

THE TAX COURT: ARTICLE I AND JUDGMENT FINALITY

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### **ABSTRACT**

Unlike U.S. district courts, the Tax Court is a legislative court established under Article I of the U.S. Constitution. Consequently, Tax Court judges do not enjoy the privileges of life tenure and guaranteed compensation. Furthermore, the Tax Court, like other Article I courts, possesses a narrowly defined jurisdiction and limited equitable and judicial authority. This is no more evident than in the court's lack of authority to review its own decisions that have become final under Internal Revenue Code (IRC) section 7481. Section 7481 provides that a Tax Court judgment becomes final upon the expiration of the period for filing a notice of appeal, currently ninety-days. While judgment finality serves an important legal and societal objective, achieving closure for the parties, it can result in inequitable consequences, including fraud. The present study reviews the Tax Court's limited equitable authority, the statutory finality rule and the development of equitable exceptions to it, particularly the application of the fraud upon the court doctrine.

## I. INTRODUCTION

The United States Tax Court serves a vital function within the federal tax system, the adjudication of tax controversies between the taxpayer and the government.<sup>1</sup> The court shares this function with both the U.S. district courts and the U.S. Court of Federal Claims, both of which possess broader subject matter jurisdiction.<sup>2</sup> However, only the Tax Court provides a pre-payment forum for taxpayers seeking tax claim adjudication.<sup>3</sup> Taxpayers may petition the Tax Court to challenge an Internal Revenue Service (IRS) proposed deficiency without being forced to pay the contested amount first.

Furthermore, the Tax Court also holds another distinction. Unlike a U.S. district court, the Tax Court is a legislative court established under Article I of the U.S. Constitution, rather than Article III.<sup>4</sup> This status is significant in various ways. The primary consequence of Article I status is that Tax Court judges do not enjoy the privileges of life tenure and guaranteed

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<sup>1</sup> United States Tax Court, About the Court, at <http://www.ustaxcourt.gov/about.htm> (May 15, 2004). See 26 U.S.C. (hereinafter I.R.C.) § 7442 (2000). However, the Tax Court also possesses jurisdiction over collection due process proceedings, as well as declaratory judgment jurisdiction over retirement plan qualification, governmental obligation interest exclusion, gift tax valuation, and estate tax installment payment eligibility cases. I.R.C. §§ 6330, 7476-7479 (2000).

<sup>2</sup> 28 U.S.C. §§ 1346 and 1491 (2000). Taxpayers must first pay the contested amount to the government and file an administrative refund claim before instituting a suit in either court. I.R.C. § 7422 (2000). Additionally, bankruptcy courts possess limited jurisdiction to resolve tax liabilities if the taxpayer is bankrupt when the Internal Revenue Service (IRS) asserts a deficiency. *In re Landmark Equity Corp.*, 973 F.2d 265 (4<sup>th</sup> Cir. 1992). Over 95 percent of tax cases were litigated in the Tax Court during the period 1975-83. Charles E. Boynton IV and Jack Robison, *Choosing District Court over Tax Court: Some Characteristics*, 36 Tax Notes 807, 808 (1987).

<sup>3</sup> I.R.C. § 6213 (2000) provides that a timely petition filed with the Tax Court will toll the assessment of a tax deficiency.

<sup>4</sup> I.R.C. § 7441 (2000).

compensation.<sup>5</sup> Another consequence is that the Tax Court, like other Article I courts, possesses a narrowly defined jurisdiction and limited judicial authority.<sup>6</sup> The Tax Court is a creature of statute and it is only by statute that the Tax Court may exercise its authority. Accordingly, the Tax Court may only do as Congress specifically allows.<sup>7</sup> This is no more evident than in the court's extremely limited authority to review its own decisions that have become final under Internal Revenue Code (IRC) section 7481, the "Tax Court Judgment Finality Rule."<sup>8</sup> IRC section 7481 provides that a Tax Court judgment becomes final after the expiration of the period for filing a notice of appeal. The consequence of finality is the inability to subsequently challenge the judgment, regardless of grounds.

The present article reviews this statutory finality rule and the development of equitable exceptions to it, particularly the application of the fraud upon the court doctrine. The next section provides an overview of the Tax Court, followed by a discussion of judgment finality and section 7481. Part four discusses the fraud upon the court doctrine and its applicability in reviewing final judgments. The development of other exceptions to section 7481 is analyzed next. The article concludes with an assessment of the current state of the Tax Court's authority to make exceptions to section 7481.

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<sup>5</sup> U.S. Const. art. III § 1 provides that judges of courts established under this article possess life tenure and a guaranteed compensation. The Tax Court is established under Article I. Consequently, the Article III guarantees do not apply. *Burns, Stix Friedman & Co. v. Comm'r*, 57 T.C. 392 (1971). I.R.C. § 7443 (2000) specifies that Tax Court judges serve only for 15 years and may be removed for cause.

<sup>6</sup> *Burns, Stix Friedman & Co.*, 57 T.C. 392, 396 (1971).

<sup>7</sup> *Id.*

<sup>8</sup> I.R.C. § 7481 (2000).

## II. TAX COURT OVERVIEW

### Authority for Creation of the Tax Court

Article III of the U.S. Constitution provides that, “the judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may ... establish.”<sup>9</sup> Courts created under this article, Article III courts, include the vast majority of the federal judicial system. The U.S. Supreme Court, circuit courts, and district courts are all derived from this constitutional provision.<sup>10</sup> A defining characteristic of Article III courts is the guarantee of salary and lifetime tenure for its judges.<sup>11</sup> The use of the word ‘shall’ in the above language would lead one to believe that creation of courts outside of Article III is impermissible. However, Congress has successfully established legislative courts based upon its Article I authority, whose judges do not enjoy salary and tenure guarantees.<sup>12</sup>

The Tax Court is one such court. Congress’ authority to establish courts outside of Article III has been upheld since the early days of the republic. The Supreme Court in 1828 acknowledged Congress’ authority to create courts for the various U.S. territories, based upon the “necessary and proper” clause of Article I.<sup>13</sup> According to the Court, creation of specialized legislative courts is often necessary for the execution of Congress’ enumerated authority.<sup>14</sup>

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<sup>9</sup> U.S. Const., art. III, § 1.

<sup>10</sup> Leandra Lederman, *Equity and the Article I Court: Is the Tax Court’s Exercise of Equitable Powers Constitutional?* 5 Fla. Tax. Rev. 357, 363 (2001). Article III expressly refers to the Supreme Court, while judges of the court of appeals are appointed for life pursuant to 28 U.S.C. § 44. District court judges are appointed for life pursuant to 28 U.S.C. § 134 (2000).

<sup>11</sup> U.S. Const., art. III, § 1.

<sup>12</sup> *Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272 (1856) and *Ex Parte Bakelite Corp.*, 279 U.S. 438, 451-52 (1929)

<sup>13</sup> *Am. Ins. Co. v. Canter*, 26 U.S. 511 (1828). U.S. Const. art. I, § 8, cl. 18 provides that Congress may enact laws that are necessary and proper for the execution of its enumerated powers.

