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TAX COURT MODERNIZATION ACT

MAY 5, 2003.—Ordered to be printed

Mr. GRASSLEY, from the Committee on Finance, submitted the following

R E P O R T

[To accompany S. 753]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 753) to amend the Internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. LEGISLATIVE BACKGROUND

The Senate Committee on Finance marked up S. 753 (the "Tax Court Modernization Act") on April 2, 2003, and ordered the bill favorably reported by voice vote.

II. EXPLANATION OF THE BILL

TITLE I. TAX COURT PROCEDURE

A. Consolidate Review of Collection Due Process Cases in the Tax Court

(Sec. 101 of the bill and sec. 6330 of the Code)

PRESENT LAW

In general, the Internal Revenue Service ("IRS") is required to notify taxpayers that they have a right to a fair and impartial hearing before levy may be made on any property or right to property.[1] Similar rules apply with respect to liens.[2] The hearing is held by an impartial officer from the IRS Office of Appeals, who is required to issue a determination with respect to the issues raised by the taxpayer at the hearing. The taxpayer is entitled to appeal that determination to a court. The appeal must be brought to the Tax Court, unless the Tax Court does not have jurisdiction over the underlying tax liability. If that is the case, then the appeal must be brought in the district court of the United States.[3] If a court determines that an appeal was not made to the correct court, the taxpayer has 30 days after such determination to file with the correct court.

The Tax Court is established under Article I of the United States Constitution[4] and is a court of limited jurisdiction.[5] Thus, the Tax Court may not have jurisdiction over the underlying tax liability with respect to an appeal of a due process hearing relating to a collections matter. As a practical matter, many cases involving such appeals (whether within the jurisdiction of the Tax Court or a district court) do not involve the underlying tax liability.

REASONS FOR CHANGE

The Tax Court does not have jurisdiction over all of the tax issues underlying collection due process cases (such as issues involving most excise taxes). The judicial appeals structure of present law was designed in recognition of these jurisdictional limitations;

[1] Sec. 6330(a).
[2] Sec. 6320.
[3] Sec. 6330(d).
[4] Sec. 7441.
[5] Sec. 7442.

however, in many cases the underlying taxes are not involved in determining the due process issue. The present-law structure can lead to confusion over which court is the proper court in which to file an appeal. Some believe that this confusion may also be used by some taxpayers seeking to delay the collection process. Accordingly, the Committee believes that the Tax Court should have jurisdiction over all appeals of collection due process determinations. The simplification provided will both benefit the taxpayers involved and the IRS by eliminating confusion over which court is the proper venue for appeal and will reduce the period of time before judicial review. This provision will also eliminate the opportunity to use the present-law rules in unintended ways to delay or defeat the collection process.

EXPLANATION OF PROVISION

The provision modifies the jurisdiction of the Tax Court by providing that all appeals of collection due process determinations are to be made to the United States Tax Court.

EFFECTIVE DATE

The provision applies to determinations made after the date of enactment.

B. Extend Authority for Special Trial Judges to Hear and Decide Certain Employment Status Cases

(Sec. 102 of the bill and sec. 7443A(b) of the Code)

PRESENT LAW

In connection with the audit of any person, if there is an actual controversy involving a determination by the IRS as part of an examination that (1) one or more individuals performing services for that person are employees of that person or (2) that person is not entitled to relief under section 530 of the Revenue Act of 1978, the Tax Court has jurisdiction to determine whether the IRS is correct and the proper amount of employment tax under such determination.[6] Any redetermination by the Tax Court has the force and effect of a decision of the Tax Court and is reviewable.

An election may be made by the taxpayer for small case procedures if the amount of the employment taxes in dispute is $50,000 or less for each calendar quarter involved.[7] The decision entered under the small case procedure is not reviewable in any other court and should not be cited as authority.

