



## UNITED STATES TAX COURT

WASHINGTON, D.C. 20217

### PROCEDURES FOR PREPARATION AND GRADING OF THE NONATTORNEY EXAMINATION

Adopted by the Conference of the United States Tax Court on December 1, 1995, and amended on November 22, 2019, and May 3, 2022.

#### A. Panel of Examiners

1. The U.S. Tax Court will appoint a panel of three to five experts to serve as examiners, e.g., a chairperson of the panel, who will prepare the substantive tax and tax procedure sections; a panel member to prepare the evidence section; and a panel member to prepare the legal ethics section.

2. The panel of examiners will prepare and grade the exam. Examiners will be selected based on their specialized knowledge of the subjects to be tested and experience testing legal knowledge. The chairperson of the panel will review and approve all questions for consistency and uniformity.

#### B. Conflicts of Interest

An examiner may not have adverse interests, conflicting duties or inconsistent obligations that would interfere or appear to interfere with the proper execution of his or her functions as an examiner. An examiner may not participate in courses which prepare applicants for the nonattorney exam.

## PROCEDURES RELATING TO THE NONATTORNEY EXAMINATION

The following procedures apply to the examination given by the Tax Court to nonattorney applicants for admission to practice. See Rule 200(a)(3).

### A. Examination

#### 1. Written Examination

a. The nonattorney examination is a written examination. It may include essay questions and may include short answer (e.g., multiple choice) questions.

b. The examination is held at least every 2 years, preceded by public announcement of the time and place of the examination at least 6 months before the date of the examination. Rule 200(a)(3).

#### 2. Purpose of the Examination

The purpose of the nonattorney examination is to test the ability of applicants to represent parties in the preparation and trial of cases before the Tax Court. Rule 200(a)(1).

#### 3. Subjects of the Examination

The following subjects are covered by the nonattorney examination (percentages show the approximate portion of the examination to be dedicated to each topic):

a. Tax Court Rules of Practice and Procedure (25%).

- b. Federal Rules of Evidence (25%).
- c. Federal taxation (40%):
  - i. Income taxation;
  - ii. Taxation of estates and gifts;
  - iii. Tax procedures and legal analysis;
  - iv. The structure and history of the Internal Revenue Code, as amended, and the general subject of the revenue laws and the interpretation placed thereon by the Court in leading cases; and
  - v. The constitutional and general substantive law applicable to Tax Court cases.
- d. Legal ethics, including the ABA Model Rules of Professional Conduct (10%). See Rule 201(a).

4. Obtaining Copies of Recent Examinations

Applicants may obtain copies of the most recent nonattorney examinations upon payment of a fee of 50 cents per page to the Clerk, United States Tax Court, 400 Second Street, N.W., Washington, DC 20217.

B. Preparation and Grading of the Nonattorney Examination

1. Preparation and Grading of the Nonattorney Exam

The nonattorney examination is administered under the guidance of the Committee on Admissions, Ethics, and Discipline along with other tax professionals and Court personnel as needed. The examination is prepared and graded by examiners, under the guidance and subject to the approval of the Tax Court.

2. Preparation of Questions

The examiners are responsible for preparing questions used for the nonattorney examination.

3. Grading Process

The examiners are responsible for grading the examinations. All answers to a particular question are graded by the same examiner.

4. Nonidentity Grading

The identity of each applicant in the grading process is not known to the examiners. Each applicant is assigned an examination number which appears on the applicant's examination answer books. The Court (and not the examiners) retains a record showing each applicant's examination number.

5. Standard of Knowledge Required to Pass the Nonattorney Examination

The examiners advise the Court whether an applicant has passed the examination. In order for the examiners to have concluded that an applicant has passed the examination, they must have determined that, in their judgment, an applicant has demonstrated proficiency in each of the tested subjects. The examination should be designed so that an applicant will be considered to have demonstrated proficiency, and therefore to have passed the examination, if he or she achieves a grade of 70 percent in each of the tested subjects.

6. Automatic Regrading

Examiners regrade the 10 examinations which come closest to passing (and also all exams which have the grade received by the exam tenth closest to passing). This applies to each part of the examination. Regrading of a question is done by the examiner who originally graded the question. Regrading occurs before applicants are notified if they passed the examination. Applicants whose examinations are regraded are not notified that their examination was regraded. The examiners give the final test scores to the Court.

7. Admission to Practice

An applicant who has not passed the examination will not be admitted to practice before the Court. The Court decides whether an applicant who has passed the examination is qualified to be admitted to practice by taking account of appropriate factors with respect to that applicant, including moral character. See Rule 200.

C. Postexamination Rights of Applicants

1. Failing Applicants

A failing applicant (and only a failing applicant) may obtain, for a fee set by the Tax Court, copies of his or her answers and the score he or she received for each answer. All requests must be received by the Clerk, U.S. Tax Court, within 60 days after the Court mails notification to an applicant that he or she did not pass the examination. The Court does not provide a copy of sample answers or the passing score.

2. Reconsideration of Final Test Results Limited to Clerical Errors

No reconsideration of the final test results is made after the examinees are told whether they pass unless the applicant shows that there was a clerical error in scoring. Any request to reconsider final test results on these grounds must be

received by the Court within 90 days after the Court mails notification to an applicant that he or she did not pass the examination.

3. No Postexamination Hearings or Interviews

No postexamination hearing to contest the examination results or personal interview with the examiners or the Tax Court is provided to failing applicants.

4. Exam Retention Policy

Exam answers for both successful and failing applicants are destroyed 120 days after the Court sends notification to applicants stating whether they passed. However, if a failing applicant requests reconsideration of his or her grade (see paragraph C-2 above), that applicant's examination answers are not destroyed until 60 days after the Court takes final action on the applicant's request.

D. Reexamination

A nonattorney applicant can sit for the exam any number of times.