<sup>14</sup> *Am. Ins. Co.*, 26 U.S. 511 (1828).

Congress has subsequently created a number of courts under Article I. While the Tax Court is one of the most visible, others include the: U.S. Court of Federal Claims,<sup>15</sup> U.S. Court of Appeals for the Armed Forces,<sup>16</sup> U.S. Court of Appeals for Veterans Claims,<sup>17</sup> the District of Columbia municipal court system,<sup>18</sup> U.S. bankruptcy courts,<sup>19</sup> and the U.S. district courts for the districts of Guam, the Virgin Islands, and the Northern Mariana Islands.<sup>20</sup> These later courts are territorial courts, similar to those upheld in 1828 by the Supreme Court in *American Insurance*.<sup>21</sup> Judges on the above courts typically serve terms ranging from ten to fifteen years, as opposed to life. However, with the exception of bankruptcy judges, they are all Presidential appointees.<sup>22</sup>

The Supreme Court has generally limited Congress' authority to establish Article I courts to four areas: (1) U.S. possessions and territories, (2) military affairs, (3) civil disputes between private parties and the United States, and (4) other areas where the Article I court serves merely as an adjunct to an Article III court who oversees the former's actions.<sup>23</sup> The United States Tax

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<sup>15</sup> 28 U.S.C. §§ 171, 172 (2000). This court possesses concurrent jurisdiction to adjudicate tax controversies, but taxpayers must pre-pay the contested amount first. Additionally, there is no statutory finality rule, comparable to I.R.C. § 7481 (2000), for judgments of this court.

<sup>16</sup> 10 U.S.C. § 941 (2000). Judges on this court serve a term of 15-years and must have less than 20-years of military experience. The creation of this court is derived from Congress' authority regulate the military. *See* U.S. Const. art. I, § 8, cl. 14.

<sup>17</sup> 38 U.S.C. § 7251 (2000). Judges serve 15-year terms.

<sup>18</sup> D.C. Code § 11-101 and District of Columbia Court Reorganization Act, Pub. L. No. 91-358, 84 Stat. 475 (1970). The President appoints members of the D.C. Court of Appeals and Superior Court for 15-year terms. D.C. Code §§ 11-1501 and 11-1502,

<sup>19</sup> 28 U.S.C. §§ 151-152 (2000). Bankruptcy judges serve a term of 14 years. Bankruptcy courts also serve ancillary to the U.S. district courts.

<sup>20</sup> 48 U.S.C. § 1424 (2000) (Guam), 48 U.S.C. § 1821 (2000) (Northern Mariana Islands), 48 U.S.C. §§ 1611 and 1614 (2000) (Virgin Islands). Judges on these territorial district courts serve 10-year terms.

<sup>21</sup> *Am. Ins. Co. v. Canter*, 26 U.S. 511 (1828).

<sup>22</sup> Bankruptcy judges are appointed by the court of appeals for each circuit. 28 U.S.C. § 152 (2000).

<sup>23</sup> Erwin Chemerinsky, *Federal Jurisdiction* 181-82 (Little Brown & Co. 1989).

Court falls into category three, resolving civil tax disputes between private parties (taxpayers) and the United States (Internal Revenue Service).<sup>24</sup>

Article I courts possess very limited authority and jurisdiction, so as to ensure they do not encroach on the authority of Article III courts.<sup>25</sup> When an Article I court is determined to possess too much power or authority, its enabling legislation has been struck down as an unconstitutional encroachment of the legislative branch upon the judicial.<sup>26</sup> However, the Supreme Court has supported the limited Congressional grant of judicial authority to non-article tribunals.<sup>27</sup> Accordingly, Article I courts only possess that authority and jurisdiction necessary to accomplish its legislative purpose. For the Tax Court, that means solely the resolution of tax disputes between the government and taxpayers.<sup>28</sup> Legislative courts derive their authority from statute and can only exercise that power granted by Congress through legislation.<sup>29</sup>

## **Historical Background**

The U.S. Tax Court traces its roots to the Board of Tax Appeals, created in 1924 as an independent agency within the executive branch.<sup>30</sup> The function of the board was to provide a

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<sup>24</sup> *Burns, Stix Friedman & Co. v. Comm’r*, 57 T.C. 392, 397-98 (1971). The U.S. Court of Federal Claims and the Court of Appeals for Veterans’ Claims also fall into this category.

<sup>25</sup> *Id.*

<sup>26</sup> *N. Pipeline v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). The Supreme Court struck down an early incarnation of the bankruptcy court. The Court held that the court encroached too heavily into the judicial branch, but lacked the requisite guarantees afforded to Article III courts.

<sup>27</sup> *See Thomas v. Union Carbide Agricultural Prod. Co.*, 473 U.S. 568, 571 (1985) and *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833 (1986).

<sup>28</sup> *Burns, Stix Friedman & Co.*, 57 T.C. 392, 398 (1971). While beyond the scope of this article, several commentators have challenged the constitutionality of the court. Deborah A. Geier, “The Tax Court, Article III, and the Proposal Advanced by the Federal Courts Study Commission: A Study in Applied Constitutional Theory,” 76 *Corn. L.R.* 985, at 993.

<sup>29</sup> *See Lederman, supra* note 10, at 371.

<sup>30</sup> Revenue Act of 1924, ch. 234, § 900, 43 Stat. 253, 336.

forum for taxpayers to challenge proposed assessments by the Bureau of Inland Revenue (now the Internal Revenue Service) without having to first pay the disputed amount.<sup>31</sup> Congress subsequently made board decisions appealable to the courts of appeal two years later.<sup>32</sup> The board's name was changed to the Tax Court of the United States in 1942.<sup>33</sup> However, the court was still statutorily described as an independent agency within the executive branch of the United States.<sup>34</sup>

Despite this label, the Tax Court has performed and continues to perform judicial functions. Namely, the adjudication of disputes between opposing parties based upon an analysis of the law and facts. Tax Court decisions are reviewable by circuit courts of appeal, like district court decisions, and Tax Court decisions have often been cited as precedent by Article III courts.<sup>35</sup>

The Tax Reform Act of 1969 elevated the Tax Court's status to that of an Article I court, as opposed to an executive branch agency.<sup>36</sup> The official name was also changed to the United States Tax Court.<sup>37</sup> These changes also clarified that Tax Court cases are reviewable by the circuit courts on the same basis as non-jury district court cases.<sup>38</sup> Furthermore, the court now

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<sup>31</sup> Appeal of Everett Knitting Works, 1 B.T.A. 5, 6 (1924).

<sup>32</sup> Revenue Act of 1926, ch. 27, §§ 1001(a) & 1002, 44 Stat. 9, 109-10.

<sup>33</sup> Revenue Act of 1942, ch. 619, § 504(a), 56 Stat. 798.

<sup>34</sup> I.R.C. § 7441(1954).

<sup>35</sup> Burns, Stix Friedman & Co. v. Comm'r, 57 T.C. 392, 398 (1971). See Lederman, *supra* note 10.