The chief judge of the Tax Court may assign proceedings to special trial judges. The Code enumerates certain types of proceedings that may be so assigned and may be decided by a special trial judge. In addition, the chief judge may designate any other proceeding to be heard by a special trial judge.[8]

REASONS FOR CHANGE

The Committee believes that clarifying that special trial judges may decide proceedings involving a determination of employment

[6] Sec. 7436.
[7] Sec. 7436(c).
[8] Sec. 7443A.

status in which the amount of employment taxes in dispute is $50,000 or less for each calendar quarter involved will improve the operations and internal functioning of the Tax Court.

EXPLANATION OF PROVISION

The provision clarifies that the chief judge of the Tax Court may assign to special trial judges any employment tax cases that are subject to the small case procedure and may authorize special trial judges to decide such small tax cases.

EFFECTIVE DATE

The provision is effective for any action or proceeding in the Tax Court with respect to which a decision has not become final as of the date of enactment.

C. Confirmation of Tax Court Authority to Apply Equitable Recoupment

(Sec. 103 of the bill and sec. 6214 of the Code)

Equitable recoupment is a common-law equitable principle that permits the defensive use of an otherwise time-barred claim to reduce or defeat an opponent's claim if both claims arise from the same transaction. U.S. District Courts and the U.S. Court of Federal Claims, the two Federal tax refund forums, may apply equitable recoupment in deciding tax refund cases.[9] In *Estate of Mueller* v. *Commissioner*,[10] the Court of Appeals for the Sixth Circuit held that the Tax Court may not apply the doctrine of equitable recoupment. More recently, the Court of Appeals for the Ninth Circuit, in *Branson* v. *Commissioner*,[11] held that the Tax Court may apply the doctrine of equitable recoupment.

REASONS FOR CHANGE

The Committee believes that it is important to resolve the conflict among the circuit courts by eliminating the uncertainty or confusion of differing results in differing circuits. The Committee also believes that the provision will provide simplification benefits to both taxpayers and the IRS.

EXPLANATION OF PROVISION

The provision confirms that the Tax Court may apply the principle of equitable recoupment to the same extent that it may be applied in Federal civil tax cases by the U.S. District Courts or the U.S. Court of Claims. No implication is intended as to whether the Tax Court has the authority to continue to apply other equitable principles in deciding matters over which it has jurisdiction.

EFFECTIVE DATE

The provision is effective for any action or proceeding in the Tax Court with respect to which a decision has not become final as of the date of enactment.

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[9] See *Stone* v. *White,* 301 U.S. 532 (1937); *Bull* v. *United States,* 295 U.S. 247 (1935).
[10] 153 F.3d 302 (6th Cir.), cert. den., 525 U.S. 1140 (1999).
[11] 264 F.3d 904 (9th Cir.), cert. den., 2002 U.S. LEXIS 1545 (U.S. Mar. 18, 2002).

D. Tax Court Filing Fee

(Sec. 104 of the bill and sec. 7451 of the Code)

PRESENT LAW

The Tax Court is authorized to impose a fee of up to $60 for the filing of any petition for the redetermination of a deficiency or for declaratory judgments relating to the status and classification of 501(c)(3) organizations, the judicial review of final partnership administrative adjustments, and the judicial review of partnership items if an administrative adjustment request is not allowed in full.[12] The statute does not specifically authorize the Tax Court to impose a filing fee for the filing of a petition for review of the IRS's failure to abate interest or for failure to award administrative costs and other areas of jurisdiction for which a petition may be filed. The practice of the Tax Court is to impose a $60 filing fee in all cases commenced by petition.[13]

REASONS FOR CHANGE

The Committee believes it is appropriate to clarify that the Tax Court filing fee applies to any case commenced by the filing of a petition.

EXPLANATION OF PROVISION

The provision provides that the Tax Court is authorized to charge a filing fee of up to $60 in all cases commenced by the filing of a petition.

EFFECTIVE DATE

The provision is effective on the date of enactment.

