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The Expansion of Appellate Jurisdiction over Tax Court Decisions, InverWorld, Ltd. v. Commissioner, 979 F.2d 868 (D.C. Cir. 1992)

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CASE COMMENTS

THE EXPANSION OF APPELLATE JURISDICTION OVER TAX COURT DECISIONS
InverWorld, Ltd. v. Commissioner, 979 F.2d 868 (D.C. Cir. 1992).

In *InverWorld, Ltd. v. Commissioner*,[1] the United States Court of Appeals for the District of Columbia Circuit expanded appellate jurisdiction over certain United States Tax Court (Tax Court) decisions by concluding that parties may immediately appeal Tax Court orders that dispose of at least one, but not all joined claims.[2]

According to the Internal Revenue Service (IRS), InverWorld failed to pay certain taxes over a three-year period.[3] Pursuant to its collection procedures,[4] the IRS mailed the company two different deficiency notices

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1. 979 F.2d 868 (D.C. Cir. 1992).

2. *Id.* at 875. This Case Comment is limited to discussing whether parties may immediately appeal Tax Court orders that dispose of one or more, but not all, joined claims. Because the *InverWorld* court concluded that parties may immediately appeal Tax Court decisions that do not dispose of the entire case, it then addressed the substantive question whether the Tax Court erred in following the "objective indication rule" by holding that a petition to the Tax Court must contain the amount of the deficiency assessed, the amount contested, and the years in dispute in order to invoke the Tax Court's jurisdiction over the petition. *Id.* On this issue, the D.C. Circuit affirmed the decision of the Tax Court, finding the Tax Court's objective indication rule is both "a reasonable test" and "consistent with prior Tax Court practice and procedure." *Id.* at 876. For a general discussion of the pleading requirements of the Tax Court, see Nina J. Crimm, *Tax Controversies: Choice of Forum*, 9 B.U. J. TAX LAW 1, 13 (1991).

3. 979 F.2d at 869. The IRS determined that InverWorld owed taxes for 1984, 1985, and 1986. *Id.* *See infra* notes 6-7 and accompanying text.

The amount that the IRS claims the taxpayer owes is known as a "deficiency." 26 U.S.C. § 6211(a) (1988). A "deficiency" constitutes the amount by which a tax imposed exceeds "the excess of . . . the sum of . . . the amount shown as the tax by the taxpayer upon his return . . . plus . . . the amounts previously assessed (or collected without assessment) as a deficiency" less adjustments for credits and refunds. *Id.*

4. The IRS indicates that it has determined a deficiency by mailing a deficiency notice. 26 U.S.C. § 6212(a) (1988) ("If the Secretary [of the Internal Revenue Service] determines that there is a deficiency in respect of any tax imposed . . . he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail."). The IRS has a three year statute of limitations period beginning from the later of the filing of the return or the due date of the return to issue a deficiency notice if it wishes to collect the amount in question. 26 U.S.C. § 6501(a) (1988).

explaining its liability.[5] The first notice detailed liability for withholding taxes.[6] The second notice specified over $900 million in liability for corporate income taxes.[7]

Instead of paying the amounts in question,[8] InverWorld contested the IRS's assertions in the Tax Court[9] for a redetermination of the deficiencies.[10] However, the petition only referred to the deficiencies listed in the first notice.[11] Because InverWorld did not contest the delinquent corporate income taxes listed in the second notice,[12] the IRS demanded payment of the $900 million once the period allowed to petition the Tax

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5. 979 F.2d at 870. The IRS sent the deficiency notices in two separate mailings on September 7, 1990. *Id.* All deficiency notices must "describe the basis for and identify the amounts, (if any), of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties." 26 U.S.C. § 7522 (Supp. III 1991). Failure to meet these conditions may lead a court to determine that the IRS has not determined a deficiency. *See, e.g.*, Scar v. Commissioner, 814 F.2d 1363, 1367-69 (9th Cir. 1987) (stating that failure to determine deficiency makes compliance with statutory notice impossible).

6. 979 F.2d at 870. The first notice specified the amounts of the company's withholding deficiencies for each of three years, 1984, 1985, and 1986. *Id.* The notice also explained how the IRS had computed the deficiencies, referring to the withholding tax form (Form 1042), adjusting for the alleged receipt of interest income. The Commissioner had imposed penalties because InverWorld had not filed "Annual Withholding Tax Returns." *Id.*

7. *Id.* The second notice specified an increase in the taxable income for 1984, 1985, and 1986. *Id.* This notice also explained how the IRS determined deficiencies in taxes paid for those years, referring to corporate tax provisions and imposing penalties because InverWorld had not filed income tax returns. InverWorld, Ltd. v. Commissioner, 98 T.C. 70, 72 (1992).

