

### **35.9.1.3.1 (08-11-2004)**

#### **Finality of Tax Court Decision**

1. Section 7481 governs the finality of a Tax Court decision. The attorney should keep in mind that finality of the decision is a prerequisite to assessment procedures. The finality of a Tax Court decision is important since the entire assessment and collection procedure is dependent upon the timing of such finality.
2. The decision of the Tax Court will become final upon the expiration of the appeal period (90 days from the date the decision is entered) if no appeal is taken by either party during that time. The appeal period may be extended by a motion to vacate or revise the decision or by a motion for litigation costs (since the court typically vacates the decision and enters a new decision determining the award of litigation costs, if any).
3. If either party files a timely notice of appeal, the finality of the Tax Court decision depends upon the outcome of the case on appeal. *See* CCDM Part 36 for a detailed discussion of appeals and appellate procedures.
4. If a Tax Court decision is remanded by a court of appeals or the Supreme Court to the Tax Court for a rehearing, the decision entered as a result of the rehearing will become final in the regular manner as if there had been no prior proceedings; *i.e.*, after the expiration of the 90-day appeal period. As used in this context, the term rehearing encompasses any Tax Court proceedings beyond the mere entry of a new decision. Note, however, that if the case has been remanded for rehearing by the court of appeals, no trial or further proceedings should be instituted until after the certiorari period has expired. *See* CCDM 36.2.5.12.2 Transfer of Case to Area Counsel for cases remanded to the Tax Court.
5. After a Tax Court decision has become final, the Tax Court is without jurisdiction to vacate or modify the decision in any way, with several exceptions, including fraud upon the court, lack of jurisdiction over the subject matter or the parties (in this situation the decision would be void), and the modification, if necessary, of a final decision in an estate tax case solely to reflect the estate's entitlement to a deduction for interest paid during an extended-payment period on the federal or state estate tax liability. *See* section 7481(d).

[http://www.irs.gov/irm/part35/irm\\_35-009-001.html](http://www.irs.gov/irm/part35/irm_35-009-001.html)

### **35.8.1.7 (08-11-2004)**

#### **Certification of Decision or Dismissal Order**

1. The court's decision or order of dismissal is the final order closing the case. When the decision or order becomes final, it generally cannot thereafter be vacated or modified. The court's decision or order, together with the administrative computation upon which it is based, must form the basis

for the administrative closing of the case by the assessment and collection of any amount due from the petitioner, or the refund or credit of any overpayment due to the petitioner.

[http://www.irs.gov/irm/part35/irm\\_35-008-001.html](http://www.irs.gov/irm/part35/irm_35-008-001.html)

#### **35.1.1.1 (08-11-2004)**

##### **Introduction**

1. The United States Tax Court is established as a court of record under Article I of the Constitution by section 7441 of the Internal Revenue Code. The Tax Court's jurisdiction is generally prescribed by section 7442, but specific grants of jurisdiction are interspersed throughout the Code. The procedure under which the court operates is prescribed in sections 7451 through 7465. Pursuant to its statutory authority in section 7453, the court has promulgated Rules of Practice and Procedure under which it operates. Except in proceedings conducted under sections 7436(c) and 7463, the rules of evidence applicable in the Tax Court are the rules of evidence applicable in trials without a jury in the United States District Court for the District of Columbia. Section 7453. The specific Internal Revenue Code provisions conferring Tax Court jurisdiction are discussed in subsequent text.

##### **IRM 4.10.7.2.9.8 (05/14/99) Importance of Court Decisions**

1. *"Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either an examiner or taxpayers to support a position.*
2. *Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow the Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.*
3. *Decisions made by lower courts, such as Tax Courts, District courts, or Claims Court are binding on the Service ONLY for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers."*

As a general rule, once the Tax Court's decision has become final, it may not take further action absent fraud on the court. *Lasky v. Commissioner*, 352 U.S. 1027 (1957). A party may raise a jurisdictional issue after a decision in the case has become final under section 7481. See *Brannon's of Shawnee, Inc. v. Commissioner*, 69 T.C. 999 (1978), and 71 T.C. 108 (1978).