<sup>36</sup> Tax Reform Act of 1969, Pub. L. No. 91-172, § 951, 83 Stat. 487, 730. The classification of the Tax Court as an Article I court was the result of a compromise between the status quo and elevating the Tax Court to Article III status, a change opposed by the Treasury Department, accountants, congressional tax writers, and then Chief Justice Earl Warren. Geier, *supra* note 28.

<sup>37</sup> *Id.* and I.R.C. § 7441 (2000).

<sup>38</sup> I.R.C. § 7482 (2000).

possesses contempt authority and may compel discovery from non-parties.<sup>39</sup> However, as an Article I court, Tax Court judges still do not enjoy lifetime tenure or a guaranteed salary.

### **Organization and Operation of the Tax Court**

The Tax Court is currently comprised of nineteen judges, appointed by the President, who serve renewable fifteen-year terms, though they may be removed for cause prior to expiration of their term.<sup>40</sup> Additionally, the chief judge may appoint special trial judges to assist the court in carrying out its duties.<sup>41</sup> While the court is based in Washington, DC, trials are held throughout the country, all of which are conducted as bench trials.<sup>42</sup>

A party may appeal an adverse decision to the U.S. court of appeals for the circuit of the taxpayer's residence.<sup>43</sup> Circuit courts review Tax Court decisions on the same basis as a district court decision rendered after a bench trial.<sup>44</sup> As Tax Court decisions may be appealed to varying circuits, depending on the taxpayer's residence, decisions will often differ geographically.<sup>45</sup> The same judge may render possibly conflicting decisions on similar facts, because the circuits to

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<sup>39</sup> *Burns, Stix Friedman & Co.*, 57 T.C. 392, 395-96. Additionally, by expressly removing the Tax Court from the executive branch, the Tax Court now possesses greater independence from the Internal Revenue Service.

<sup>40</sup> I.R.C. § 7443 (2000).

<sup>41</sup> I.R.C. § 7443A (2000). Special trial judges may also conduct trials and prepare proposed findings of facts and conclusions of law for submission to the full court. Legislation pending in Congress would rename Special Trial Judges as Tax Court Magistrate Judges. Tax Administration and Good Government Act, S. 882, 108<sup>th</sup> Cong. § 318.

<sup>42</sup> I.R.C. § 7446 (2000). Taxpayer designates a place for trial as part of the petitioning process. *See* Tax Ct. R. 140.

<sup>43</sup> I.R.C. § 7482 (2000).

<sup>44</sup> *Id.*

<sup>45</sup> *Golsen v. Comm'r*, 54 T.C. 742, 757 (1970). As a result, the Tax Court may rule differently regarding a Texas taxpayer (5<sup>th</sup> Circuit) than a New York (2<sup>nd</sup> Circuit) taxpayer.

which they may be appealed have ruled differently. This situation contrasts sharply with the district and claims courts, which follow the precedent established by a particular circuit.<sup>46</sup>

Cases are initiated by the taxpayer's filing a petition with the Tax Court, in response to an IRS generated statutory notice of deficiency, so-called ninety-day letter.<sup>47</sup> This petition initiates a civil action by the taxpayer, naming the Commissioner of Internal Revenue (CIR) as the respondent, challenging the commissioner's proposed tax deficiency. The term ninety-day letter is derived from that fact that the petition must be received or postmarked within ninety days of the date on the IRS notice.<sup>48</sup> A petition filed even a single day late will be summarily dismissed, with the underlying deficiency subject to immediate assessment and collection.<sup>49</sup> However, the timely filing of petition will toll assessment and collection until a final judgment is rendered.<sup>50</sup>

The Tax Court has adopted its own procedural rules, loosely based upon the Federal Rules of Civil Procedure.<sup>51</sup> The Tax Court, though, follows the rules of evidence as applicable to non-jury trials in the U.S. District Court for the District of Columbia.<sup>52</sup> Even discovery, while

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<sup>46</sup> Decisions of the Court of Federal Claims may only be appealed to the Federal Circuit. 28 U.S.C. § 1295. Decisions of the district courts are appealed to the court of appeals for the circuit in which the district is situated. 28 U.S.C. § 1294 (2000).

<sup>47</sup> I.R.C. § 6213 (2000). If a petition is filed, the government is generally precluded from assessing the deficiency or initiating collection. Only after a Tax Court judgment becomes final may the deficiency be assessed and collection activities commence.

<sup>48</sup> I.R.C. § 7502 (2000) provides for timely mailed, timely filed rule. Ordinarily the postmark date determines the date of mailing, but a taxpayer may also utilize a designated private delivery service's (i.e. Fedex or UPS) receipt date. If the notice is addressed to a taxpayer outside the United States, the taxpayer has 180 days to file their petition. Either way, the petition must be mailed, delivered, or hand-carried to the Tax Court in Washington within the requisite time period. I.R.C. § 6213 (2000) and Tax Ct. R. 20.

<sup>49</sup> *Rosenberg's Est. v. Comm'r*, 73 T.C. 1014 (1980).

<sup>50</sup> I.R.C. § 6213 (2000).

<sup>51</sup> I.R.C. § 7453 (2000) and Tax Ct. R. 1.

<sup>52</sup> I.R.C. § 7453 (2000) and Tax Ct. R. 143.

available, is limited in Tax Court cases.<sup>53</sup> Moreover, non-attorneys, such as accountants, may be admitted to practice before the Tax Court.<sup>54</sup> For taxpayers contesting deficiencies under \$50,000, the Tax Court even offers a small claims division.<sup>55</sup> Trials are conducted using informal and relaxed rules, with taxpayers often appearing *pro se*.<sup>56</sup> However, a court's decision under these simplified rules is final and not subject to further review.<sup>57</sup>

Unlike in Article III courts, IRS attorneys, not the Justice Department, provide government representation.<sup>58</sup> Trials are conducted in similar fashion to a district court bench trial. Following trial, the parties typically submit briefs for review by court. The court subsequently renders its decision, consisting of both findings of fact and conclusions of law. Occasionally, the court's decision may only resolve the issues in dispute, leaving it to the parties to compute the exact dollar amount of the deficiency, based on the court's findings.<sup>59</sup> The parties have a limited time to challenge the decision before it becomes final, including filing motions to vacate the decision or for reconsideration.<sup>60</sup>

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<sup>53</sup> Boris I. Bittker, Martin J. McMahon, and Lawrence A. Zelenak, *Federal Income Taxation of Individuals* ¶51.04 (3<sup>rd</sup> ed. 2002). See Tax Ct. R. 70-104.

<sup>54</sup> Tax Ct. R. 200 allows non-attorneys to be admitted upon passage of a written examination, offered bi-annually, and sponsorship by two current members of the Tax Court bar.

<sup>55</sup> I.R.C. § 7463 (2000). See Tax Ct. R. 170-175.

<sup>56</sup> Trials under these rules are typically conducted before special trial judges. I.R.C. § 7443A (2000) and Tax Ct. R. 182.

<sup>57</sup> I.R.C. § 7443A (2000).

