

COMPARING THE DECISION MAKING OF SPECIALIZED COURTS AND GENERAL COURTS: AN EXPLORATION OF TAX DECISIONS

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The Internal Revenue Service (IRS) is a unique federal agency because it is subject to the jurisdiction of different trial courts, the two most important of which are the United States Tax Court, a specialized court of limited jurisdiction, and the United States District Court, a court of general jurisdiction. This article offers an exploratory comparison of the tax-case decision-making process of the United States Tax Court and the United States District Courts. Using data from 1996 and 1997, the article examines the differences in decision making of these courts, specifically focusing on expertise and ideology. The United States Tax Court uses its expertise and lack of realistic structural or hierarchical constraints to decide the cases in a far more ideological manner than does the district court; this is consistent with the complexity and political nature of tax assessment and tax collection.

Recently, scholars have devoted attention to the decisions and behavior of specialized courts of limited subject-matter jurisdiction (Baum, 1990, 1995; Hansen, Johnson, and Unah, 1995, 1997); however, there has been little direct comparison of the decisions of specialized and general courts to determine if there are any systematic differences in the respective decisions. In part this is because there are relatively few issue areas that are still subject to the jurisdiction of both types of courts. Bankruptcy matters, for example, even if filed in United States District Courts, are routinely referred to the bankruptcy court.

There is, however, one very important area of policy subject to the jurisdiction of both types of courts, and that is tax policy. Tax policy, like any other law or regulation, is subject to debate, interpretation, and revision as litigants and the government pursue their disputes. The Internal Revenue Service (IRS) is unique among federal agencies in that it is subject to the jurisdiction of both the U.S. District Courts and the U.S. Tax Court, a specialized court of limited jurisdiction and limited independence.

Almost every day the courts make decisions favoring the Internal Revenue Service or the taxpayer, revising and reinterpreting the law. While there has been some scholarly examination of tax decision making (King and Lazarus, 2003; Schneider, 2001, 2002; Maule, 1999) and of specialized courts (Hanson, Johnson, and Unah, 1998; Baum, 1995, 1990), there has been no direct comparison of the decision-making process of the U.S. Tax Court and the U.S. District Court as they deal with tax matters. We do so here, using data from 1996 and 1997, and we focus on expertise and ideology.

SPECIALIZED COURTS

Congress creates specialized courts to contribute to policy-neutral goals when there is the need for discretion or judgment in interpretation of intricate issues in specific subject areas (Hansen, Johnson, and Unah, 1995; Legomsky, 1990); the subject matter involves significant technical complexity (Legomsky, 1990); or the caseload would overwhelm courts of general jurisdiction (Hansen, Johnson, and Unah, 1995; Baum, 1990). The judges on such courts often sit for fixed, not unlimited, terms, and the jurisdiction is usually limited to the specific policy.

Expertise is a significant benefit of a specialized court. Courts are often criticized for influencing or making policy without having any particular knowledge in the particular policy domain (Horowitz, 1977; Melnick, 1983). Familiarity with the policy allows specialized courts to offer expertise and skill in the subject matter (Unah, 1977). The specialized court decision confers judicial legitimacy on the result, something that a decision by an administrative law judge is not thought to confer.

Despite these perceived benefits, many have argued that these specialized courts are little better than the agency they supposedly review; that is, critics contend that these tribunals are captured by the agency or under the control of the industry interests (see Posner, 1983; see also Rifkind, 1951). Echoing concerns of other scholars concerned with bureaucratic pathologies (e.g., Gormley, 1989), critics assail specialized courts as biased and afflicted with a narrow outlook (Unah, 1997), and this concern, which led to significant opposition to the Federal Circuit Court of Appeals, has prevented the creation of a tax court of appeals (Posner, 1996; Geier, 1991).

