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SENATE

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109-64 }

### UNITED STATES TAX COURT MODERNIZATION ACT

APRIL 28, 2005.—Ordered to be printed

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

### R E P O R T

[To accompany S. 661]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 661) 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 with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

#### CONTENTS

	Page
I. Legislative Background .....	2
II. Explanation of the Bill .....	2
Title I.—Tax Court Procedure .....	2
A. Jurisdiction of Tax Court Over Collection Due Process Cases (sec. 101 of the bill and sec. 6330 of the Code) .....	2
B. Authority for Special Trial Judges to Hear and Decide Certain Employment Status Cases (sec. 102 of the bill and sec. 7443A of the Code) .....	4
C. Confirmation of Tax Court Authority to Apply Doctrine of Equitable Recoupment (sec. 103 of the bill and sec. 6214 of the Code) .....	5
D. Tax Court Filing Fees (sec. 104 of the bill and sec. 7451 of the Code) .....	5
E. Appointment of Tax Court Employees (sec. 105 of the bill and sec. 7471(a) of the Code) .....	6
F. Expanded Use of Practice Fees (sec. 106 of the bill and sec. 7475 of the Code) .....	8
Title II.—Tax Court Pension and Compensation .....	9
A. Judges of the Tax Court (secs. 201–207 and 213 of the bill and secs. 7443, 7447, 7448, and 7472 of the Code) .....	9

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) .....	12
III. Budget Effects of the Bill .....	14
IV. Votes of the Committee .....	19
V. Regulatory Impact and Other Matters .....	19
VI. Changes in Existing Law Made by the Bill as Reported .....	20

## I. LEGISLATIVE BACKGROUND

### *Overview*

The Senate Committee on Finance marked up S. 661, the “United States Tax Court Modernization Act,” on April 19, 2005, and ordered the bill, with an amendment in the nature of a substitute, favorably reported by voice vote.

### *Activity during the 108th Congress*

During the 108th Congress, the Senate passed a bill, H.R. 1528 as amended by the Senate (the “Tax Administration Good Government Act”), which contained provisions to address the same issues addressed by the current bill. During the 108th Congress, the Committee also reported several bills addressing the same issues as the current bill: (1) S. 753 (the “Tax Court Modernization Act”), reported May 5, 2003; (2) S. 882 (the “Tax Administration Good Government Act”), reported May 4, 2004; and (3) S. 2424 (the “National Employee Savings and Trust Equity Guarantee Act of 2004”), reported May 14, 2004 (which contained the Tax Court Pension and Compensation provisions). The provisions of the current bill are substantially the same as the related provisions contained in the bills from the 108th Congress.

## II. EXPLANATION OF THE BILL

### TITLE I.—TAX COURT PROCEDURE

#### A. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES

(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.<sup>1</sup> Similar rules apply with respect to liens.<sup>2</sup> 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 United States Tax Court (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.<sup>3</sup> If a court determines that an appeal was not

<sup>1</sup>Sec. 6330(a). Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended.

<sup>2</sup>Sec. 6320.

<sup>3</sup>Sec. 6330(d).

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<sup>4</sup> and is a court of limited jurisdiction.<sup>5</sup> The Tax Court only has the jurisdiction that is expressly conferred on it by statute.<sup>6</sup> For example, the jurisdiction of the Tax Court includes the authority to redetermine the correct amount of an income, estate, or gift tax deficiency, to make certain types of declaratory judgments, and to determine certain worker classification status issues, but does not include jurisdiction over most excise taxes imposed by the Internal Revenue Code. Thus, the Tax Court lacks jurisdiction over the appeal of a due process hearing relating to certain collections matters.

#### REASONS FOR CHANGE

The Tax Court does not have jurisdiction over all of the tax issues underlying collection due process cases. For example, the jurisdiction of the Tax Court does not extend to issues involving most excise taxes. Thus, a taxpayer seeking to appeal the collection due process determination must know whether the Tax Court or a district court has jurisdiction over the underlying tax liability.

The judicial appeals structure of present law was designed in recognition of these jurisdictional limitations; however, in many cases the underlying taxes are not involved in determining the due process issue. The present-law structure can lead to taxpayer 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 Committee believes that the simplification provided by the provision will benefit the taxpayers seeking judicial review and benefit 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 Tax Court.

