking Number)

Examples of Docket Numbers

00123-18 Regular Case

00124-18S Small Case

00125-18L Liability Case

 18 –Year Docket Number was assigned.

Collection Clock is **STOPPED** after filing.

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Taxpayers can file a Tax Court Petition Pro Se

Circular 230 Practitioners can represent Pro Se Taxpayers at Appeals and Discussions / Negotiations with Chief Counsel Attorneys. They CANNOT represent the taxpayer in Tax Court (**in the Court Room before the judge**).

Circular 230 Practitioners must hold USTCP credentials to represent the taxpayer **in Tax Court**.

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Taxpayer Submitted a Petition

After a taxpayer has submitted a petition, Circular 230 Practitioners can represent Pro Se Taxpayers at Appeals and Discussions / Negotiations with Chief Counsel Attorneys. They CANNOT represent the taxpayer at Tax Court (**in the Court Room before the judge**).

Circular 230 Practitioners (EA & CPA) must hold USTCP credentials to represent the taxpayer at Tax Court.

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Tax Court is Open to the Public

Google **Tax Court Calendar**

to pull up the current Tax Court Calendar

See the Tax Court Calendar for Oct 18, 2018 on the following page

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Tax Court Calendar Winter 2019 Term

| Week of | 01/07 | 01/14 | 01/21 | 01/28 | 02/04 | 02/11 | 02/18 | 02/25 | 03/04 | 03/11 | 03/18 | 03/25 | | | | |
|--------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--|--|--|--|
| Atlanta | | | | | | | | | | | | | | | | |
| Birmingham | | | | | | | | | | | | | | | | |
| Boston | | | | | | | | | | | | | | | | |
| Chicago | | | | | | | | | | | | | | | | |
| Columbia | | | | | | | | | | | | | | | | |
| Cleveland | | | | | | | | | | | | | | | | |
| Dallas | | | | | | | | | | | | | | | | |
| Denver | | | | | | | | | | | | | | | | |
| Detroit | | | | | | | | | | | | | | | | |
| El Paso | | | | | | | | | | | | | | | | |
| Hartford | | | | | | | | | | | | | | | | |
| Houston | | | | | | | | | | | | | | | | |
| Indianapolis | | | | | | | | | | | | | | | | |
| Kansas City | | | | | | | | | | | | | | | | |
| Los Angeles | | | | | | | | | | | | | | | | |
| Lubbock | | | | | | | | | | | | | | | | |
| Milwaukee | | | | | | | | | | | | | | | | |
| Mobile | | | | | | | | | | | | | | | | |
| New York | | | | | | | | | | | | | | | | |
| Philadelphia | | | | | | | | | | | | | | | | |
| Phoenix | | | | | | | | | | | | | | | | |
| Pittsburgh | | | | | | | | | | | | | | | | |
| San Antonio | | | | | | | | | | | | | | | | |
| San Diego | | | | | | | | | | | | | | | | |
| Seattle | | | | | | | | | | | | | | | | |

Legend: Regular Case Calendar Small Tax Case Calendar Regular & Small Tax Case Calendar * Starting Date (Duration) Page 1 of 2

Protect SSN or EIN

T.C. Form 4, Statement of Taxpayer Identification Number is the **ONLY** document in the tax court petition which has the taxpayer's Identification Number.

Any other notices you attach to your petition should be **REDACTED**.

Since the Notice of Deficiency is part of the tax court petition, the taxpayer's TIN should be **REDACTED** in the NOD and any other documents submitted.

One Shot at Appeals

Scenario 1:

Bad audit – Taxpayer appealed audit and did not get substantial relief.

Taxpayer petitioned Tax Court Pro Se and will negotiate directly with Chief Counsel Attorneys.

Scenario 2:

Bad audit – Taxpayer skipped Appeals and petitioned Tax Court.

Chief Counsel Attorneys will refer to Appeals for resolution. If not resolved, case goes back to Chief Counsel Attorneys.

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Tax Court Petition Filed Case Docketed

The Docket Number is a tracking number and is assigned to each case; 6 digits – Year (2 Digits)

Typical Format is 012345-18

Small Case: 012345-18S

Regular Case: 012345-18

Collection Case: 012345-18L

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Docket Inquiry

Docket Inquiry

DOCKET RECORDS SEARCH BY:

- >> [Docket Number](#)
- >> [Individual Party Name](#)
- >> [Corporate Name Keyword](#)

[Docket Inquiry Help](#)

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Docket Inquiry Individual Party Name Search

Docket Inquiry - Individual Party Name Search

| | | |
|--|---|--------------------|
| Last Name: TAXPAYER | First Name: TOMMY | Middle: |
| State: GA | Year Filed: From 2017 To 2018 | |
| <input type="button" value="Search"/> <input type="button" value="Reset"/> | | |

No Results.

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Docket Number Search

Docket Number: -

Search

Reset

Docket No.: 020795-05

Caption: Californians Helping To Alleviate Medical Problems, Inc.

Petitioner Counsel

Bar No: KM0559
No: 3

Matthew W. Kumin

38 Mason Street
San Francisco, CA 94102

**Californians Helping To Alleviate Medical Problems
Well-Known 280-E Tax Court Case involving Growing and
Sales of a Schedule 1 Controlled Substance. (CHAMP)**

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OVERVIEW

Taxpayer files Tax Court Petition Pro Se.

Enrolled Agent under POA can represent the taxpayer at Appeals and can negotiate with Chief Counsel Attorneys.

Appeals has 4 months to settle the case.

It is almost automatic that Appeals will abate Accuracy-Related Penalties - § 6662

99.9% of Tax Court Cases are SETTLED prior to Tax Court.

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Case is Calendared

(Court Date is set)

Case NOT settled at Appeals

or

Case NOT settled with Chief Counsel

This is a good thing – pressure to settle increases.

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Case is Calendared

Pro Se Taxpayer will appear in Tax Court, stand at the Podium, state their name and briefly review their case with the judge.

Judge will ask them to talk with Chief Counsel attorneys at the break, or talk with Low Income Tax Clinic volunteers and see if they can reach an agreement.

NOTE: If the Taxpayer does not appear in Tax Court, they lose.

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Case is Calendared

If a Pro Se Tax Court case gets this far, it is usually settled by quick negotiation.

After the break, taxpayer is called back to the podium along with Chief Counsel Attorney:

Two Outcomes:

- Reached Settlement – Decision documents will be drawn up and signed.
- Did NOT reach Settlement – Goes to Trial.

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Discussion

Takeaways:

Taxpayer gets one shot at Appeals.

After Taxpayer responds to a Notice of Deficiency with a Tax Court Petition, the filing status of the return cannot be changed (Single to Head-of-Household, MFS to MFJ, etc.)

Collection clock is STOPPED.

See the Simple Tax Court Tutorial handout for a complete example of a Pro Se Tax Court Petition.

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Procedurally Taxing

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ABOUT THE BLOG

Search Results for: JUDGE HOLMES

The Jarndyce Case, Judge Mark Holmes, and the Taxation Literary Tradition

November 28, 2017 by [Guest Blogger](#) 7 Comments

We welcome back guest blogger Bob Kamman. Although Bob has practiced tax law in the Phoenix area for many years, he began his studies and his career as a journalist. Today, he draws from the Tax Court judge most likely to make literary references to provide us

JUDGE HOLMES

SEARCH



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Questions ? ? ?



Bill Nemeth, EA
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