Empirical scholarship has shown that specialized federal courts in other areas, such as the Court of International Trade, the former CCPA, and its successor the Court of Appeals for the Federal Circuit, do not necessarily behave as critics assert. The creation of the U.S. Court of Appeals for the Federal Circuit seems to have brought about consensus in patent law and an end to forum shopping (Posner, 1996:253). Specialized courts are less deferential to agencies than the nonspecialized federal courts of general jurisdiction (Hansen, Johnson, and Unah, 1995; Unah, 1997). With expertise in these areas of law, the courts do not have to rely on agency interpretation. This may extend to their relationship with hierarchically superior courts. Examining the U.S. Court of Customs and Patent Appeals, Baum (1995) found that the court was significantly less likely than the general jurisdiction courts of appeals to rely on Supreme Court authority when making decisions.

THE UNITED STATES TAX COURT AND THE UNITED STATES DISTRICT COURT

Tax cases often involve technically complex issues calling for significant judicial discretion in interpretation. The evaluation of such claims usually demands expertise in the policy area. As for complexity, one former IRS revenue agent and author of tax preparation manuals urged his readers not to examine the over 2,000 pages of the

Internal Revenue code as a reference source for tax law because of its sheer complexity and lack of accessibility (Wade, 1986). If one wanted to litigate a tax question, one could do so either in the tax court or the U.S. District Court.

The United States Tax Court is a specialized court created under the Article I legislative power of the Congress. There are nineteen full-time judges appointed by the president and subject to confirmation by the Senate. Unlike an Article III judge, a tax court judge serves for a limited period of time—fifteen years, although as a practical matter, if they so desire, they may be reappointed, either to an additional term, or allowed to remain on the court to decide cases on senior status. There are also seven special judges appointed by the chief judge of the court. The special judges have full authority over all matters not exceeding \$50,000. For matters exceeding \$50,000, the report of the special judge is forwarded to the chief judge, who then assigns the report to a regular judge for approval (United States Tax Court Rules 182 and 183). The full-time judges enjoy full federal pension and retirement benefits and draw the same salaries as United States District Court judges.

To sue in tax court, a taxpayer files a claim with the tax court clerk in Washington, D.C., and then either a judge can request assignment, or the chief judge will assign the case to one of the judges. The judge then tries the case in the area designated by the taxpayer, often in the taxpayer's local area or as close to the taxpayer's local area as possible. No prepayment is required, and all cases are tried without a jury. The losing party can appeal the decision to the appellate circuit within which the claim was initially filed. Under the rule in *Golson v. Commissioner* (1970), the tax court follows the law of the particular circuit, if the circuit has ruled on that issue (Dubroff, 1979:387-94).

Litigating in the tax court is but one option for the taxpayer. The major alternative is the United States District Court, the court of federal general trial jurisdiction. A third alternative, the court of claims, is omitted from this analysis, as few cases are litigated there (Daily, 1992). To sue in district court, the taxpayer must pay the disputed tax and then sue for a refund. The prestige of the district court is greater than that of the tax court. The salary is guaranteed, and the tenure is lifetime, dependent only upon good behavior. The taxpayer files the claim, and the case is tried in the taxpayer's local district. The taxpayer can, and usually does, request a jury trial. Decisions of these courts can be appealed to the court of appeals for the circuit within which the district court is located.

Even though the tax court will try a case in the jurisdiction of the taxpayer and the decisions can be appealed to the appropriate regional court of appeals to hear cases, the tax court is a national court, with the judges from Washington sitting in the local area to hear cases. The district courts are located within each state, and the judges are appointed from that particular state, with district court decision making is subject to regional and political effects (Rowland and Carp, 1996; see also Giles and Walker, 1975). Thus, the district court should be more influenced by the state political and economic climate.

Table 1
A Comparison of Tax Venues: Specialization v. General Courts

Tax Court	District Court
Specialized expertise	Judicial independence
Greater institutional constraints	Fewer institutional constraints
Less reliance on agency	Greater reliance on agency
Greater agency experience	Greater reliance on counsel
Less reliance on counsel	Less agency experience
Less reliance on precedent	Greater reliance on precedent
Less use of ideology	Greater use of ideology
Lower likelihood of taxpayer win	Greater likelihood of taxpayer win

TAXPAYERS, COURTS, AND OUTCOMES

Research from other specialized courts (Hansen, Johnson, and Unah, 1995) suggests that taxpayers would have a greater probability of winning in the tax court than in the district court. In addition, given the complexity of the issues and a significant caseload, tax court judges should be able to use their expertise to premise their decisions less on ideological grounds and more on the facts and the law. In contrast, the district court is likely to show a greater reliance on IRS expertise, and by implication, on attorneys, as well as a greater reliance on relevant court-of-appeals decisions. The trade-off for litigating in the district court and losing the expertise of the tax court would be the district court judge's greater independence and concomitant ability to oppose the bureaucracy. A summary of the theoretical differences a taxpayer could expect in each forum is presented in Table 1.