E. Employees of the Tax Court

(Sec. 105 of the bill and sec. 7471(a) of the Code)

PRESENT LAW

The Tax Court is a legislative court established by the Congress pursuant to Article I of the U.S. Constitution (an "Article I" court).[14] The Tax Court is authorized to appoint employees, subject to the rules applicable to employment with the Executive Branch of the Federal Government (generally referred to as "competitive service"), as administered by the Office of Personnel Management.[15]

Employment with the Federal Executive Branch is governed by certain general statutory principles, such as recruitment of qualified individuals, fair and equitable treatment of employees and applicants, maintenance of high standards of employee conduct, and protection of employees against arbitrary action. The rules for employment in the Federal Executive Branch address various aspects of such employment, including: (1) procedures for the appointment of employees in the competitive service, including preferences for

[12] Sec. 7451.
[13] See Rule 20(a) of the Tax Court Rules of Practice and Procedure.
[14] Sec. 7441.
[15] Sec. 7471.

certain individuals (e.g., veterans); (2) compensation, benefits, and leave programs for employees; (3) appraisals of employee performance; (4) disciplinary actions; and (5) employee rights, including appeal rights. In addition, employees are protected from certain personnel practices (referred to as "prohibited personnel practices"), such as discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition.

REASONS FOR CHANGE

The Tax Court was established as an Article I court in part because of its need for independence from the Executive Branch and its responsibility for reviewing determinations of a Federal Executive Branch agency (i.e., the Internal Revenue Service).[16] Accordingly, the Committee believes that the Tax Court should have the authority to establish its own personnel system, rather than being subject to the rules administered by the Federal Executive Branch. Similar authority has previously been provided to other Article I courts and to courts established under Article III of the U.S. Constitution. The Committee also believes that a personnel system established by the Tax Court should be consistent with the general principles that govern other employment with the Federal Government and should provide certain protections to employees.

EXPLANATION OF PROVISION

The provision extends to the Tax Court authority to establish its own personnel management system. Any personnel management system adopted by the Tax Court must: (1) include the merit system principles that govern employment with the Federal Executive Branch; (2) prohibit personnel practices that are prohibited in the Federal Executive Branch; and (3) in the case of an individual eligible for preference for employment in the Federal Executive Branch, provide preference for that individual in a manner and to an extent consistent with preference in the Federal Executive Branch.

The provision requires the Tax Court to prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition. The Tax Court is also required to promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

The provision allows the Tax Court to appoint a clerk without regard to the Federal Executive Branch rules regarding appointments in the competitive service. Under the provision, the clerk serves at the pleasure of the Tax Court.

The provision allows the clerk of the Tax Court to appoint deputies and other employees without regard to the Federal Executive Branch rules regarding appointments in the competitive service. Under the provision, these deputies and employees are subject to removal by the clerk.

The provision allows judges and special trial judges of the Tax Court to appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to the Federal Executive Branch rules regarding appointments in the competitive service.

[16] See, e.g., S. Rep. No. 91–552, at 302 (1969).

Under the provision, a law clerk or secretary serves at the pleasure of the appointing judge.

The provision exempts law clerks from the sick leave and annual leave provisions applicable to employees of the Federal Executive Branch. Any unused sick or annual leave to the credit of a law clerk as of the effective date of the provision remains credited to the individual and is available to the individual upon separation from the Federal Government, or upon transfer to a position subject to such sick leave and annual leave provisions.

The provision allows the Tax Court to fix and adjust the compensation of the clerk and other employees without regard to the Federal Executive Branch rules regarding employee classifications and pay rates. To the maximum extent feasible, Tax Court employees are to be compensated at rates consistent with those of employees holding comparable positions in the Federal Judicial Branch. The Tax Court may also establish programs for employee evaluations, premium pay, and resolution of employee grievances.

In the case of an individual who is an employee of the Tax Court on the day before the effective date of the provision, the provision preserves certain rights that the employee is entitled to as of that day. The provision preserves the right to: (1) appeal a reduction in grade or removal; (2) appeal an adverse action; (3) appeal a prohibited personnel practice; (4) make an allegation of a prohibited personnel practice; or (5) file an employment discrimination appeal. These rights are preserved for as long as the individual remains an employee of the Tax Court.

Under the provision, a Tax Court employee who completes at least 1 year of continuous service under a nontemporary appointment with the Tax Court acquires competitive service status for appointment to any position in the Federal Executive Branch competitive service for which the employee possesses the required qualifications.