<sup>58</sup> I.R.C. § 7452 (2000). 28 U.S.C. § 516 (2000) provides that Justice Department attorneys shall represent the United States in all litigation in which it is party, unless otherwise provided. Section 7452 thus creates a limited exception to this general rule. However, if a Tax Court decision is appealed, Justice Department attorneys provide representation at the appellate level.

<sup>59</sup> Such decisions are referred to as rendered under Rule 155. Tax Ct. R. 155 allows the court to allow the parties to compute the deficiency themselves, based on the court's findings and conclusions. This computed deficiency will be subsequently incorporated into the court's final judgment.

<sup>60</sup> Tax Ct. R. 161-162. These motions must be filed within 30-days after entry of judgment.

The decision of the Tax Court becomes final upon the expiration of the period for filing a notice of appeal, currently ninety days.<sup>61</sup> If no notice is filed within this 90-day period, the judgment achieves finality and is no longer subject to review or attack.<sup>62</sup> Despite the apparent clarity and strictness of this rule, repeated attempts have been made to challenge an otherwise final Tax Court judgment. These attacks have been based upon a multitude of reasons and have faced very limited success. Mutual mistake, excusable neglect, clerical error, fraud, and lack of jurisdiction have been used as grounds for attack. The ability of the Tax Court, and appellate courts, to review an otherwise final judgment on these grounds is the topic of this article.

### **III. JUDGMENT FINALITY RULE**

#### **Overview of Judgment Finality**

Litigation is generally easier to start than to finish. Initiation of a lawsuit is a fairly straightforward process, involving the filing of a complaint or petition. Unfortunately, the conclusion of the suit may be years away, especially if there is extensive discovery. If appellate review is sought, the conclusion is delayed further. However, there eventually comes a time when a final judgment is rendered. Achieving that finality serves a strong societal interest, bringing about closure and allowing the parties to move on with their lives.<sup>63</sup> As a result, a challenge to an otherwise final judgment is accompanied by a heavy burden of proof, showing just cause to alter the status quo.

A party dissatisfied with a judgment has the option to challenge it through either a post-trial motion or a notice of appeal. However, these actions must be taken within specific time frames. If no action is taken, the judgment becomes final. A subsequent challenge to a

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<sup>61</sup> I.R.C. §§ 7481 and 7483 (2000).

<sup>62</sup> *Webbe v. Comm’r*, 902 F.2d 688 (8<sup>th</sup> Cir. 1990).

<sup>63</sup> *Webb v. Comm’r*, T.C. Memo 1994-549.

judgment conflicts with its finality. A final judgment, by usage of the term ‘final,’ is not subject to challenge or modification. The societal interest served by finality is ill served if a judgment may be attacked months and even years later. As the Tax Court stated in *Webb*, “judgment finality prevents an inundation of relitigated stale claims by losing parties.”<sup>64</sup> It for this reason that the judgment finality rule exists; not only for the Tax Court, but for other courts as well.

### **Finality in U.S. District Courts**

The statutory time period for filing a notice appeal following entry of judgment by a U.S. district court is thirty days, sixty days if the United States is a party.<sup>65</sup> As a result, a district court judgment typically becomes final after this period has expired. However, Rule 60 of the Federal Rules of Civil Procedure provides that a district court may modify or vacate judgment after this period for specified reasons.<sup>66</sup> Clerical errors may be corrected at any time, either on motion by a party or on the court’s own initiative.<sup>67</sup> Moreover, judgments that are void or have been previously satisfied may be attacked at any time on motion of a party.<sup>68</sup> Additionally, a judgment may be modified or vacated due to excusable neglect, mistake, newly discovered evidence, or fraud.<sup>69</sup> A motion attacking a judgment on these grounds must be filed within one year of the judgment’s entry.<sup>70</sup> Importantly, Rule 60(b) expressly states this rule does not limit the court’s authority to set aside a judgment for fraud upon the court.<sup>71</sup> Unfortunately, the Federal Rules of Civil Procedure only apply to U.S. district courts, not the U.S. Tax Court.<sup>72</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> 28 U.S.C. § 2107 (2000).

<sup>66</sup> Fed. R. Civ. P. 60.

<sup>67</sup> Fed. R. Civ. P. 60(a).

<sup>68</sup> Fed. R. Civ. P. 60(b).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

## Finality in the U.S. Tax Court

A Tax Court judgment becomes final following the expiration of the time period for filing a notice of appeal, currently ninety days.<sup>73</sup> Neither newly discovered evidence, fraud *ex partes*, excusable neglect, nor mistake may be used to subsequently challenge a final Tax Court judgment.<sup>74</sup> This strict interpretation of Section 7481 is based largely upon the Tax Court's Article I status.<sup>75</sup> As a legislative court, the Tax Court lacks any implied judicial authority to reexamine a final judgment once the statutory period for review has passed. Instead, the letter of the statute strictly binds the Tax Court.<sup>76</sup>

Another reason for judgment finality unique to the Tax Court is found in section 6213. If a timely petition is filed with the Tax Court, the government is generally precluded from assessing or collecting a tax deficiency until after entry of a final judgment.<sup>77</sup> If a judgment is subsequently reviewed or modified it delays the government's ability to initiate collection activities. As a result, achieving and preserving finality also facilitates the government's collection efforts.

The Ninth Circuit in *Lasky* described the Tax Court as a mere "administrative agency of the executive branch."<sup>78</sup> As such, its authority was entirely derived from statute and, as an executive agency; it possesses neither implied nor inherent judicial power.<sup>79</sup> As a result, the Ninth Circuit ruled that the Tax Court did not possess the authority to vacate its previous

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<sup>72</sup> Fed. R. Civ. P. 1.

<sup>73</sup> I.R.C. §§ 7481 and 7483 (2000).

<sup>74</sup> *Abatti v. Comm'r*, 859 F.2d 115 (9<sup>th</sup> Cir. 1988) and *Webbe v. Comm'r*, 902 F.2d 688 (8<sup>th</sup> Cir. 1990).

<sup>75</sup> *Id.*

<sup>76</sup> *Webbe*, 902 F.2d 688 (8<sup>th</sup> Cir. 1990).

<sup>77</sup> I.R.C. § 6213 (2000).

<sup>78</sup> *Lasky v. Comm'r*, 235 F.2d 97, 99 (9<sup>th</sup> Cir. 1956), *aff'd.*, 352 U.S. 1027 (1957)

<sup>79</sup> *Id.*

judgment based upon excusable neglect.<sup>80</sup> While excusable neglect is listed in Rule 60(b) as grounds for altering a final district court judgment, the Tax Court is not equivalent to a district court.<sup>81</sup> The Ninth Circuit in *Abatti* subsequently used similar reasoning in denying a challenge to a final Tax Court judgment based upon mutual mistake, also listed in Rule 60(b).<sup>82</sup>

The Supreme Court in *Simpson* held that it was powerless to hear a request for a rehearing involving a Tax Court case.<sup>83</sup> The request was filed within the time period allowed by the Court's own rules, but after the thirty-day period stated in section 7481.<sup>84</sup> Following expiration of the statutory deadline, the Tax Court's judgment became final and was no longer amenable to review or alteration, even by the Supreme Court.<sup>85</sup>

The Eighth Circuit has also upheld the position that section 7481 is absolute. The Eighth Circuit in *Heim* determined that even fraud, committed upon an adverse party, was not sufficient to trump the clear language of section 7481.<sup>86</sup> Likewise, the Seventh Circuit in *Kutner* similarly held that newly discovered evidence was not enough to overcome the finality rule of section 7481.<sup>87</sup> Both courts based their decisions on the language of section 7481 and the Tax Court's Article I status. As a legislative court, the Tax Court's judgments are only amenable to review or alteration in accordance with the enabling legislation, which clearly establishes finality after ninety days. As a result, the Tax Court and the circuit courts are powerless to alter a final Tax

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<sup>80</sup> *Id.* at 100.