However, an examination of raw numbers shows the taxpayer does better in the general jurisdiction district court than in the specialized tax court.¹ Some studies show that the taxpayer wins only 5 percent of the time in tax court as compared to winning 20 to 30 percent of the time in the district court. Other studies acknowledge at least a 20 percent differential (Geier, 1991:998). Data used for this study show taxpayers winning 20-percent of the time in tax court and 32 percent of the time in the district court, a 12-percent difference. These differential rates have led some scholars to argue that the tax court is biased in favor of the agency (Kroll, 1996; but see Maule,

¹ There is a potential for bias in a study comparing decisions in the tax court and the district courts. One can make the claim that there actually are *distinctly different* types of litigants in each court, with the district court wealthier on average and, therefore, that this wealth causes some *systematic differences* in treatment. To account for this possibility, I control for type of litigant and attorney. These variables systematically control for wealthier people, who would be more likely to be represented by an attorney, and for litigants with more-complex claims. In addition, I ran an analysis, not reported here, that controlled for assessment, a direct measure of wealth. The results of this analysis did not alter the results. All of these variables control for systematic bias in the type of litigants and, therefore, systematic bias in treatment.

1999), with the potential for bias leading Congress to resist creating other specialized courts (Baum, 1990).

No coherent theory for why such bias exists has been developed, but posited reasons include such factors as ideology, institutional design and structure, prior IRS work experience, the type of litigant, attorney representation, and even the judge's social and personal characteristics. This failure to develop a coherent theory stems in large part from a failure to focus on bias due to policy preference, although studies of other courts show that ideology is an important factor in judicial decision making (Segal and Spaeth 2002; Hettinger, Lindquist, and Martinek, 2004) to the extent that it is now a scholarly given (Rowland and Carp, 1996).

Taxes are an issue charged with significant ideological dimension (see, e.g., Stevenson, 1997; Wiseman 1997a, b; Scholz and Wood, 1998, 1999), as conservatives have adopted an anti-tax posture and generally oppose taxes and, by extension, the Internal Revenue Service. Republicans and conservatives have sought to portray tax collection and the IRS as dangerous and out of control (see, e.g., Stevenson, 1997; Wiseman, 1997). Arguably this has occurred because of the anti-government posture adopted by conservatives and the pro-government posture adopted by liberals during this time period. Government spending depends on tax collection; therefore, opposition to government spending means opposition to the collection of revenue that supports such spending, while support for government spending means support for the collection of revenue. An earlier study found a significant positive correlation between judicial liberalism and support for the IRS (Howard and Nixon, 2002). In the most ideologically and politically charged issue areas, more-conservative judges would be more supportive of the tax shelters and tax protestors, while liberal judges would be less accommodating of shelters and tax protestors.

Given that judges of the tax court are appointed by the president and confirmed by the Senate, there is no obvious reason, save for institutional structure and design, that the court should be less ideological in its decision making than the district court, especially when the decisions involve such a politically charged issue. However, one could also argue that the tax court, given its expertise, would be more ideological in its decisions because the judges know the law and do not have to rely on hierarchically superior courts, the agency, or lawyers for interpretation and meaning.

The tax court does not enjoy the same prestige, independence, and salary guarantees of courts created under Article III of the Constitution, with this lack of independence implying a greater willingness to defer to agency goals (see Unah, 1997). Thus, institutional constraints might restrict the tax court's choices and lead to a bias in favor of the IRS. However, this constraint is not obvious in practice, with the difference said to be "largely theoretical" (Posner, 1996:268; see also Easterbrook, 1990). Because tax court judges enjoy full-pension protection, usually are reappointed or assume senior status, and have the same salary as district court judges, in practice they enjoy the same protections as the Article III judges (see Maule, 1999; Dubroff, 1979). The exception is that the tax court's special judges, who are appointed by the current

chief judge, usually come directly from the IRS and are likely to show greater deference to the agency.