The provision also allows the Tax Court to procure the services of experts and consultants in accordance with Federal Executive Branch rules.

EFFECTIVE DATE

The provision is effective on the date that the Tax Court adopts a personnel management system after date of enactment of the provision.

F. Use of Practitioner Fee

(Sec. 106 of the bill and sec. 7475 of the Code)

PRESENT LAW

The Tax Court is authorized to impose on practitioners admitted to practice before the Tax Court a fee of up to $30 per year.[17] These fees are to be used to employ independent counsel to pursue disciplinary matters.

[17] Sec. 7475.

REASONS FOR CHANGE

The Committee understands that many pro se taxpayers are not familiar with Tax Court procedures and applicable legal requirements. The Committee believes it is beneficial for Tax Court fees imposed on practitioners also to be available to provide services to pro se taxpayers.

EXPLANATION OF PROVISION

The provision provides that Tax Court fees imposed on practitioners also are available to provide services to pro se taxpayers.

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE II. TAX COURT PENSION AND COMPENSATION

A. JUDGES OF THE TAX COURT

(Secs. 201–207 and 213 of the bill and secs. 7443, 7447, 7448, and 7472 of the Code)

PRESENT LAW

The Tax Court is established by the Congress pursuant to Article I of the U.S. Constitution.[18] The salary of a Tax Court judge is the same salary as received by a United States District Court judge.[19] Present law also provides Tax Court judges with some benefits that correspond to benefits provided to United States District Court judges, including specific retirement and survivor benefit programs for Tax Court judges.[20]

Under the retirement program, a Tax Court judge may elect to receive retirement pay from the Tax Court in lieu of benefits under another Federal retirement program. A Tax Court judge may also elect to participate in a plan providing annuity benefits for the judge's surviving spouse and dependent children (the "survivors' annuity plan"). Generally, benefits under the survivors' annuity plan are payable only if the judge has performed at least 5 years of service. Cost-of-living increases in benefits under the survivors' annuity plan are generally based on increases in pay for active judges.

Tax Court judges participate in the Federal Employees Group Life Insurance program (the "FEGLI" program). Retired Tax Court judges are eligible to participate in the FEGLI program as the result of an administrative determination of their eligibility, rather than a specific statutory provision.

Tax Court judges are not covered by the leave system for Federal Executive Branch employees. As a result, an individual who works in the Federal Executive Branch before being appointed to the Tax Court does not continue to accrue annual leave under the same leave program and may not use leave accrued prior to his or her appointment to the Tax Court.

[18] Sec. 7441.
[19] Sec. 7443(c).
[20] Secs. 7447 and 7448.

Tax Court judges are not eligible to participate in the Thrift Savings Plan.

Tax Court judges are subject to limitations on outside earned income under the Ethics in Government Act of 1978.

REASONS FOR CHANGE

Tax Court judges receive compensation at the same rate as United States District Court judges. In addition, the benefit programs for Tax Court judges are intended to accord with similar programs applicable to District Court judges.[21] However, subsequent legislative changes in the benefits provided to District Court judges have not applied to Tax Court judges, thus creating disparities between the treatment of Tax Court judges and the treatment of District Court judges. The Committee believes that parity should exist between the benefits provided to Tax Court judges and those provided to District Court judges.

EXPLANATION OF PROVISION

Survivor annuities for assassinated judges

Under the provision, benefits under the survivors' annuity plan are payable if a Tax Court judge is assassinated before the judge has performed 5 years of service.

Cost-of-living adjustments for survivor annuities

The provision provides that cost-of-living increases in benefits under the survivors' annuity plan are generally based on cost-of-living increases in benefits paid under the Civil Service Retirement System.

FEGLI program

Under the provision, a judge or retired judge of the Tax Court is deemed to be an employee continuing in active employment for purposes of participation in the FEGLI program. In addition, in the case of a Tax Court judge age 65 or over, the Tax Court is authorized to pay on behalf of the judge any increase in employee premiums under the FEGLI program that occur after April 24, 1999,[22] including expenses generated by such payment, as authorized by the chief judge of the Tax Court in a manner consistent with payments authorized by the Judicial Conference of the United States (i.e., the body with policymaking authority over the administration of the courts of the Federal Judicial Branch).