8. Upon receiving a deficiency notice, the taxpayer may pay the amount listed in the notice or litigate the controversy. *See* 26 U.S.C. § 6213(a) (1988). If the taxpayer chooses not to pay, then he or she must litigate the matter in the United States Tax Court; if the taxpayer pays, then he or she may sue for a refund in either the United States district courts, or the United States Claims Court. *See* Crimm, *supra* note 2, at 1 & n.1.

Most taxpayers choose to litigate in the Tax Court. 1988 IRS ANN. REP. 35. As of September 30, 1988, the Tax Court had pending 70,815 petitions involving deficiencies totaling more than $22 billion. *Id.* at 38. The district courts had 2,679 complaints pending seeking refunds of $526 million, and the Claims Court had 829 complaints pending seeking refunds of $885 million. *Id.* at 35.

9. If the taxpayer chooses to litigate in the Tax Court, he or she has 90 days from the date of notice, or 150 days if the Commissioner mails the notice to an address outside the United States, to petition the Tax Court for a "redetermination" of the deficiency. 26 U.S.C. § 6213(a) (1989 & Supp. 1993). In general, the IRS cannot make any collection efforts until the expiration of the 90 or 150 day period or until the Tax Court renders a final decision on a timely petition. *Id.*

10. 979 F.2d at 870. InverWorld, a Cayman Islands corporation, argued that it did not owe any taxes because it did not conduct business in the United States. *Id.*

11. *Id.* InverWorld referred to the alleged deficiencies as involving a dispute over "income tax," but only attached and referred to the first notice. *Id.*

12. Because InverWorld's headquarters is located outside of the United States, it had 150 days from its receipt of the deficiency notice, September 7, 1990, to petition the Tax Court. 26 U.S.C. § 6213(a) (1989 & Supp. 1993). See *supra* note 9 for a discussion of 26 U.S.C. § 6213(a).

Court expired.[13] Faced with paying such a large sum, InverWorld immediately filed a motion with the Tax Court to amend its original petition to include another claim regarding the deficiencies in the second notice.[14] The Tax Court denied the motion for lack of timeliness.[15] The Tax Court's decision disposed entirely of InverWorld's income tax claim and subjected the company to immediate payment of the $900 million.[16] With a resolution of the withholding tax claims still pending, InverWorld appealed the Tax Court's denial of the motion to amend to the D.C. Circuit.[17] Although neither party challenged the D.C. Circuit's jurisdiction over the appeal,[18] the court raised the issue sua sponte because other courts had dismissed similar appeals.[19] The D.C. Circuit held that parties may appeal Tax Court orders that dispose of at least one, but not all, joined claims.[20]

In non-tax cases brought in federal district court, the "final judgment" rule dictates when parties may make an appeal.[21] In general, appellate

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13. 979 F.2d at 870-71. In accordance with 26 U.S.C. § 6213(a), *see supra* note 9, the IRS demanded payment on February 6, 1991, 150 days after mailing the two deficiency notices. 979 F.2d at 870-71.

14. 979 F.2d at 871. "InverWorld also sought a temporary restraining order and preliminary injunction in the United States District Court for the District of Columbia." *Id.* at 371 n.3. The district court denied relief and the appellate court dismissed an appeal of this denial as moot once the Tax Court denied InverWorld's motion to amend its petition. *Id. See infra* note 15 and accompanying text.

15. *InverWorld*, 98 T.C. at 88. In reaching its conclusion, the Tax Court relied on Tax Court Rule of Procedure 41(a) which states, "No amendment shall be allowed after expiration of the time for filing the petition . . . which would involve conferring jurisdiction on the Court over a matter which otherwise would not come within its jurisdiction under the petition as then on file." 98 T.C. at 75 (quoting RULES OF PRAC. AND PROC. OF THE U.S. TAX CT. 41(a)). The Tax Court held that because the time for filing a petition had expired, the court had no jurisdiction to hear the amended claim. *Id.* The Tax Court also held that the vagueness of the original petition, *see supra* note 11 and accompanying text, did not confer jurisdiction over the second notice. *Id.* at 87-88. For a general discussion of the Tax Court's decision see *Tax Court Petition Must Indicate Specific Deficiency*, 76 J. TAX'N 250 (1992).

16. 979 F.2d at 871.

17. *Id.* InverWorld argued that its original petition contained enough information to invoke the Tax Court's jurisdiction over the corporate income tax deficiencies. *Id.*

18. However, once the court raised the issue sua sponte, *see infra* note 19 and accompanying text, the parties submitted supplemental briefs. 979 F.2d at 871.