#### EFFECTIVE DATE

The provision applies to determinations made by the IRS after the date which is 60 days after the date of enactment.

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<sup>4</sup> Sec. 7441.

<sup>5</sup> Sec. 7442.

<sup>6</sup> Sec. 7442.

B. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE  
CERTAIN EMPLOYMENT STATUS CASES

(Sec. 102 of the bill and sec. 7443A 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

REASONS FOR CHANGE

The Committee believes that it is important for special trial judges to preside over and enter decisions in proceedings involving a determination of employment status in which the amount of employment taxes in dispute is \$50,000 or less for each calendar quarter. The Committee believes that this clarification 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 employment status proceeding in the Tax Court with respect to which a decision has not become final before the date of enactment.

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<sup>7</sup> Sec. 7436.

<sup>8</sup> Sec. 7436(c).

<sup>9</sup> Sec. 7443A(b) and (c).

### C. CONFIRMATION OF TAX COURT AUTHORITY TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT

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

#### PRESENT LAW

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.<sup>10</sup> In *Estate of Mueller v. Commissioner*,<sup>11</sup> 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*,<sup>12</sup> held that the Tax Court may apply the doctrine of equitable recoupment.

#### REASONS FOR CHANGE

The conflict among the circuit courts regarding the application of the doctrine of equitable recoupment results in uncertainty and confusion. For example, the cases of similarly situated taxpayers may be resolved differently simply because the taxpayers reside in different circuit court jurisdictions. The Committee believes that it is important to clarify the applicability of the doctrine of equitable recoupment in order to eliminate 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 Federal Claims. No negative inference should be drawn 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.

### D. TAX COURT FILING FEES

(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

<sup>10</sup> See *Stone v. White*, 301 U.S. 532 (1937); *Bull v. United States*, 295 U.S. 247 (1935).

<sup>11</sup> 153 F.3d 302 (6th Cir. 1998), cert. den., 525 U.S. 1140 (1999).

<sup>12</sup> 264 F.3d 904 (9th Cir. 2001), cert. den., 535 U.S. 927 (2002).

section 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.<sup>13</sup> 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.<sup>14</sup>

#### 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 clarifies 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. No negative inference should be drawn as to whether the Tax Court has the authority under present law to impose a filing fee for any case commenced by the filing of a petition.

#### EFFECTIVE DATE

The provision is effective on the date of enactment.

#### E. APPOINTMENT OF TAX COURT EMPLOYEES

(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).<sup>15</sup> 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.<sup>16</sup>

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 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,

<sup>13</sup> Sec. 7451.

<sup>14</sup> See Rule 20(a) of the Tax Court Rules of Practice and Procedure.

<sup>15</sup> Sec. 7441.

<sup>16</sup> Sec. 7471.

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).<sup>17</sup> 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 ("Article III" courts). Currently, the Tax Court is the only Federal court (Article I or III) that does not have its own personnel system. Authority to establish its own personnel system will also provide the Tax Court with greater flexibility in meeting its staffing needs, thus enabling the court to operate more effectively. 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 also allows the Tax Court to appoint other necessary 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 Tax Court.

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.

<sup>17</sup> 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 one 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 the date of enactment.

#### F. EXPANDED USE OF PRACTICE FEES

(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.<sup>18</sup> These fees are to be used to employ independent counsel to pursue disciplinary matters.

#### REASONS FOR CHANGE

The Committee understands that many pro se taxpayers are not familiar with Tax Court procedures and applicable legal require-

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<sup>18</sup> Sec. 7475.



ments. 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 (an “Article I” court).<sup>19</sup> The salary of a Tax Court judge is the same salary as received by a United States District Court (“District Court”) judge.<sup>20</sup> Present law also provides Tax Court judges with some benefits that correspond to benefits provided to District Court judges, including a specific retirement program for Tax Court judges.<sup>21</sup>

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”).<sup>22</sup> Generally, benefits under the survivors’ annuity plan are payable only if the judge has performed at least five 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.

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

Under the retirement program for Tax Court judges, retired judges generally receive retired pay equal to the rate of salary of

<sup>19</sup> Sec. 7441.

<sup>20</sup> Sec. 7443(c).

<sup>21</sup> Sec. 7447.