Accrued annual leave

Under the provision, in the case of a judge who is employed by the Federal Executive Branch before appointment to the Tax Court, the judge is entitled to receive a lump-sum payment for the balance of his or her accrued annual leave on appointment to the Tax Court.

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[21] *See, e.g.,* S. Rep. No. 91–552, at 303 (1969).

[22] This date relates to changes in the FEGLI program, including changes to premium rates to reflect employees' ages.

Thrift Savings Plan participation

Under the provision, Tax Court judges are permitted to participate in the Thrift Savings Plan. A Tax Court judge is not eligible for agency contributions to the Thrift Savings Plan.

Exemption for teaching compensation from outside earned income limitations

Under the provision, compensation earned by a retired Tax Court judge for teaching is not treated as outside earned income for purposes of limitations under the Ethics in Government Act of 1978.

EFFECTIVE DATE

The provisions are effective on the date of enactment, except that: (1) the provision relating to cost-of-living increases in benefits under the survivors' annuity plan applies with respect to increases in Civil Service Retirement benefits taking effect after the date of enactment; (2) the provision relating to payment of accrued annual leave applies to any Tax Court judge with an outstanding leave balance as of the date of enactment and to any individual appointed to serve as a Tax Court judge after such date; (3) the provision relating to participation by Tax Court judges in the Thrift Savings Plan applies as of the next open season; and (4) the provision relating to teaching compensation of a retired Tax Court judge applies to any individual serving as a retired Tax Court judge on or after the date of enactment.

B. Special Trial Judges of the Tax Court

(Secs. 208–213 of the bill, and sec. 7448 and new secs. 7443A, 7443B, and 7443C of the Code)

PRESENT LAW

The Tax Court is established by the Congress pursuant to Article I of the U.S. Constitution.[23] The chief judge of the Tax Court may appoint special trial judges to handle certain cases.[24] Special trial judges serve for an indefinite term. Special trial judges receive a salary of 90 percent of the salary of a Tax Court judge and are generally covered by the benefit programs that apply to Federal Executive Branch employees, including the Civil Service Retirement System or the Federal Employees' Retirement System.

REASONS FOR CHANGE

Special trial judges of the Tax Court perform a role similar to that of magistrate judges in courts established under Article III of the U.S. Constitution ("Article III" courts). However, disparities exist between the positions of magistrate judges of Article III courts and special trial judges of the Tax Court. For example, magistrate judges of Article III courts are appointed for a specific term, are subject to removal only in limited circumstances, and are eligible for coverage under special retirement and survivor benefit programs. The Committee believes that special trial judges of the Tax Court and magistrate judges of Article III courts should receive

[23] Sec. 7441.
[24] Sec. 7443A.

comparable treatment as to the status of the position, salary, and benefits.

EXPLANATION OF PROVISION

Magistrate judges of the Tax Court

Under the provision, the position of special trial judge of the Tax Court is renamed as magistrate judge of the Tax Court. Magistrate judges are appointed (or reappointed) to serve for 8-year terms and are subject to removal in limited circumstances.

Under the provision, a magistrate judge receives a salary of 92 percent of the salary of a Tax Court judge.

The provision exempts magistrate judges from the leave program that applies to employees of the Federal Executive Branch and provides rules for individuals who are subject to such leave program before becoming exempt.

Survivors' annuity plan

Under the provision, magistrate judges of the Tax Court may elect to participate in the survivors' annuity plan for Tax Court judges. An election to participate in the survivors' annuity plan must be filed not later than the latest of 6 months after: (1) the date of enactment of the provision; (2) the date the judge takes office; or (3) the date the judge marries.

Retirement annuity program for magistrate judges

The provision establishes a new retirement annuity program for magistrate judges of the Tax Court, under which a magistrate judge may elect to receive a retirement annuity from the Tax Court in lieu of benefits under another Federal retirement program. A magistrate judge may elect to be covered by the retirement program within 5 years of appointment or 5 years of date of enactment. A magistrate judge who elects to be covered by the retirement program generally receives a refund of contributions (with interest) made to the Civil Service Retirement System or the Federal Employees' Retirement System.