Previous examinations of ideological decision making by the tax court show either a weak correlation between ideology and tax decision making (King and Lazarus, 2003; Schneider, 2002) or the lack of any connection between ideology and decisions in favor of or against the IRS (Schneider, 2001). Such findings are consistent with the specialized court model. Curiously, contrary to the expectations of prior research (Howard and Nixon, 2002, 2003; Scholz and Wood, 1998, 1999,) some studies (Schneider, 2001; King and Lazarus, 2003) show Democratic or Democratic appointed judges being somewhat more likely to vote in favor of the taxpayer, a finding contrary to known partisan positions on the IRS and taxes over the past twenty-five years.

These findings, in all likelihood, stem from measurement error. One aspect is that, consistent with previous research, Schneider (2001) and King and Lazarus (2003) use the partisanship of the appointing judge and the partisanship of the appointed judge, respectively, as their ideology measures. Focusing on a judge's partisanship fails to account for the subtlety and diversity of attitudes on the bench and, as a tax scholar notes, does not take into account the control of the Senate, the confirming institution (Maule, 1999).

In addition, previous studies have failed to account in any significant way for the influence of facts and issues, which can temper, or trigger, attitudes (see Segal and Spaeth, 1993), nor did they examine whether the litigant was a business, estate, or individual, which might have an effect because a judge might have less experience with estates and businesses than with individuals, and because the issues presented by estates and businesses are more complex than presented by individuals.

Yet a focus on the type of litigant does not address the question of the actual issues examined by the court. For example, all litigants might have to defend the meaning of what constitutes income, what are proper deductions, what is the proper value of stock or another item, or whether a business or an individual properly withheld income taxes from an employee's return and, if not, who is responsible for the failure. While a business or an estate might present more complexity on these questions, a wealthy individual might have a far more complex tax return than a small business or a relatively simple estate. Both courts deal with highly salient, ideologically charged matters like tax protestors, individuals who assert that the income tax is unconstitutional and that the IRS has no authority to collect income taxes; frauds, when individuals or businesses are accused of illegally hiding income or asserting patently false deductions; or tax shelters, financial arrangements to reduce the investor's tax, with some designed to lose money for potentially greater tax savings.

Highly relevant to comparisons of the two courts is that, although some issues appear in both courts, such as what constitutes income and what deductions were proper, the two courts at times deal with different issue areas. For example, district

courts often deal with the question of jurisdiction, when court litigants have not paid their assessment and are, thus, in the wrong court. The district court, unlike the tax court, also confronts issues as to whether income was properly withheld from employees, as the government holds a taxpayer responsible for a company's failure to withhold taxes properly, or a business tries to avoid withholding taxes by claiming that the workers were independent contractors and not employees. The tax court, by contrast, often deals with innocent-spouse issues. This occurs when a spouse signed a joint return but claims lack of knowledge of the contents in order not to be held responsible for penalties and interest. In addition, the court deals with valuation issues, particularly for gifts, estates, and trusts.

HYPOTHESES

The prevalence of ideological decision making, the differences in structure, and local versus national outlook lead to two subgroups of hypotheses about decisions of these two courts.

Ideology. As tax policy, and support or opposition to the Internal Revenue Service, is highly ideological, one would expect judges to exhibit ideological bias in their rulings. Tax court judges are subject to the same nomination and confirmation process as are the judges of the district court, so one should see similar ideologies in rulings for both courts. However, because tax policy is complex, judges of general jurisdiction courts need to rely more on litigants, lawyers, the IRS, and other courts for the meaning and proper construction of the Internal Revenue Code; this reliance on outside interpretation will restrict the use of ideology in the rulings by the district court judges. Tax court judges' expertise, and the concomitant lack of reliance on others, means that the tax court judges have *greater* freedom to use their ideology in their rulings.