<sup>81</sup> *Id.* at 99.

<sup>82</sup> *Abatti*, 859 F.2d 115, 118.

<sup>83</sup> *Simpson v. Comm'r*, 321 U.S. 225, 228 (1944).

<sup>84</sup> I.R.C. § 7481(a)(2)(C) (2000) provides that finality is reached upon the expiration of 30 days following issuance of a Supreme Court mandate. The Supreme Court's rules at the time allowed a request for a rehearing to be filed any time before the expiration of the Court's term.

<sup>85</sup> *Simpson*, 321 U.S. 225, 228.

<sup>86</sup> *Heim v. Comm'r*, 872 F. 2d 245 (8<sup>th</sup> Cir. 1989).

<sup>87</sup> *Kutner v. Comm'r*, 245 F.2d 462 (7<sup>th</sup> Cir. 1957)

Court judgment, even if the result may be inequitable.<sup>88</sup> Unlike Article III courts, the Tax Court does not possess general equitable authority to achieve a just result, but merely the statutory authority bestowed upon it by Congress.<sup>89</sup>

#### **IV. FRAUD UPON THE COURT AS AN EXCEPTION TO SECTION 7481**

##### **Overview of Fraud Upon the Court**

Fraud upon the court consists of a pattern of deceit and dishonesty directed at the court, so as to interfere with its ability to impartially adjudicate a dispute. It occurs where it can be clearly and convincingly demonstrated that a party has set in motion an unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter.<sup>90</sup> It is a special species of fraud regarded not only as harmful to adverse parties, but to the judicial process itself. Fortunately, fraud upon the court is rarely established. The leading case on fraud upon the court is *Hazel-Atlas v. Hartford-Empire*, in which the Supreme Court held that a judgment based on fraud upon the court can, and should, be vacated, regardless of its age.<sup>91</sup>

The facts of *Hazel-Atlas* revealed an extensive fraudulent scheme directed not only against the adverse party, but also against both the trial and appellate courts. The litigation was initiated as a patent infringement claim by Hartford-Empire against Hazel-Atlas. Following a district court decision for Hazel-Atlas, Hartford-Empire successfully appealed to the Third Circuit, which reversed and held for Hartford-Empire.<sup>92</sup> However, it was revealed years later that a trade publication article, that purportedly contained an unbiased favorable review of Hartford-Empire's invention, was actually written by an associate of Hartford-Empire in

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<sup>88</sup> *Id.*

<sup>89</sup> *Heim*, 872 F. 2d 245 (8<sup>th</sup> Cir. 1989)

<sup>90</sup> *Aoude v. Mobile Oil Corp.*, 892 F.2d 1115, 1118 (1<sup>st</sup> Cir. 1989).

<sup>91</sup> *Hazel-Atlas v. Hartford-Empire*, 322 U.S. 238 (1944).

<sup>92</sup> *See Hartford-Empire v. Hazel-Atlas*, 59 F.2d 399 (3<sup>rd</sup> Cir. 1932).

anticipation of its patent claim.<sup>93</sup> This article was used not only in support of Hartford-Empire's patent application, but in its infringement claim as well.<sup>94</sup> The Third Circuit's opinion for Hartford-Empire quoted extensively from the article.<sup>95</sup>

Based upon this discovery of fraud, Hazel-Atlas moved to set aside the circuit court's ruling and to reinstate the original district court decision. The circuit court denied Hazel-Atlas' petition based upon lack of evidence of fraud and the expiration of too much time.<sup>96</sup> The circuit court stated that its original opinion was not based on the article in question. As a result, the falsity of it was irrelevant.

Hazel-Atlas subsequently obtained review by the Supreme Court. The Court reversed and ordered that the original district court decision for Hazel-Atlas be reinstated.<sup>97</sup> The Court found that the facts presented clearly established a "deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Third Circuit Court of Appeals as well."<sup>98</sup> While the circuit court may not have relied exclusively on the article in rendering its opinion, its extensive quotation indicates that the court was impressed by it and it was clearly a material factor in reaching its decision.<sup>99</sup>

Furthermore, the Supreme Court referred to this particular species of fraud as not only an, "injury to single litigant, but a wrong against the institutions set up to protect and safeguard the

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<sup>93</sup> *Hazel-Atlas*, 322 U.S. 238, 240-241. The article was initially secured to bolster Hartford-Empire's questionable patent application for a method of creating glass molds. The patent application, accompanied by this article, was approved in 1928.

<sup>94</sup> *Id.* The article was not utilized at trial, but was cited extensively by Hartford-Empire in its appellate brief.

<sup>95</sup> *Id.* at 241. *See also* *Hartford-Empire v. Hazel-Atlas*, 59 F.2d 399 (3<sup>rd</sup> Cir. 1932).

<sup>96</sup> *Hazel-Atlas*, 322 U.S. 238, 244.

<sup>97</sup> *Id.* at 251.

<sup>98</sup> *Id.* at 245-246.

<sup>99</sup> *Id.* at 246-247.

public, institutions in which fraud cannot complacently be tolerated consistent with the good order of society.”<sup>100</sup> The Court was clearly impressed with the degree of fraud perpetrated through the use of the article, as well as its impact on the judicial process.

The time period between the fraud’s occurrence and the instant proceeding was approximately ten years. Despite the passage of so much time, the Court held a court has the inherent judicial authority, and obligation, to set aside judgments that are fraudulently induced. While judgment finality serves a societal purpose, equity requires that a judgment, however final, must be vacated if based upon fraud. Courts have possessed the authority to set aside fraudulently induced judgments from the early days of the republic, and this power can even be traced to English practice.<sup>101</sup> The relief sought by Hazel-Atlas was based upon equitable principles and the inherent judicial authority possessed by courts of the United States.<sup>102</sup> Accordingly, it was well within the power of the circuit court to vacate the fraudulently induced judgment, despite the passage of ten years.

The authority referred to by the Supreme Court clearly exists in Article III courts, by virtue of their possession of the full judicial authority of the United States. Whether that authority extends to the Tax Court, and other Article I courts, remains unclear. The Court’s reference to English practice and long standing principles of equity cast doubt on whether this authority extends to a legislative court like the Tax Court.<sup>103</sup>

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<sup>100</sup> *Id.* at 246.

<sup>101</sup> *Id.* at 244.