19. 979 F.2d at 871. Courts must raise the jurisdictional issue sua sponte whenever reason for inquiry exists. Mansfield, Coldwater & Lake Mich. R.R. v. Swan, 111 U.S. 379, 382 (1884).

20. 979 F.2d at 875.

21. *See, e.g.*, Van Cauwenberghe v. Biard, 486 U.S. 517, 524 (1988) (stating that litigants must abide by the final judgment rule). For a general discussion of the final judgment rule, see FLEMING JAMES, JR. & GEOFFREY C. HAZARD, JR., CIVIL PROCEDURE § 12.4, at 657-60 (3d ed. 1985).

However, in Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949), the Supreme Court created a narrow exception to the final judgment rule—the "collateral order doctrine." 337 U.S. at 546. In *Cohen*, the Court stated that a party may appeal a decision under 28 U.S.C. § 1291 if the decision

jurisdiction arises under statute[22] for only "final" decisions of the district courts.[23] A final decision terminates the litigation on the merits.[24] In contemplating an appeal, parties must distinguish between a final decision and an interlocutory order.[25] An interlocutory order adjudicates a particular issue at hand but does not conclude the action.[26] Parties must wait for resolution of the entire lawsuit before appealing an interlocutory order.[27] Although the final judgment rule promotes judicial economy,[28] its application can create difficulties for parties in multiclaim litigation by forcing them to wait until the end of the lawsuit, which may take years, to bring an appeal.[29]

"finally determine[s] claims of right separate from, and collateral to, rights associated in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id.* Later, in Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978), the Court held that for a decision to fall within the collateral order doctrine, it "must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable from a final judgment." *Id.* at 468.

For a general discussion of the exceptions to the final judgment rule, see Michael E. Solimine, *Revitalizing Interlocutory Appeals in the Federal Courts*, 58 GEO. WASH. L. REV. 1165, 1168-74 (1990).

22. 28 U.S.C. § 1291 (1988). For a general discussion of the statutory exceptions to the final judgment rule, see Robert J. Martineau, *Defining Finality and Appealability by Court Rule: Right Problem, Wrong Solution*, 54 U. PITT. L. REV. 717, 729-36 (1993).

23. Specifically, 28 U.S.C. § 1291 states "[t]he courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States...except where a direct review may be had in the Supreme Court." *Id.*

24. Catlin v. United States, 324 U.S. 229, 233 (1945) ("A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.") (citing St. Louis, Iron Mountain & S. Ry. v. Southern Express Co., 108 U.S. 24, 28 (1883)).

25. *See, e.g*, Sinclair Oil Corp. v. Amoco Prod. Co., 982 F.2d 437 (10th Cir. 1992) (dismissing action for lack of jurisdiction because party tried to appeal an interlocutory order).

26. An interlocutory order "does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order . . . to adjudicate the cause on the merits." BLACK'S LAW DICTIONARY 815 (6th ed. 1990).

27. *Catlin*, 324 U.S. at 233. *See also* Lauro Lines S.R.L. v. Chasser, 490 U.S. 495, 498 (1989) (stating that a party may not appeal a district court order that does not constitute a decision on the merits).

28. Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 380 (1987) (stating that "the finality rule of § 1291 protects a variety of interests that contribute to the efficiency of the legal system"); Richardson-Merrell, Inc. v. Koller, 472 U.S. 424, 430 (1985) (same); Flanagan v. United States, 465 U.S. 259, 264 (1984) (declaring that the final judgment rule "reduces the ability of litigants to harass opponents and to clog the courts through a succession of costly and time-consuming appeals"); Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981) (stating that the final judgment rule "serves the important purpose of promoting efficient judicial administration").

29. Martin H. Redish, *The Pragmatic Approach to Appealability in the Federal Courts*, 75 COLUM. L. REV. 89, 98 (1975) (arguing for a more flexible approach to the final judgment rule to allow appeals

Consequently, the Supreme Court promulgated Federal Rule of Civil Procedure 54(b).[30] Rule 54(b) enables a district court in a multiclaim controversy to enter a final judgment on a completed claim and certify it for an immediate appeal.[31] Rule 54(b) does not provide an exception to the final judgment rule. Rather, it establishes a statutory framework for determining the appealability of one claim in a multiclaim action.[32] Once a trial court certifies a claim pursuant to Rule 54(b), an appellate court must still determine whether the party actually brought multiple claims and whether any reason exists to delay review before granting an appeal.[33] If the appellate court concludes that the district court properly certified a claim under Rule 54(b), then it may consider the appeal of the claim that was part of a multiclaim action.[34]

In Tax Court cases, however, different procedural rules apply.[35] Appellate jurisdiction originates under a different statute, 26 U.S.C. § 7482(a)(1),[36] which provides appellate review of Tax Court "decisions . . . in the same manner and to the same extent as decisions of the district court . . . ."[37] However, the statute does not define what constitutes a "decision."[38] Consequently, for some time courts disagreed as to when

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when "the danger of prejudicing the litigants as a result of delaying appeal will be so substantial as to outweigh any countervailing interest in avoiding the harms of piecemeal litigation").