Finally, of all issues and facts confronting the judges of both courts, the greatest challenge to the collection of taxes comes from those taxpayers who, through fraud, deception, and abuse, challenge the right of the state to collect taxes. While many tax protesters in earlier eras withheld tax payments in support of a liberal cause, such as protesting the war in Vietnam, the nature of tax protests has significantly changed. All of those coded as tax protesters in these cases protested the authority of the government to collect taxes and would be considered very conservative by any definition. Therefore, the tax-protest assertions from these cases should lead to significant divergence between liberal and conservative judges, with liberal judges being the most opposed to these assertions and conservative judges being less opposed.

From this discussion, the following hypotheses are derived:

Hyp. 1 The more liberal the judge, the greater the support for the Internal Revenue Service.

Hyp. 2 When the issues are centered on tax protesters, tax fraud, and tax shelters, the more conservative the judge, the greater the support for the taxpayer.

Hyp. 3 Ideology will have a greater influence in the tax court than in the district court.

Structure, Specialization and Expertise. Given that other specialized courts have been shown to be less likely than courts of general jurisdiction to follow precedent imposed by hierarchically superior courts, the regional courts of appeals will have a greater influence on the district courts' decisions than on the tax court's decisions. However, given the role of expertise in the tax court as compared to the district court, one should also expect that attorneys would have a greater influence in the district courts, because district court judges will need to rely on the presentation and arguments of legal experts. Complexity and lack of familiarity with unusual tax returns, such as those presented by business or trusts and estates, will result in greater success for these types of litigants than for individual litigants in both tax court and district court; however, businesses and estates and trusts will experience even greater success in the district court.

While most of the structural differences between the tax court and the district courts do not restrict the independence of tax court judges and, therefore, should not lead to any greater support of the IRS, because tax court special judges do not have the same independence, pension, and reappointment advantages as a regular judge of that court, special judges are liable to show greater deference to the agency. In addition, a judge's prior IRS experience will influence the decisions of special judges and regular judges. One should thus expect that special judges would be more likely to decide cases in favor of the IRS, while all tax court judges with IRS experience, special or regular, will be more likely to decide cases in favor of the IRS. Following prior research that demonstrates local influences on the district court, one would expect the U.S. District Courts to show the influence of state-specific factors more than does the U.S. Tax Court. This leads to the following hypotheses:

Hyp. 4 The regional U.S. Courts of Appeals will have a greater influence on the decisions of the district court than on the decisions of the tax court.

Hyp. 5 Representation by an attorney will have a greater influence on the district court than on the tax court.

Hyp. 6 Special judges will be more likely to decide cases in favor of the IRS than will regular judges.

Hyp. 7 Tax court judges with IRS experience will be more likely to decide cases in favor of the IRS than those without such experience.

Hyp. 8 District court judges will be more likely to decide cases in favor of business or estate and trust litigants than will tax court judges.

Hyp. 9 District court judges will be more influenced by state-level political and economic factors than will tax court judges.

DATA AND RESULTS

Data and Variables. To compare the decision-making process of these two courts, data from all decisions of the U.S. Tax Court for the year 1996, and for all tax cases from the U.S. District Court for the years 1996 and 1997, were collected.² These years were used because other direct studies of the tax court used these years, thus providing for a direct comparison. Data collected included information on type of taxpayer, state, the name of the judge, type of judge, issue being contested, and whether counsel represented the taxpayer. Following the coding pattern, I coded each case as either a win for the IRS or a win for the taxpayer based on the major issue or issues under consideration. This approach was used by Schneider (2001) and had an inter-coder reliability of 91 percent. This coding led to an initial database of 681 decisions for the tax court and 207 decisions for the district courts. After dropping decisions due to lack of obtainable data for all the independent variables, there were 631 decisions for the tax court analysis and 191 decisions for the district court analysis.

Included in the analysis were litigant type (business, estate or trust, or individual), judge type, attorney representation, and issue. Both courts dealt with several of the same issues, including income, deductions, tax shelters, tax protesters, and fraud; I combined the tax-protestor and tax-fraud items into one variable as both represent an assault on the legitimate collection of taxes. In addition, incorporated as variables were additional issue areas such as jurisdiction and withholding issues for the district court analysis and for valuation and innocent-spouse issues for the tax court analysis. To account for the tax court's structural difference, a variable was included for each case decided by a special judge and to indicate if the judge had IRS experience.

