

**ABA Section of Taxation  
May Meeting – Washington, DC  
Pro Bono & Tax Clinics Committee  
(co-sponsored by Court Procedure & Practice)**

**Special Trial Judges of the US Tax Court**

Moderator:

Andrew R. Roberson, McDermott Will & Emery LLP, Chicago, IL

Panelists:

The Honorable John O. Colvin, Judge, US Tax Court, Washington, DC

The Honorable Peter J. Panuthos, Chief Special Trial Judge, US Tax Court,  
Washington, DC

The Honorable Lewis R. Carluzzo, Special Trial Judge, US Tax Court,  
Washington, DC

Agenda

1. Introductions
2. History of Special Trial Judges / Statutory Framework
3. Work of Special Trial Judges

## Outline

1. Section 7443A contains statutory rules relating to Special Trial Judges.
  - (a) The Chief Judge of the US Tax Court is authorized to appoint special trial judges who shall proceed under rules and regulations promulgated by the Court. Sec. 7443A(a).
  - (b) Under section 7443A(b), the Chief Judge may assign a variety of proceedings to be heard by a Special Trial Judge:
    - (1) Any declaratory judgment proceeding;
    - (2) Any proceeding under section 7463;
    - (3) Any proceeding where neither the amount of the deficiency placed in dispute nor the amount of any claimed overpayment exceeds \$50,000;
    - (4) Any proceeding under section 6320 or 6330;
    - (5) Any proceeding under section 7436(c);
    - (6) Any proceeding under section 7623(b)(4); and
    - (7) Any other proceedings which the chief judge may designate
  - (c) The Court may authorize a Special Trial Judge to make a decision of the Court with respect to all but section 7443A(b)(7), subject to such conditions and review as the Court may provide. Sec. 7443A(c).
  - (d) For section 7443A(b)(7) proceedings, the Special Trial Judge may not enter a decision. Thus, any opinion in a section 7443A(b)(7) proceeding requires adoption.
2. Section 7463(a) addresses disputes involving \$50,000 or less where an election is made to proceed as an “S” case. The statute provides:
  - (a) In the case of any petition filed with the Tax Court for a redetermination of a deficiency whether neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment exceeds:

- (1) \$50,000 for any one taxable year, in the case of the taxes imposed by subtitle A [income tax],
- (2) \$50,000, in the case of the tax imposed by chapter 11 [estate tax],
- (3) \$50,000 for any one calendar year, in the case of the tax imposed by chapter 12 [gift tax], or
- (4) \$50,000 for any one taxable period (or, if there is not taxable period, taxable event) in the case of any tax imposed by subtitle D which his described in section 6212(a) (relating to a notice of deficiency)

at the option of the taxpayer concurred in by the Tax Court or a division therefore before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefore, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

3. As noted above, proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe.
  - (a) Tax Court Rule 174(b) addresses differences between the conduct of regular cases and “S” cases.
  - (b) Trials of small tax cases shall be conducted as informally as possible.
  - (c) Any evidence deemed by the Court to have probative value shall be admissible.
4. Section 7463(b) provides that a decision in an S case is not appealable and shall not be treated as precedent for any other case.
5. Sec. 7463(d) allows either party to request that the S designation be removed.

Discontinuance of Proceeding: The Tax Court, or the division thereof hearing such case, may, if it finds that –

- (a) There are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount described in subsection (a), and
  - (b) The amount of such excess is large enough to justify granting such request, discontinue further proceedings as a small tax case.
6. Tax Court Rules 170-174 sets forth the special provisions which are to be applied to S cases.
- (a) Rule 170 – definition of S case.
  - (b) Rule 171 – S case election procedures.
  - (c) Rule 172 – representation in S cases.
  - (d) Rule 173 – pleadings.
  - (e) Rule 174 – trial.

## List of Current Special Trial Judges

The Honorable Peter J. Panuthos: <http://www.ustaxcourt.gov/judges/panuthos.htm>

The Honorable Robert N. Armen: <http://www.ustaxcourt.gov/judges/armen.htm>

The Honorable Lewis R. Carluzzo: <http://www.ustaxcourt.gov/judges/carluzzo.htm>

The Honorable Daniel A. Guy: <http://www.ustaxcourt.gov/judges/guy.htm>

The Honorable Diana L. Leyden: <http://www.ustaxcourt.gov/judges/Leyden.htm>