A magistrate judge may retire at age 65 with 14 years of service and receive an annuity equal to his or her salary at the time of retirement. For this purpose, service may include service performed as a special trial judge or a magistrate judge, provided the service is performed no earlier than 9½ years before the date of enactment of the provision. The provision also provides for payment of a reduced annuity in the case of a magistrate judge with at least 8 years of service or in the case of disability or failure to be reappointed.

A magistrate judge receiving a retirement annuity is entitled to cost-of-living increases based on cost-of-living increases in benefits paid under the Civil Service Retirement System. However, such an increase cannot cause the retirement annuity to exceed the current salary of a magistrate judge.

Contributions of 1 percent of salary are withheld from the salary of a magistrate judge who elects to participate in the retirement annuity program. Such contributions must be made also with respect to prior service for which the magistrate judge elects credit under the retirement annuity program. No contributions are re-

quired after 14 years of service. A lump sum refund of the magistrate judge's contributions (with interest) is made if no annuity is payable, for example, if the magistrate judge dies before retirement.

The provision includes rules under which annuity payments may be made to a person other than the magistrate judge in certain circumstances, such as divorce or legal separation.

A magistrate judge's right to a retirement annuity is generally suspended or reduced in the case of employment outside the Tax Court.

The provision establishes the Tax Court Judicial Officers' Retirement Fund (the "Fund"). Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under the retirement annuity program. Contributions withheld from a magistrate judge's salary are deposited in the Fund. In addition, the provision authorizes to be appropriated to the Fund amounts required to reduce the Fund's unfunded liability to zero. For this purpose, the Fund's unfunded liability means the estimated excess, actuarially determined on an annual basis, of the present value of benefits payable from the Fund over the sum of (1) the present value of contributions to be withheld from the future salary of the magistrate judges and (2) the balance in the Fund as of the date the unfunded liability is determined.

Under the provision, a magistrate judge who elects to participate in the retirement annuity program is also permitted to participate in the Thrift Savings Plan. Such a magistrate judge is not eligible for agency contributions to the Thrift Savings Plan.

Special retirement annuity rule for incumbent magistrate judges

The provision provides a special rule under which a magistrate judge in active service on the date of enactment of the provision may elect to receive both an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System (as applicable to the magistrate judge) and an annuity under the magistrate judges' retirement program.

Under the special rule, such a magistrate judge is entitled to an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System based on prior service that is not credited under the magistrate judges' retirement annuity program. If the magistrate judge made contributions to the Civil Service Retirement System or the Federal Employees' Retirement System with respect to service that is credited under the magistrate judges' retirement annuity program, such contributions are refunded (with interest).

A magistrate judge who elects the special rule is also entitled to the annuity payable under the magistrate judges' retirement program in the case of retirement with at least 8 years of service or on failure to be reappointed. This annuity is based on service as a magistrate judge or special trial judge of the Tax Court that is performed no earlier than 9½ years before the date of enactment of the provision and for which the magistrate judge makes contributions of 1 percent of salary.

Recall of retired magistrate judges

The provision provides rules under which a retired magistrate judge may be recalled to perform services for a limited period.

EFFECTIVE DATE

The provisions are effective on date of enactment.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the provisions of the bill as reported.

ESTIMATED BUDGET EFFECTS OF S. 753, THE ''TAX COURT MODERNIZATION ACT,'' AS REPORTED BY THE COMMITTEE ON FINANCE

[Fiscal years 2003–2013, in millions of dollars]

Provision	Effective	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2003–08	2003–13
Tax Court Procedure	various	Negligible Revenue Effect												
Tax Court Pension and Compensation [1] [2]	various	.....	−3	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	−1	−4	−6
Net Total	.....	(4)	−3	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	−1	−4	−6

[1] Certain portions of the estimate were provided by the Congressional Budget Office.