<sup>22</sup> Sec. 7448.

an active judge and must be available for recall to perform judicial duties as needed by the court for up to 90 days a year (unless the judge consents to more). However, retired judges may elect to freeze the amount of their retired pay, and those who do so are not available for recall.

Retired Tax Court judges on recall are subject to the limitations on outside earned income that apply to active Federal employees under the Ethics in Government Act of 1978. However, retired District Court judges on recall may receive compensation for teaching without regard to the limitations on outside earned income. Retired Tax Court judges who elect to freeze the amount of their retired pay (thus making themselves unavailable for recall) are not subject to the limitations on outside earned income.

#### REASONS FOR CHANGE

Tax Court judges receive compensation at the same rate as District Court judges. In addition, the benefit programs for Tax Court judges are intended to accord with similar programs applicable to District Court judges.<sup>23</sup> However, subsequent legislative changes in the benefits provided to District Court judges and judges in certain other Article I courts have not applied to Tax Court judges, thus creating disparities between the treatment of Tax Court judges and the treatment of other Federal judges.

The Committee believes that, as a general matter, parity should exist between the benefits provided to Tax Court judges and those provided to District Court judges. Thus, the benefits provided to Tax Court judges should be updated to reflect benefits currently provided to District Court judges.

In addition, the Committee is concerned that certain aspects of the present-law rules relating to Tax Court judges may be inequitable in that Tax Court judges are treated less favorably than District Court judges and judges in certain other Article I courts. With respect to increases in FEGLI premiums for Tax Court judges age 65 or older, the Committee believes that the Tax Court should be authorized to pay for such increases, similar to authority in other Federal courts. In addition, because Tax Court judges are not covered by the leave system for Federal Executive Branch employees, a judge who has unused accrued annual leave for service with the Federal Executive Branch should be able to receive a lump sum payment for such accrued annual leave. Moreover, the Committee believes that exempting from the limitations on outside earned income compensation received by retired Tax Court judges for teaching will encourage such judges to remain available for recall by the court.

#### 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 five years of service.

<sup>23</sup> See, e.g., S. Rep. No. 91-552, at 303 (1969).

*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.

*Life insurance coverage*

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,<sup>24</sup> 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 policy-making 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.

*Thrift Savings Plan participation*

Under the provision, Tax Court judges are permitted to participate in the Thrift Savings Plan as provided under 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 the 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 FEGLI coverage applies to any individual serving as a Tax Court judge or any retired Tax Court judge on or after the date of enactment; (3) 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; and (4) the provision relating to teaching compensation of a retired Tax Court judge applies to any individual

<sup>24</sup>This date relates to changes in the FEGLI program, including changes to premium rates to reflect employees' ages.

serving as a retired Tax Court judge on or after the date of enactment.<sup>25</sup>

#### 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.<sup>26</sup> The chief judge of the Tax Court may appoint special trial judges to handle certain cases.<sup>27</sup> 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 comparable treatment as to the status of the position, salary, and benefits. This will better enable the Tax Court to attract and retain qualified persons to serve in this capacity.

##### 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 eight 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

<sup>25</sup> With respect to participation in the Thrift Savings Plan, recent legislation permits elections under the Thrift Savings Plan to be made at any time, rather than only during open seasons. Thus, Tax Court judges will be able to participate in the Thrift Savings Plan as of the date of enactment.

<sup>26</sup> Sec. 7441.

<sup>27</sup> Sec. 7443A.

judges. An election to participate in the survivors' annuity plan must be filed not later than the latest of: (1) twelve months after the date of enactment of the provision; (2) six months after the date the judge takes office; or (3) six months after 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 five years of appointment or five 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 eight years of service or in the case of disability or failure to be re-appointed.

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 one 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 required 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.

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 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, under a court decree, a court order, or a court-approved property settlement.

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.

*Retirement annuity rule for incumbent magistrate judges*

The provision provides a transition rule for magistrate judges in active service on the date of enactment of the provision. Under the transition 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 transition rule is also entitled to the annuity payable under the magistrate judges' retirement program in the case of retirement with at least eight 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 one percent of salary.

*Recall of retired magistrate judges*

The provision provides rules under which a retired magistrate judge may be recalled to perform judicial duties for up to 90 days a year.

