

DESCRIPTION OF S. 1691  
(TAX COURT IMPROVEMENT ACT OF 1979)  
LISTED FOR A HEARING

BEFORE THE  
SUBCOMMITTEE ON TAXATION AND  
DEBT MANAGEMENT GENERALLY  
OF THE  
COMMITTEE ON FINANCE  
ON NOVEMBER 2, 1979

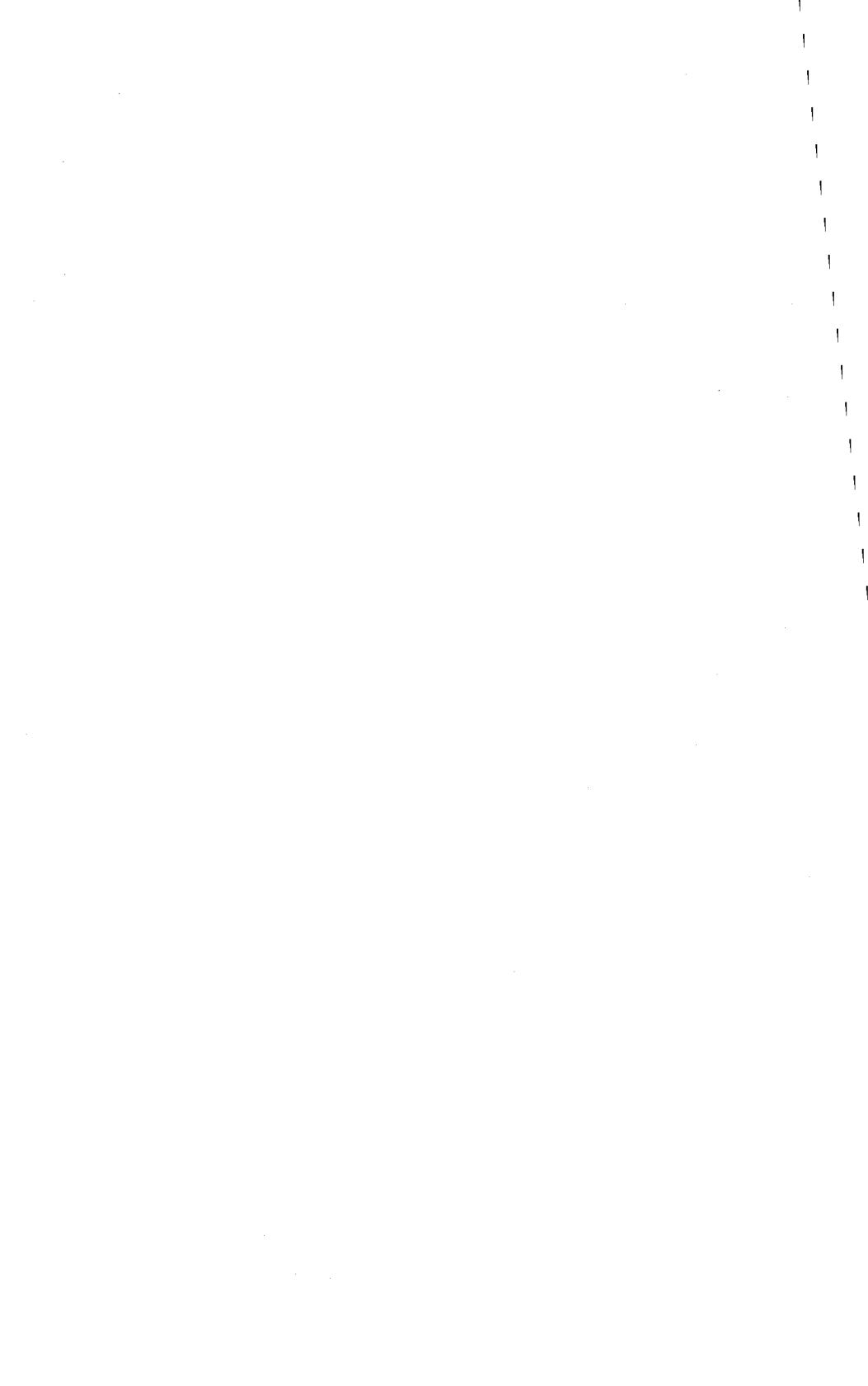
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PREPARED FOR THE USE OF THE  
COMMITTEE ON FINANCE  
BY THE STAFF OF THE  
JOINT COMMITTEE ON TAXATION



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## CONTENTS

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	Page
Introduction -----	1
I. Summary -----	2
II. Description of the Bill-----	3
	(III)



## **INTRODUCTION**

The bill described in this pamphlet, S. 1691, has been scheduled for a hearing on November 2, 1979, by the Subcommittee on Taxation and Debt Management Generally of the Senate Committee on Finance. S. 1691, the "Tax Court Improvement Act of 1979," was reported by the Senate Committee on the Judiciary on August 3, 1979 (S. Rep. 96-306) and referred, by unanimous consent, to the Committee on Finance.

