



SHOULD TAXPAYERS FILE AMICUS BRIEFS IN TAX COURT CASES?

Amicus—or “friend of the court”—briefs are not uncommon in Supreme Court and appellate court cases. The purpose of an amicus brief is generally to provide assistance to the court by presenting additional arguments either in support or opposition of one of the litigant’s positions. Amicus briefs should not rehash the same arguments presented by one of the parties, but rather should provide insights and a different perspective that is not presented by the parties, and to inform the court of the impact of the issues in the case on other affected parties. The Federal Rules of Appellate Procedure provide detailed rules on how and when to file an amicus brief. See [here](#) for Federal Rule of Appellate Procedure 29, which governs amicus filings.

Sometimes, amicus parties want to get involved at the trial court level before the trial record is fixed. Thus, increasingly, amicus briefs are being filed in trial courts, and in particular in the United States Tax Court (Tax Court). When, why and how to file an amicus brief in a trial court is not clear. Indeed, most trial courts do not have procedural rules that directly address those filings. This post provides an overview of some of the considerations and procedures for filing such briefs in a Tax Court case.

Whether to allow an amicus to participate in a case is within the sound discretion of the court. Because the filing of an amicus brief is discretionary, the typical practice is to file a motion seeking permission or “leave” of the court to file an amicus brief accompanied with a statement stating that the litigants do, or do not, object to the filing of the amicus brief.

In deciding whether to grant permission to file an amicus brief, the Tax Court generally examines whether “the proffered information is timely, useful or otherwise helpful.” The court also considers whether amici are advocates for one of the parties, have an interest in the outcome of the case and possess unique information or perspective. This is consistent with the standards applied by other courts in making the determination.

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PRACTICE POINT:

Several factors should be considered by taxpayers in deciding whether to file an amicus brief in Tax Court. In addition to the cost, taxpayers may want to consider whether their position is being adequately represented by another taxpayer’s case and whether they believe that they can provide arguments that might persuade the court to adopt their position. Participation as an amicus can also be helpful to taxpayers in coordinating legal positions and ensuring that the best possible arguments are presented on issues of first impression. An effective amicus brief has the potential to persuade the court, and can be an effective tool to resolve an issue favorably. This is especially true when, because of the specific facts of the taxpayer, the perspectives of other taxpayers are not adequately addressed.