<sup>102</sup> *Id.* at 245.

<sup>103</sup> It has been argued that the Tax Court does not possess general equitable powers. *See Lederman, supra* note 10, at 412.

## Rejection of Fraud Upon the Court Exception to Section 7481

Thirteen years after *Hazel-Atlas*, the Eighth Circuit in *Jefferson Loan* had an opportunity to review a final Tax Court judgment challenged on fraud.<sup>104</sup> The original judgment, then four years old, was based upon a written stipulation agreed to by the taxpayer's president.<sup>105</sup> The taxpayer subsequently alleged that its president was engaged in a fraudulent scheme to overstate the taxpayer's income to achieve an appearance of successful management. This overstatement included taxable income and led to the resulting stipulation. According to the taxpayer, its actual performance was sub-par and in reality, it incurred losses during the period in question. The taxpayer asserted that this scheme constituted a fraud upon the Tax Court.<sup>106</sup> Citing *Hazel-Atlas*, the taxpayer claimed that the Tax Court possessed the authority to vacate or modify its judgment, despite its finality under section 7481.<sup>107</sup>

The government disagreed, contending that the Tax Court's jurisdiction and authority is based solely upon the internal revenue code, which provides that a judgment becomes final after ninety days. Since the taxpayer failed to file a notice of appeal within those ninety-days, the judgment subsequently became final. Once finality attached, the judgment could no longer be challenged or even reviewed.

The Tax Court and the Eighth Circuit agreed with the government's contention. Without reviewing the merits of the taxpayer's fraud claim, the Eighth Circuit held that the Tax Court's judgment became final and thus was immune from challenge.<sup>108</sup> Citing *Lasky* and *Simpson*, the court took the position that the finality rule of section 1140, the precursor to current section

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<sup>104</sup> *Jefferson Loan v. Comm'r*, 249 F.2d 364 (8<sup>th</sup> Cir. 1957).

<sup>105</sup> *Id.* at 365.

<sup>106</sup> *Id.* at 366.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 367.

7481, was absolute.<sup>109</sup> The Tax Court's status as an Article I body restricted its authority to the clear language of the statute. The taxpayer argued that the Supreme Court in *Hazel-Atlas* created an exception to finality in cases of fraud upon the court. However, the Eighth Circuit pointed out that the Supreme Court's opinion rests this authority on a court's implied judicial authority to achieve a just outcome.<sup>110</sup> According to the circuit court, the Tax Court does not possess such implied judicial authority. Furthermore, the Tax Court's jurisdiction is not based upon general equitable principles, but the Internal Revenue Code.<sup>111</sup> Accordingly, *Hazel-Atlas* is inapplicable to the Tax Court.

The Eighth Circuit continues to apply a strict interpretation of section 7481. As recently as 1990 the court rejected a claim of fraud upon the court, citing *Jefferson Loan* and *Heim* and rejecting the few exceptions that other circuits have recently acknowledged.<sup>112</sup> Instead, the court has adopted the strict position that the Tax Court, despite its "elevation" to an Article I court, lacks any implied equitable powers.<sup>113</sup> This includes the power to review an otherwise final judgment on equitable grounds, such as fraud.

### **Adoption of Fraud Upon the Court as an Exception to Section 7481**

Eleven years after *Jefferson Loan*, the Seventh Circuit entertained a fraud upon the court challenge in *Kenner*.<sup>114</sup> The taxpayer in *Kenner* filed a petition with the Tax Court challenging a five-year old judgment. Various assertions of misconduct on the part of the government and even its trial counsel were made in support of this petition. The Tax Court declined to rule on

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Webbe v. Comm'r*, 902 F.2d 688 (8<sup>th</sup> Cir. 1990).

<sup>113</sup> *Id.*

<sup>114</sup> *Kenner v. Comm'r*, 387 F.2d 689 (7<sup>th</sup> Cir. 1968).

the petition, stating that it lacked jurisdiction.<sup>115</sup> The taxpayer subsequently appealed to the Seventh Circuit. The circuit court identified two issues for review: whether the Tax Court has the power to vitiate its own final decisions, and, if yes, whether the facts presented warranted such vitiating.<sup>116</sup>

The court examined the Tax Court's role and function in adjudicating tax controversies. While the Tax Court is technically an independent agency within the executive branch, its responsibilities and functions are judicial in nature.<sup>117</sup> Accordingly, the Tax Court must possess some of the powers that courts currently possess to facilitate their judicial function, even in the absence of Congressional action. One of these powers arguably is the authority to review and correct judgments obtained as a result of fraud. The government actually conceded this point on appeal, that the Tax Court could review an otherwise final judgment based on alleged fraud upon the court.<sup>118</sup>

However, the *Kenner* court went on to state that Congress not only failed to expressly provide the Tax Court with the power to review fraudulent judgments, but also expressly specified a time period after which judgments are to become final.<sup>119</sup> The judgment being challenged by the taxpayer in *Kenner* fell well outside that period, five years, and was thus ordinarily final. According to the *Kenner* court, the statutory finality rule precludes the review

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<sup>115</sup> *Id.* at 690.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* This concession by the government points out an inconsistency in the government's litigating position on this issue. The government asserted that the Tax Court possessed no such authority in both *Jefferson Loan*, 249 F.2d 364, and *Webbe*, 902 F.2d 688.

<sup>119</sup> *Id.*, citing I.R.C. § 7481 (2000).

of final judgments based upon mistake, new evidence, and excusable neglect.<sup>120</sup> Review is not only barred by the Tax Court, but by appellate courts as well.<sup>121</sup>

The balancing of the statutory finality rule and the implied judicial power to review and vacate fraudulently obtained judgments lead the Seventh Circuit to conclude that a judgment obtained through fraud upon the court is not a judgment at all, and thus never becomes final.<sup>122</sup> Expressly rejecting the Eighth Circuit's decision in *Jefferson Loan*, the Seventh Circuit concluded that the Tax Court possesses the power to inquire into the integrity of its own decision, even when such a decision has become final and immutable in all other respects.<sup>123</sup>

The taxpayer's victory in *Kenner* was incomplete however. While the court held that the Tax Court did possess the authority to review an otherwise final judgment for alleged fraud upon the court, it also held that the taxpayer failed to substantiate his fraud claim.<sup>124</sup> Fraud upon the court is limited to, "that species of fraud which does, or attempts to, defile the court itself, or is fraud perpetrated by officers of the court, so that the court cannot perform its task of impartially adjudicating cases."<sup>125</sup> The taxpayer was unsuccessful in establishing a pattern of conduct that met the above definition of fraud upon the court. Mr. Kenner's petition alleged that an Internal Revenue Service agent solicited a bribe. However, such conduct, even if true, would not support a fraud upon the court claim. Moreover, the taxpayer alleged his counsel failed to adequately represent his interests. Again, such conduct may generate a malpractice claim, but it does not support a claim of fraud directed against the court. The taxpayer's strongest claim was that one

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<sup>120</sup> *Id.*, citing *Lasky*, 235 F.2d 97.