The first part of the pamphlet is a brief summary of the bill. This is followed by a discussion of present law, issues involved the provisions of the bill, and the effective date.

(1)

## **I. SUMMARY**

Under present law, a decision of a United States District Court in a tax case or a decision of the United States Tax Court generally is appealable to the United States Court of Appeals for the judicial circuit in which the taxpayer resides or has its principal place of business.

The bill would establish a national court of tax appeals with exclusive intermediate appellate jurisdiction over all decisions of the United States Tax Court and civil tax decisions of the United States District Courts, regardless of the taxpayer's residence or place of business. Decisions of the new national appellate tax court would be reviewable by the United States Supreme Court.

The national court of tax appeals would be staffed by 11 judges, one from each of the 11 Courts of Appeals, serving three-year terms. The new court would hear cases, in panels of three or more judges, in the judicial circuit in which the taxpayer is domiciled or has its principal place of business.

The provisions of the bill would become effective two years after the date of enactment.

(2)

## II. DESCRIPTION OF THE BILL

### *Present law*

If the Internal Revenue Service determines a deficiency of income, estate, gift, or certain excise taxes, the taxpayer can challenge the asserted liability in the United States Tax Court without first paying the tax.<sup>1</sup> Alternatively, the taxpayer can first pay the deficiency and, after exhausting administrative remedies, sue for a refund in either a United States District Court or the United States Court of Claims. Also, a taxpayer can sue for a refund of an overpayment of tax not attributable to a deficiency, after exhausting administrative remedies, in a District Court or the Court of Claims. A trial by jury may be obtained in a District Court, but not in the Tax Court or the Court of Claims.

A decision of the Tax Court can be appealed to the United States Court of Appeals for the judicial circuit<sup>2</sup> in which the taxpayer's legal residence is located (sec. 7482(b)(1)(A) of the Internal Revenue Code). In the case of a corporation, the appeal lies to the Court of Appeals for the judicial circuit in which the principal place of business or principal office or agency of the corporation is located (sec. 7482(b)(1)(B)). If a taxpayer files suit in a District Court, the decision of the District Court usually will be appealable to the same Court of Appeals that would hear an appeal from a decision of the Tax Court had that taxpayer sued in the Tax Court.

A Court of Claims decision cannot be appealed to a Court of Appeals and can be reviewed only by the United States Supreme Court.

In deciding a question of tax law, the Tax Court or a United States District Court is required to follow only interpretations of the law made by the particular Court of Appeals to which the case being tried can be appealed. For example, a District Court within the Fourth Circuit is bound by the decisions of the Court of Appeals for the Fourth Circuit and is not bound by decisions of the ten other Courts of Appeals. Similarly, if a taxpayer residing in the Second Circuit files suit in the Tax Court, the Tax Court, in reaching its decision, is bound only by the decisions of the Court of Appeals for the Second Circuit.<sup>3</sup> If a second taxpayer with an identical claim but residing in

<sup>1</sup> A taxpayer may also seek a declaratory judgment in the Tax Court in controversies involving tax-exempt organizations, retirement plans, certain transfers of property from the United States, and certain government obligations (secs. 7428, 7476, 7477, and 7478 of the Internal Revenue Code. A declaratory judgment may also be sought in the United States District Court for the District of Columbia and the United States Court of Claims in a controversy involving tax-exempt organizations (sec. 7428 of the Code).

<sup>2</sup> The Federal intermediate appeals courts are divided into 11 geographically defined judicial circuits. For example, the Fourth Circuit encompasses Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

<sup>3</sup> *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd on other grounds*, 445 F.2d 985 (10th Cir.), cert. denied, 404 U.S. 940 (1971).

the Third Circuit files suit in the Tax Court, the Tax Court, in deciding the second taxpayer's claim, is bound only by the decisions of the Court of Appeals for the Third Circuit and is not bound by the decisions of any other Court of Appeals. The Court of Claims is not bound by any decision of a Court of Appeals.

All three trial courts—the Tax Court, District Courts, and Court of Claims—are bound by the decisions of the Supreme Court. Decisions of the Courts of Appeals are reviewable by the United States Supreme Court.