[2] Includes the following outlay effects—*2003:* .....; *2004:* −3; *2005:*(3); *2006:*(3); *2007:*(3); *2008:*(3); *2009:*(3); *2010:*(3); *2011:*(3); *2012:*(3); *2013:*(3); *2003–08:* −3; *2003–13:* −5.

[3] Loss of less than $500,000.

[4] Negligible revenue effect.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

B. Budget Authority and Tax Expenditures

Budget authority

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the revenue provisions of the bill involve new or increased budget authority with respect to the Tax Court Judicial Officers' Retirement Fund.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act, the Committee states that the revenue reduction provided for by the bill involves increased tax expenditures (see revenue table in Part III.A, above).

C. Consultation With Congressional Budget Office

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office submitted the following statement on this bill.

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 24, 2003.

Hon. Charles E. Grassley,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 753, the Tax Court Modernization Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Geoffrey Gerhardt.

Sincerely,

Douglas Holtz-Eakin,
Director.

Enclosure.

S. 753—Tax Court Modernization Act

Summary: Enacting S. 753 would establish a new retirement program for certain employees of the U.S. Tax Court. The bill would give all current and future special trial judges of the Tax Court the option of being covered by this new retirement program in lieu of another federal retirement system. The program established under S. 753 would provide retirement and survivor benefits similar to those accrued under retirement programs that cover regular Tax Court judges. Retirement benefits for regular Tax Court judges are more generous than those under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS).

CBO estimates that enacting the bill would increase direct spending by $3 million in 2004 and by $5 million over the 2004–2013 period. CBO and the Joint Committee on Taxation (JCT) estimate S. 753 would decrease revenue by $1 million over the 2004–2013 period. In addition, implementing the bill would increase spending subject to appropriation by $2 million each year during the 2004–2013 period.

JCT has reviewed the tax provisions of S. 753 and has determined they contain no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO has reviewed the nontax provisions of the bill and determined that they contain no intergovernmental or private-sector mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 753 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By fiscal year, in millions of dollars—									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in Direct Spending										
Estimated Budget Authority	3	*	*	*	*	*	*	*	*	*
Estimated Outlays	3	*	*	*	*	*	*	*	*	*
Changes in Revenues										
Various Taxes and Fees	*	–*	–*	–*	–*	–*	–*	–*	–*	–*
Changes in Spending Subject to Appropriation										
Estimated Authorization Level	2	2	2	2	2	2	2	2	2	2
Estimated Outlays	2	2	2	2	2	2	2	2	2	2

*Less than $500,000.

Basis of estimate: For this estimate, CBO assumes the legislation will be enacted in September 2003.

Direct spending

S. 753 would establish a new retirement program for special judges of the U.S. Tax Court and renames those positions to be magistrate judges of the Tax Court. Under current law, most special trial judges participate in either CSRS or FERS, depending on when they first entered government service. The bill would provide all current and future magistrate judges the option of being covered by the new retirement program or continuing their coverage under CSRS or FERS. Information provided by the U.S. Tax Court indicate that 10 special trial judges currently work for the court and that these judges have been employed by the government for an average of 33 years. All 10 of these special trial judges are covered under CSRS and earn about $140,000 annually.

Current or newly appointed judges who opt to be covered by the new retirement program would be entitled to refunds of employee contributions made to either CSRS or FERS. The employee contribution rate for most workers covered by CSRS is 7 percent, while the rate for FERS is 0.8 percent. CBO assumes that all of the special judges employed by the court would elect to have their retirement contributions refunded and be covered by the new retirement program. Based on this assumption, CBO estimates that enacting S. 753 would increase direct spending for refunds of employee contributions by $3 million in 2004 and less than $50,000 for each year thereafter.

Both CSRS and FERS are defined benefit pension programs that provide retirement annuities based on the final years of salary and amount of creditable service. For workers with the age and service history of the current special judges of the Tax Court, CSRS replaces about 60 percent of a retiree's salary and FERS replaces

about 30 percent, although those in CSRS do not earn Social Security credits while those in FERS do. The new retirement program for special trial judges, like that for regular Tax Court judges, would replace 100 percent of a judge's final salary upon retirement. CBO estimates that the difference between what these judges would have gotten under CSRS and what they would get under the new retirement program would increase federal spending by less than $500,000 annually during the 2004–2013 period, but total nearly $2 million over the 10-year period.