<sup>121</sup> *Id.* at 691, citing *Simpson*, 321 U.S. 225.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*, citing *Hazel-Atlas*, 322 U.S. 238.

of the attorneys he retained in this matter later became chief counsel for the Internal Revenue Service, where he allegedly took positions contrary to those taken while representing the taxpayer. The court determined that such behavior was unwise and unprofessional, but still did not rise to the level of a fraud upon the court. As a result, the Tax Court's dismissal of his petition was affirmed. Mr. Kenner won the battle, but lost the war.<sup>126</sup>

The year following the Seventh Circuit's opinion in *Kenner*, Congress enacted the Tax Reform Act of 1969.<sup>127</sup> One of the provisions in that legislation "elevated" the status of the Tax Court to that of an Article I court, as opposed to an independent executive agency.<sup>128</sup> Congress' enactment of this provision could be seen as tacit approval of the Seventh Circuit's holding in *Kenner*. By clearly defining the Tax Court as a court, Congress is clearly bestowing upon them judicial, albeit limited, authority. The authority to review otherwise final judgments for alleged fraud upon the court would seemingly fall into that category.

Following the Seventh Circuit's 1968 holding in *Kenner* and the 1969 Reform Act, other circuits slowly followed suit. Three years later, the Ninth Circuit in *Toscano*, citing *Kenner*, held that the Tax Court possessed the authority to review and vacate an otherwise final judgment on the ground of fraud upon the court.<sup>129</sup> The Tax Court originally entered a judgment in 1955, based upon stipulation by Mr. Toscano, that he was liable for a deficiency based on a joint return filed by Mr. Toscano and the appellant, the alleged Mrs. Toscano. She did not become aware of the judgment until after Mr. Toscano's death, when the government instituted collection proceedings against her. The appellant alleged that she was never married to Mr. Toscano and

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<sup>126</sup> *Id.* at 692.

<sup>127</sup> Pub. L. No. 91-172, 83 Stat. 487.

<sup>128</sup> Pub. L. No. 91-172, § 951, 83 Stat. 487, 730.

<sup>129</sup> *Toscano v. Comm'r*, 441 F.2d 930 (9<sup>th</sup> Cir. 1971).

that her signature on the joint return was forged. As a result, she never filed the return that became the subject of the Tax Court's earlier judgment.

While acknowledging that fraud upon the court is a term to be narrowly defined, it nevertheless held that the alleged actions satisfied that definition.<sup>130</sup> According to the circuit court, the alleged fraudulent activity started with Mr. Toscano's filing a joint return using a forged signature of the appellant. This fraud was carried over to the Tax Court when Mr. Toscano filed a petition challenging the government's proposed tax deficiency on the return.<sup>131</sup> The Tax Court fell victim to this fraudulent scheme by holding the appellant liable for a tax deficiency that was not hers. The Ninth Circuit even went so far as to compare Mr. Toscano's use of the taxpayer's forged signature to Hartford-Empire's use of the spurious article in *Hazel-Atlas*.<sup>132</sup>

The Ninth Circuit subsequently addressed one of the most notorious claims of fraud upon the Tax Court in *Dixon*, a case involving a fraudulent scheme carried out by counsel for the government.<sup>133</sup> The underlying litigation arose from a large multi-party tax shelter dispute involving over 1,800 taxpayers. To simplify matters, the parties had agreed to follow the Tax Court's decision in a test case involving seven representative taxpayers. However, counsel for the government had secretly settled with two of the seven representatives in exchange for their co-operation at trial.<sup>134</sup> This settlement was not disclosed to the other taxpayers or the court. During trial, the government directed questions at these taxpayers away from the topic of settlement. What was supposed to be a legitimate and representative proceeding turned out to be

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 935

<sup>132</sup> *Id.*

<sup>133</sup> *Dixon v. Comm'r*, 316 F.3d 1041 (9<sup>th</sup> Cir. 2003).

<sup>134</sup> *Id.* at 1043

the exact opposite.<sup>135</sup> The Tax Court subsequently held for the government, after which the truth came out. The Tax Court initially rejected a motion to vacate the judgment on the grounds of fraud upon the court.<sup>136</sup> The Ninth Circuit subsequently reversed and found that the behavior of the government was more than sufficient to warrant a finding of fraud directed at the Tax Court.<sup>137</sup> The circuit court went to direct the Tax Court to enter a judgment for the taxpayers on terms identical to those offered in the settlement agreement.<sup>138</sup>

The Third, Second, Sixth and District of Columbia Circuits, as well as the Tax Court itself, have subsequently followed the Seventh and Ninth Circuits in finding that the Tax Court possesses the limited authority to review and vacate a final judgment on the ground of fraud upon the court, especially in light of the 1969 amendment to section 7441.<sup>139</sup> However, none of those circuits have found that the taxpayer satisfied the heavy burden of substantiating their claim of fraud. As stated by the Sixth Circuit in *Harbold*, “fraud upon the court is a term to be narrowly defined, so as to promote the policy of putting an end to litigation. Proof of fraud by itself is insufficient. The taxpayer must substantiate an intentional plan of deception designed to influence the court in rendering its decision.”<sup>140</sup> Accordingly, taxpayers face a heavy burden of

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<sup>135</sup> *Id.* at 1044.

<sup>136</sup> *Id.* at 1045

<sup>137</sup> *Id.* The 9<sup>th</sup> Circuit also went on to chastise the two IRS attorneys involved and, in dicta, recommended disciplinary action against them. *Id.* at 1047. See Sheldon I Banoff and Richard M. Lipton, “Tax Court Chastised for Allowing a Fraud on the Court by IRS,” 98 J. Tax. 4, at 254.

<sup>138</sup> *Dixon*, 316 F.3d 1041, 1047. The court did entertain the idea of discharging the tax liability for all of the taxpayers in the action (over 1,000). However, it decided that such action was too extreme. The IRS subsequently took disciplinary action against the two attorneys by giving them a two-week unpaid suspension. One attorney was later censured and transferred from Honolulu to San Francisco. The other attorney retired. Sheldon I Banoff and Richard M. Lipton, *supra* note 137.

<sup>139</sup> *Stickler v. Comm’r*, 464 F.2d 368 (3<sup>rd</sup> Cir. 1972); *Senate Realty Corp. v. Comm’r*, 511 F.2d 929 (2<sup>nd</sup> Cir. 1975); *Harbold v. Comm’r*, 51 F.3d 618 (6<sup>th</sup> Cir. 1995); and *Taub v. Comm’r*, 64 T.C. 741 (1975).

<sup>140</sup> *Abatti v. Comm’r*, 86 T.C. 1319, 1325 (1986).

proof to substantiate a fraud upon the court claim. Moreover, not all circuits have acknowledged the existence of a fraud upon the court exception to Tax Court judgment finality.<sup>141</sup>

## V. OTHER EXCEPTIONS

Following the fraud upon the court exception, two additional exceptions have recently been recognized: clerical error and lack of jurisdiction. Like the fraud upon the court exception, both of these exceptions are limited and strictly construed.