To provide additional control measures, two other variables were merged into this data set. State-level political and economic measures have been used in prior studies of taxes and political responsiveness (Scholz and Wood, 1998, 1999). Applying the same logic of responsiveness to the district court, we would expect that the judges of the district courts, because they live and work in the state, should be more responsive to the political environment than the judges of the tax court (Giles and Walker, 1975), and that there would be a greater likelihood of a ruling by the district court in favor of the IRS in a more-liberal state. Similarly, because there would be more audits of wealthier individuals in a wealthier state, as measured by per capita income, judges would be more likely to decide cases in favor of the IRS in a wealthier state.³

To find such a connection between liberal ideology and a greater likelihood to decide a case in favor of the IRS and against the taxpayer, an accepted measure of ideology is needed. There is no generally accepted measure of lower-court ideology, particularly for federal trial courts, which would be strictly comparable across institutions

² Data for the U.S. Tax Court was taken directly from the tax court Web site, www.ustaxcourt.gov. Data for the district court was compiled through Westlaw (www.westlaw.com), with the keyword "tax" and the appropriate year added to the search.

³ The Berry et al. (1998) measure of state governmental liberalism was used.

and time, and inferring a judge's ideology from that of the appointing president fails to capture the diversity of judicial attitudes. Here, I use a measure of the personal ideology of each U.S. District Court judge and U.S. Tax Court judge that is strictly comparable to a measure developed by Poole (1998; see also Howard and Nixon, 2003)⁴ to indicate economic conservatism of all presidents and members of the U.S. House and Senate since 1938. The comparable measure is based on a combination of political factors, including president's party, nominee's party, region, and state ideology; it is scaled in the same issue space and on the same metric as Poole's scores. It provides a precise, defined measure of attitudes and allows for significant variation.

When a special judge rendered a decision and a regular judge approved the decision, I used the latter's ideology score.⁵ When there was no such approval, I used the incumbent president as the nominating president for the special judges, as the president appoints the chief judge, and the chief judge appoints the special judges. If a district court judge approved a magistrate judge's decision, the ideology score of the approving district court judge was used. If there was no approving judge, the magistrate judge's ideology score was used.⁶ The same process was used for the appellate court measure of ideology, with the measure pegged to the median ideology of the relevant appellate court (for a complete discussion, see Howard and Nixon, 2003).

The data show that there are many similarities between the tax court and the district court. Both are slightly conservative in their decisions, with an average ideology score of .10. Both also confront roughly the same types of cases; more than two-thirds in both courts are from individuals, with roughly one-fourth of the dockets of each composed of business matters. Income and deduction issues are the most frequently litigated issues in both courts.

There are also some significant differences. One is the much greater number of taxpayers who forgo counsel in the tax court (36 percent) as compared to the district court (10 percent). In addition, more than twice as many tax-shelter and tax-protester cases are heard in the tax court (21 percent) than in the district court (10 percent). Another important difference is that the IRS wins 12 percent more often in the tax court than in the district court; however, in the cases examined here, while the IRS wins most often, the taxpayer still won 20 percent of the time in the tax court and in 32 percent of the cases in the district court.

⁴ Poole's scores range continuously from -1.0 (most liberal) to +1.0 (most conservative).

⁵ This follows Tax Court Rule 182 (c), which states, "The Judge to whom . . . the case is assigned may adopt the Special Trial Judge's report or may modify it or may reject it in whole or in part," and as the recent Supreme Court case of *Ballard v. Commissioner of Internal Revenue*, 125 S.Ct. 1270 (2005), makes clear, such reports can be significantly modified. [Editor's Note: For a Legal Note on that case, which we asked Prof. Howard to prepare, see "The Supreme Court Says Rules Are Rules: *Ballard v. Commissioner of Internal Revenue*" in this issue. SLW]

⁶ In some jurisdictions, a magistrate judge can hear civil tax cases with the consent of the parties, and appeals go directly to the courts of appeal. In other districts the cases are assigned to both the magistrate and a district court judge and appeals go to the district court judge, hence the coding of the district court judge's ideology score for decisions of the magistrate judge in this data set where both judges are listed in the case.