Section 106 of the bill would allow the tax court to use fees collected from attorneys before the court to pay for services for taxpayers who represent themselves. Under current law, such fees may only be used to employ independent counsel to pursue disciplinary matters. Based on information from the Tax Court, CBO estimates that enacting section 106 would increase direct spending from the fund in the first few years of the period. However, such increase would not be significant.

S. 753 also contains several other proposals that could have an effect on direct spending. These include provisions to provide survivor annuities for assassinated Tax Court judges and changes the eligibility standards for Tax Court judges under the Federal Employees' Group Life Insurance program. CBO estimates each of these provisions would increase federal spending by less than $500,000 annually.

Revenues

The bill would require that judges who elect to be covered by the new retirement program contribute 1 percent of their salary toward the program. Judges also would have to make a lump-sum contribution—at 1 percent of salary—for previous years they worked for the court equal to what they would have contributed if the new retirement program had been in existence. CBO estimates these changes in employee contributions would have a negligible effect on receipts.

S. 753 also would make several changes to existing Tax Court procedure and modify laws relating to Tax Court pensions and compensation. Title I of the bill would expand filing fees to include petition cases and expand use of practice fees to include pro se taxpayers. In addition, title I would provide the Tax Court with jurisdiction over all appeals of collection due process determinations. JCT estimates that these provisions would have a negligible effect on federal revenues. Title II would allow Tax Court judges to participate in the Thrift Savings Plan (TSP), which JCT estimates would decrease governmental receipts by about $1 million over the 2004–2013 period.

Spending subject to appropriation

S. 753 also would require that the Secretary of the Treasury establish a new trust fund for the new retirement program. This fund, to be called the Tax Court Judicial Officers' Retirement Fund, would receive agency and employee contributions and pay out benefits to retirees and survivors. the bill specifies that the Tax Court would make adequate contributions to eliminate the program's unfunded liability, taking employee contributions into account. Information provided to CBO by the Tax Court indicates that this pay-

ment would amount to about $2 million annually during the 2004–2013 period, subject to the availability of appropriated funds.

In addition, the bill allows those employed by the Federal Executive Service before appointment to the Tax Court the right to collect a lump-sum payment for all unused annual leave. CBO estimates that this provision would have a negligible effect on outlays.

Intergovernmental and private-sector impact: JCT has reviewed the tax provisions of S. 753 and has determined they contain no intergovernmental or private-sector mandates as defined in UMRA. CBO has reviewed the nontax provisions of the bill and determined that they contain no intergovernmental or private-sector mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Spending: Geoffrey Gerhart; Federal Revenue: Annabelle Bartsch; Impact on State, Local, and Tribal Governments: Leo Lex; and Impact on the Private Sector: Kate Bloniarz.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill was, with a quorum present, ordered favorably reported by voice vote on April 2, 2003.

V. REGULATORY IMPACT AND OTHER MATTERS

A. Regulatory Impact

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

Impact on individuals and businesses

The bill includes provisions relating to the jurisdiction and procedures of the Tax Court relating to taxpayer appeals of collection due process determinations, employment status cases, application of the principle of equitable recoupment, authority to charge filing fees, and the use of practitioner fees. The bill also gives the Tax Court the authority to establish its own personnel system, makes changes to the benefit programs and outside compensation limitations for Tax Court judges, renames the position of special trial judge of the Tax Court as magistrate judge of the Tax Court, and provides new compensation and benefits rules for magistrate judges. The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses.

Impact on personal privacy and paperwork

The provisions of the bill do not impact personal privacy.

The provisions of the bill do not impose increased paperwork burdens on individuals.

B. Unfunded Mandates Statement

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4).

The Committee has determined that the revenue provisions of the bill do not contain Federal mandates on the private sector. The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

C. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the IRS Reform Act) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the Code) and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

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