The Seventh Circuit recognized clerical error as an exception to judgment finality in *Michaels*.<sup>142</sup> The Tax Court's judgment incorrectly referenced the tax year in question as 1982, rather than 1976. The taxpayer subsequently challenged the government's attempts to collect for 1976 and the Tax Court's correction of its judgment. Referencing Rule 60(a), the circuit court found that correction of an error is a power inherent in any court, including the Tax Court.<sup>143</sup> Unlike Rule 60(b), the court on its own motion may revise a final judgment revision under Rule 60(a) at any time.<sup>144</sup> The court went on to state that courts have traditionally possessed the power and obligation to correct clerical errors in their judgments.<sup>145</sup> The Tax Court, possessed of some judicial authority, apparently possesses this authority. Accordingly, the statutory finality of section 7481 only restricts the Tax Court's authority to revise final judgments under the provisions of Rule 60(b).<sup>146</sup> For a clerical error to qualify under *Michaels*, it must be a pure administrative matter and not involve the exercise of discretion.

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<sup>141</sup> See *Webbe v. Comm'r*, 902 F.2d 688 (8<sup>th</sup> Cir. 1990), rejecting any exception to section 7481.

<sup>142</sup> *Michaels v. Comm'r*, 144 F.3d 495 (7<sup>th</sup> Cir. 1998).

<sup>143</sup> *Id.* at 497.

<sup>144</sup> *Id.*, citing Fed. R. Civ. P. 60(a).

<sup>145</sup> *Id.*, citing *Am. Truck. Ass'n v. Frisco Transp. Co.*, 358 U.S. 133 (1958).

<sup>146</sup> *Id.*

The Tax Court in *Abeles* held that it possessed the authority to vacate a judgment rendered against a taxpayer over whom it had acquired no jurisdiction.<sup>147</sup> A prerequisite to Tax Court jurisdiction is the issuance by the Internal Revenue Service of a statutory notice of deficiency.<sup>148</sup> The IRS had delivered a notice to the taxpayer's ex-spouse, proposing a deficiency on a joint return filed by both the taxpayer and her spouse. However, the taxpayer in *Abeles* had recently divorced from her husband and never received the notice. The husband subsequently filed a Tax Court petition in his own name, later filing an amended petition purportedly containing the taxpayer's signature as well. After the Tax Court rendered judgment for the government, the taxpayer challenged the court's judgment on jurisdictional grounds, claiming that she was never a party to the case or the resulting judgment.<sup>149</sup> The taxpayer successfully asserted that she never filed a petition, stating that the signature on the amended petition was a forgery.<sup>150</sup> Accordingly the judgment rendered against the taxpayer was void.<sup>151</sup>

## VI. CONCLUSION

The United States Tax Court serves a unique role in the nation's judicial process. The function of the court is to provide a forum for the resolution of tax controversies. Unlike the U.S. district courts and Court of Federal Claims, the Tax Court carries out this role without the necessity of prepayment of the underlying tax. However, the Tax Court was established under

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<sup>147</sup> *Abeles v. Comm'r.*, 90 T.C. 103 (1988).

<sup>148</sup> I.R.C. §§ 6213 and 7442 (2000). The notice is to be addressed to the last know address of the taxpayer(s). A single notice is sufficient for a joint return, unless the IRS is aware that the spouses are no longer married and maintain separate residences. According to Tax Ct. R. 13, the court's jurisdiction requires both the issuance of a notice of deficiency and a timely petition by the taxpayer.

<sup>149</sup> Tax Ct. R. 34 requires that the petition contain the signatures of the petitioning parties. Tax Ct. R. 60 allows a party not originally part of the petition to ratify the petition and thus become a party. However, a party's failure to ratify a petition will preclude them from becoming a party in the action.

<sup>150</sup> The taxpayer had used a handwriting expert to support her forgery claim.

<sup>151</sup> *Abeles v. Comm'r.*, 90 T.C. 103, 109 (1988)

Article I of the U.S. Constitution. As an Article I, or legislative court, the Tax Court does not possess the full spectrum of the judicial authority of the United States granted to Article III courts. The Tax Court may only exercise that authority granted by Congress. Moreover, Congressional limitations on the Tax Court are strictly construed.

One of the situations where this limitation is quite evident is the Tax Court's power to review judgments that have otherwise become final. Section 7481 provides that a Tax Court judgment becomes final upon the expiration of the period for filing a notice of appeal, currently ninety days. Once that period has expired, the judgment becomes final and no longer amenable to challenge. A final Tax Court judgment may not be revised or vacated by the Tax Court itself or an appellate court.

While judgment finality serves an important legal and societal objective by achieving closure for the parties, it can result in inequitable consequences. The Federal Rules of Civil Procedure, applicable only for U.S. district courts, provide limited exceptions to finality. Rule 60(a) allows final judgments to be revised or vacated due to clerical error at any time.<sup>152</sup> Rule 60(b) allows revisions to be made, for up to one year, due to fraud, mistake, and newly discovered evidence.<sup>153</sup> There is no comparable rule for the Tax Court.<sup>154</sup> Attempts to revise final Tax Court judgments have been refuted based upon the Tax Court's possession of strictly construed limited authority, along with the express language of section 7481. The court's promotion from an independent executive agency to an Article I court has changed that view, but

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<sup>152</sup> Fed. R. Civ. P. 60(a).

<sup>153</sup> Fed. R. Civ. P. 60(b).

<sup>154</sup> Tax Ct. R. 161 and 162 provide for post-trial motions, but they must be filed within 10 days after judgment. There are no provisions in the Internal Revenue Code or Tax Court rules that extend the 90-day deadline imposed by section 7481.

only slightly.<sup>155</sup> As an Article I court, the Tax Court does not possess implied judicial authority, including the equitable power to revisit a final judgment to achieve a just result. Accordingly, section 7481's finality rule has been strictly construed.

Exceptions to this rule have slowly developed. Two exceptions that have developed without much contention are: correction of clerical errors and lack of jurisdiction. However, fraud upon the court is a third exception that has been and remains quite contentious. The Supreme Court held in 1944 that a district court possesses the authority to revisit an otherwise final judgment on grounds of fraud upon the court. However, it was over twenty years before that exception was extended to the Tax Court. Moreover, even after *Kenner*, the exception has not found uniform acceptance. The Eighth Circuit still holds to a strict interpretation of section 7481, and refuses to recognize any exceptions to the finality of a Tax Court judgment.

Strict interpretation of the finality rule means that taxpayers suffering an adverse judgment from the Tax Court must immediately assess their appeal options. Unlike a district court judgment, there is no margin for delay. It is unlikely that the finality rule will be further relaxed absent congressional action. The express language of the provision and the Tax Court's apparent lack of equitable authority leave little room for additional exceptions. Meanwhile, taxpayers and their counsel must be aware of the ninety-day deadline imposed by section 7483 and the strictness in which it is applied, especially in those circuits that still follow an absolute interpretation of section 7481.

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<sup>155</sup> *Kenner*, 387 F.2d 689, opening the door for the fraud upon the court exception, was decided before enactment of the 1969 Tax Reform Act.