Table 2
Comparing U.S. Tax Court and U.S. District Court:
P Values

<i>Court</i>	<i>Tax Court</i>	<i>District Court</i>
IRS experience		
Special judge	*	
Attorney	*	
Business	*	*
Estate or trust		*
Tax shelter		
Fraud/Tax protester	**	
Appellate court		*
Ideology	*	
Income and ideology interaction		
Deduction and ideology interaction	*	
Valuation and ideology interaction		
Withholding and ideology interaction		***
Tax shelter and ideology interaction	*	
Fraud/Protester and ideology interaction	**	*

* Significant at $p < .05$ (two tailed)
** Significant at $p < .01$ (two tailed)
*** Significant at $p < .001$ (two tailed)

Results. A more elaborate statistical analysis (see Table 2) allows us to determine if there is a statistically significant relationship between the independent variables and the probability of the IRS winning in either court. The analysis confirms most of our hypotheses, confirms some of the previous literature, and produces some surprising differences.

The tax court, contrary to expectations, seems to be both more expert and more ideological in its decision making than the district court. As expected, the more liberal the judge, the greater the likelihood of support for the Internal Revenue Service, while the more conservative the judge, the greater the likelihood of support for the taxpayer. Tax court judges are more ideological in deciding cases than are district court judges. Finally, the hypothesis that liberal judges would react more negatively, and conservatives more positively, to tax-protestor or tax-fraud issues was confirmed for both courts.

Many structural hypotheses deriving from prior research are also confirmed. The general jurisdiction court is more likely to rely on precedent than is the specialized court, and a special judge is likely to decide issues differently from regular tax court judges; how-

ever, prior IRS experience does not matter for type of judges. Curiously, the presence of an attorney appears to help the taxpayer in the more specialized tax court but not in the district court. This could be an artifact of sample as counsel represented most taxpayers in the district courts, while more than one-third of the tax court litigants appeared pro se, but it could also represent the ability of the tax court judge to appreciate and understand the arguments of counsel, whereas the more generalized district court judge relies on the agency. As expected, the district court was more sensitive to the type of litigant, being more likely to support a business or a trust or estate, than was the tax court.

DISCUSSION AND CONCLUSION

The results show a different picture than anticipated and perhaps a different role than considered appropriate for a specialized court. The specialized court, free from any practical structural constraints, uses its expertise to allow a much freer hand in decisions for its judges' policy preferences. This seems to be a deviation from the ideal that a specialized court used its expertise to decide the issues without reference to ideology. However, this ideal ignores the practical matter that the collection and distribution of revenue is the single most important and politically charged issue that any government must confront. Who or what should pay and how much, and who or what should receive this revenue and how much, are inescapably political questions charged with ideological overtones (see Johnston, 2003). Despite repeated calls for simplification and ease, any system of taxation is likely to have complex laws, rules, and regulations. The resulting interpretation of complicated questions of assessment and collection requires discretion and technical expertise, and any result requires opinion and judgment—opinion and judgment that cannot be divorced from basic views about the collection and allocation of scarce resources. Thus, while there has been some concern that, like the tax court, specialized courts would be no more than extensions of the IRS and thus likely to exhibit bias in favor of the agency, and while the U.S. Tax Court might issue more rulings in favor of the IRS than the U.S. District Court, the reason might be as much due to ideology as any bias based on structure or experience.

Additional study, is of course, needed to compare specialized with general jurisdiction courts. Arguably there are few issues litigated in different federal trial courts, which may limit the generalizability of the present study. However, while there are few federal agencies that deal with structurally different federal trial courts, most federal agencies must deal with different U.S. District Courts, different U.S. Courts of Appeals, and competing state and federal courts.

One fruitful area to examine in an additional study is the issue of congressional and executive control. The fifteen-year tenure of nineteen tax court judges, as opposed to the lifetime tenure of more than 600 district court judges, allows Congress and the president to modify and alter the small tax court's ideology more quickly than the ideology of the district courts. Given the volatile and highly politicized issue of taxes, the ideological rulings of the tax court might be due to congressional design, and the decisions might deliberately match congressional and executive preference. **jsj**

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