### *Issues*

The first issue to be considered with respect to S. 1691 is whether there should be a national court of tax appeals.

If a national court of tax appeals were to be established, other issues include the following:

- (1) Where should the court be located?
- (2) Where should the court hear cases?
- (3) How many judges should the court have?
- (4) How should the judges be selected?
- (5) Should the judges be permanently appointed to the court or should they serve on a temporary basis?
- (6) How many judges should be required to decide a case?
- (7) When should the court hear a case en banc?

### *Explanation of the bill*

#### *General*

The bill would establish a United States Court of Tax Appeals which would decide (1) all appeals from decisions of the United States Tax Court and (2) appeals from decisions of United States District Courts in civil tax cases. Decisions of the Court of Tax Appeals would be reviewable by the United States Supreme Court by writ of certiorari.

The bill would not affect provisions of present law concerning the jurisdiction of the Court of Claims over tax refund litigation or review by the Supreme Court of tax decisions of the Court of Claims.<sup>4</sup>

#### *Location*

The Court of Tax Appeals would have permanent offices in the District of Columbia. Appeals would be heard, however, in the judicial circuit in which the taxpayer is domiciled. In the case of a corporation, an appeal would be heard in the judicial circuit in which the corporation has its principal place of business.<sup>5</sup> The Court of Tax Appeals would convene at least once a year in each judicial circuit and hold additional sessions at such locations and at such times as the Court determines.

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<sup>4</sup> S. 1477 (the "Federal Courts Improvement Act of 1979"), as passed by the Senate on October 30, 1979, provides that tax decisions of the Court of Claims would be reviewable by the Courts of Appeals in the same manner as decisions of the District Courts in nonjury civil tax cases. For example, if a taxpayer residing within the Fourth Circuit brought a refund suit in the Court of Claims, the case would be reviewable by the Court of Appeals for the Fourth Circuit. The provisions of S. 1477 generally would become effective two years after the date of enactment.

<sup>5</sup> The principal place of activity of a cooperative or organization claiming a tax exemption would determine the judicial circuit in which the cooperative's or organization's appeal would be heard.

### *Composition*

The 11 members of the Court of Tax Appeals would be chosen by the Chief Justice of the Supreme Court from among the judges of the Courts of Appeals.<sup>6</sup> The Chief Justice would be required to designate one judge from each of the geographically defined judicial circuits. Whenever a vacancy occurs on the Court of Tax Appeals, the Chief Justice would be required to appoint a circuit judge from the judicial circuit no longer represented on the Court of Tax Appeals. If the Chief Justice is unable to designate a circuit judge, a district judge sitting in that judicial circuit could be designated.

### *Term of service*

A Court of Tax Appeals judge would serve a three-year term<sup>7</sup> during which he or she would remain a judge of the Court of Appeals from which he or she was selected. The bill does not expressly provide whether a judge may serve consecutive terms.

### *Chief Judge*

The first chief judge of the Court of Tax Appeals would be selected by the Chief Justice from among the first 11 judges. Thereafter, the chief judge would be selected on the basis of seniority and age in the same manner the chief judge of a Court of Appeals is selected.

### *Hearings*

The Court of Tax Appeals would sit in panels of three or more judges. In addition, the bill requires that at least nine judges would hear a case en banc whenever six judges decide an en banc hearing is "in the interest of justice." The bill requires the judges to consider, but does not limit consideration to, the following factors in determining whether to hear a case en banc: (1) whether the issue presented is novel or applicable to many taxpayers; (2) whether the panel of judges that decided the case was unanimous; (3) whether any of the judges on the original panel recommend a rehearing; and (4) whether the case presents issues of first impression.

### *Report*

The bill requires the Director of the Administrative Office of the United States Courts to report, on or about January 1, 1985, on the implementation of the bill and the extent to which taxpayers have had their cases resolved promptly and efficiently in their judicial circuits.

### *Effective date*

The provisions of the bill would become effective two years after the date of enactment. All appeals taken before the effective date from a decision of a District Court would be decided by the Court of Appeals in which the appeal had been filed. The bill does not contain a similar rule for the disposition of pending appeals from Tax Court decisions.

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<sup>6</sup> The bill provides that judges of the proposed Court of Appeals of the Federal Circuit could not serve on the Court of Tax Appeals. The Court of Appeals for the Federal Circuit would be established under S. 1477 (the "Federal Courts Improvement Act of 1979"), as passed by the Senate on October 30, 1979.

<sup>7</sup> The terms of the first judges selected would vary from one to three years so that vacancies would be staggered.

