

Types of Tax Court Opinions and Their Precedential Effect

Most tax cases are decided by the US Tax Court (Tax Court). The Tax Court issues two categories of opinions: (1) formally published dispositions; and (2) unpublished dispositions. The first category consists of opinions that are published in the Tax Court Reports and technically are called “division opinions” but are more commonly referred to as “T.C. opinions.” The second category consists of three sets of unpublished dispositions: (1) memorandum opinions (commonly referred to as “memo opinions” or “T.C. memos”); (2) summary opinions; and (3) orders. A common question asked by taxpayers relates to the difference between these forms of dispositions in terms of precedential effect.

T.C. opinions are binding, precedential, and published by the Tax Court. They generally address issues of first impression, issues that impact a large number of taxpayers, or matters related to the validity or invalidity of regulations. To the extent there is a T.C. opinion on point, taxpayers should cite to it as primary authority in a Tax Court proceeding.

Memo opinions are not published by the Tax Court, but are available on the court’s website (starting with opinions released on September 25, 1995) and are reproduced by commercial publishers. They generally address cases that do not involve novel legal issues and that the law is settled or the result is factually driven. Although these opinions are technically not precedential, they are often cited by litigants, and the Tax Court does not regard these opinions lightly. It is rare to find a non-T.C. opinion that rejects the reasoning of a memo opinion. Indeed, the trend in recent years seems to be that the weight afforded to T.C. opinions and memo opinions is not substantially different. This reflects the fact that there are significantly more memo opinions than T.C. opinions each year (approximately 90 percent of all Tax Court opinions are memo opinions), providing taxpayers with more authority upon which to provide support for their position.

Summary opinions are also not published by the Tax Court, but are available on the court’s website (starting

with opinions released on January 10, 2001) and are reproduced by commercial publishers. They are issued in cases where the amount in dispute is less than \$50,000 and the taxpayer elects to have its case tried under the small tax case procedures. Most summary opinions involve run-of-the-mill facts, but some provide insightful discussions of the law that may support a taxpayer’s case. By statute, summary opinions are not precedential; however, the Tax Court does not prohibit the citation of this type of opinion and has noted that it may give consideration to the reasoning and conclusions in a summary opinion to the extent they are persuasive. Thus, in the absence of a T.C. opinion or memo opinion supporting a taxpayer’s position or addressing the issue presented, taxpayers may want to consider citing to a favorable summary opinion.

Finally, the Tax Court sometimes issues orders that involve the discussion of substantive issues. Orders are not published by the Tax Court, but orders issued after June 17, 2011, are available on the court’s website. The most common substantive orders involve evidentiary questions or the application of the court’s rules. Tax Court Rule 51(f) provides that “Orders shall not be treated as precedent, except as may be relevant for purposes of establishing the law of the case, *res judicata*, collateral estoppel, or other similar doctrine.” However, similar to summary opinions, there is no express rule prohibiting the citation to orders. Thus, if any issues has never been addressed by the Tax Court in an opinion, but has been discussed in an order, taxpayers may want to bring the order to the Court attention. A recent example of this situation is the orders issued by Judge Holmes in two cases requiring the Internal Revenue Service to serve on the taxpayer all non-party subpoenas issued in the case, together with all responses and documents that nonparties produced after receiving those subpoenas. For further discussion of that issue, see [here](#).

In litigating a case in Tax Court, taxpayers must research and determine which authority best supports their position. Because they are precedential, T.C. opinions are the strongest form of authority. However, memo opinions, summary opinions, and even orders should not be overlooked as additional sources of support. For a more detailed discussion of the precedential and persuasive value of unpublished dispositions, please see our article [here](#).

If you have questions, please contact [Andy Roberson \(aroberson@mwe.com\)](mailto:aroberson@mwe.com) or [Kevin Spencer \(kspencer@mwe.com\)](mailto:kspencer@mwe.com).