EFFECTIVE DATE

The provisions are effective on the 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. 661  
THE "UNITED STATES TAX COURT MODERNIZATION ACT,"  
AS REPORTED BY THE COMMITTEE ON FINANCE

Fiscal Years 2006 - 2015  
[Millions of Dollars]

Provision	Effective	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006-10	2006-15
I. Tax Court Procedure .....	various												
II. Tax Court Pension and Compensation [1] [2] .....	various	-2	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	-3	-5
<i>Negligible Revenue Effect</i>													
<b>NET TOTAL</b> .....		-2	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	-3	-5
Joint Committee on Taxation													

NOTE: Details may not add to totals due to rounding.

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

[2] Includes the following increase in outlay effects .....

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

[4] Outlay effect of less than \$500,000. ....

2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2006-10 2006-15

2 [4] [4] [4] [4] [4] [4] [4] [4] [4] [4] 3 4

## 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 28, 2005.*

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. 661, the Tax Court Modernization Act.

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

Sincerely,

ELIZABETH M. ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*S. 661—Tax Court Modernization Act*

Summary: S. 661 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. 661 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 \$2 million in 2006 and by \$4 million over the 2006–2015 period. CBO and the Joint Committee on Taxation (JCT) estimate S. 661 would decrease revenue by about \$1 million over the 2006–2015 period—but by less than \$500,000 in each year. In addition, implementing the bill would have discretionary costs of approximately \$1 million in 2006 and \$13 million over the 2006–2015 period, assuming the appropriation of the necessary funds.



JCT has reviewed the tax provisions of S. 661 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. 661 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—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
<b>CHANGES IN DIRECT SPENDING<sup>1</sup></b>										
Estimated Budget Authority .....	2	*	*	*	*	*	*	*	*	*
Estimated Outlays .....	2	*	*	*	*	*	*	*	*	*
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>										
Estimated Authorization level .....	1	1	1	1	1	1	1	1	1	1
Estimated Outlays .....	1	1	1	1	1	1	1	1	1	1

<sup>1</sup> Enacting the bill also would affect revenues, but those effects would be less than \$500,000 in each year.

Note.—\* = less than \$500,000.

**Basis of estimate:** For this estimate, CBO assumes the legislation will be enacted in September 2005.

#### *Direct spending*

S. 661 would establish a new retirement program for special judges of the U.S. Tax Court and rename 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 seven special trial judges currently work for the court and that these judges have been employed by the government for an average of 32 years. All of these special trial judges are covered under CSRS and earn about \$150,000 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. 661 would increase direct spending for refunds of employee contributions by \$2 million in 2006 and by less than \$75,000 for each subsequent year.

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 potential 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 pro-

gram 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 2006–2015 period, but total a little more than \$1 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 increases would not be significant.

S. 661 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 cost-of-living adjustments for survivor annuities. CBO estimates 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. This would reduce overall employee retirement contributions since the rate for CSRS employees is 7 percent of salary. 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. 661 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 taxpayers who choose to represent themselves 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, which JCT estimates would decrease governmental receipts by about \$1 million over the 2006–2015 period.

#### *Spending subject to appropriation*

S. 661 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 payout 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 from the Tax Court indicates that this payment would amount to about \$1 million annually during the 2006–2015 period, subject to the availability of appropriated funds.

In addition, the bill would allow 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. It would also change eligibility standards for Tax Court judges under the Federal Employees' Group Life Insurance program. CBO estimates that these provisions would have a negligible effect on outlays.

In total, CBO estimates S. 661 would increase spending subject to appropriation by a little more than \$1 million annually and \$13 million over the 2006–2015 period.

Intergovernmental and private-sector impact: JCT has reviewed the tax provisions of S. 661 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 Gerhardt; Federal Revenues: Annabelle Bartsch; Impact on State, Local, and Tribal Governments: Leo Lex; and Impact on the Private Sector: Meena Fernandes.

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 following statements are made concerning the votes taken on the Committee's consideration of the bill.

##### *Motion to report the bill*

The bill as amended was ordered favorably reported by voice vote, a majority and quorum being present, on April 19, 2005.

##### *Votes on amendments*

The amendment in the nature of a substitute was passed by voice vote. No other amendments were offered and voted upon.

#### **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 (Pub. L. No. 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).