30. The Enabling Act authorizes the Supreme Court to promulgate the Federal Rules of Civil Procedure. 28 U.S.C. § 2072 (1988) ("The Supreme Court shall have the power to prescribe general rules of practice and procedure . . . for cases in the United States district courts and courts of appeals.").

31. Rule 54(b) provides in relevant part:

> When more than one claim for relief is presented in an action . . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

FED. R. CIV. P. 54(b).

32. Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 435 (1956) (stating that Rule 54(b) "does not relax the finality required of each decision . . . but it does provide a practical means of permitting an appeal to be taken from one or more final decisions . . . in multiple claims actions. . .").

33. *See, e.g.*, Schwartz v. Compagnie Gen. Transatlantique, 405 F.2d 270, 274 (2d Cir. 1968).

34. *See, e.g.*, Aetna Casualty & Sur. Co. v. Sheft, 989 F.2d 1105, 1106 (9th Cir. 1993) (holding that district court properly certified claim under Rule 54(b)).

35. *See generally* MARVIN J. GARBIS & ALLEN L. SCHWAIT, TAX COURT PRACTICE (1974).

36. 26 U.S.C. § 7482(a)(1) (1988).

37. *Id.*

38. *Id.* Formerly, courts interpreted "decisions" to refer specifically to other statute sections pertaining to the tax laws. *See, e.g.*, Michael v. Commissioner, 56 F.2d 825, 826 (2d Cir. 1932) (declaring that "decisions" is defined by statute). These courts held that "decisions" refers to those decisions now listed in 26 U.S.C. § 7459(c). *Id.* Section 7459(c) states in relevant part:

> Date of Decision—A decision of the Tax Court . . . shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax

section 7482(a)(1) conferred appellate jurisdiction.[39] Today, almost all circuit courts hold that section 7482(a)(1) jurisdiction exists over final, as opposed to interlocutory,[40] decisions of the Tax Court.[41] In this respect, appellate courts follow the final judgment rule in evaluating appeals from the Tax Court.[42]

As with district court cases, hardships may arise for parties in multiclaim litigation.[43] However, in Tax Court cases the problem poses a more difficult challenge because the Tax Court lacks a procedural rule analogous to Rule 54(b).[44] The lack of a procedure to certify a claim as appealable creates ambiguity both for the party wishing to bring an immediate appeal

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> Court. . . . If the Tax Court dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency . . . an order to that effect shall be entered in the records of the Tax Court. . . .

26 U.S.C. § 7459(c) (1988).

39. *Compare* Commissioner v. Smith Paper, Inc., 222 F.2d 126, 128 (1st Cir. 1955) (holding that "decisions" refers only to those Tax Court orders specified in I.R.C. § 1141(a), now codified at 26 U.S.C. § 7459(c), that dismiss a proceeding for lack of jurisdiction or formally determine a deficiency or lack of a deficiency) *with* Louisville Builders Supply Co. v. Commissioner, 294 F.2d 333, 336-37 (6th Cir. 1961) (deciding that Congress did not intend to limit "decisions" to only those situations enumerated in § 7459(c)).

40. *See supra* note 26.

41. Sampson v. Commissioner, 710 F.2d 262, 263 (6th Cir. 1983); Ryan v. Commissioner, 680 F.2d 324, 326 (3d Cir. 1982); Estate of Dixon v. Commissioner, 666 F.2d 386, 387 (9th Cir. 1982); Porter v. Commissioner, 453 F.2d 1231, 1232 (5th Cir. 1972).

42. Prior to the enactment of § 7482, appeals courts generally treated cases from the Tax Court the same as cases from the district courts. However, in 1943, the Supreme Court changed appellate jurisdiction in Tax Court cases in Dobson v. Commissioner, 320 U.S. 489 (1943). In response, Congress passed § 7482 to change the appellate jurisdiction in Tax Court cases back to the pre-*Dobson* scheme. As the legislative history records:

> Section 1141 [now codified at 26 U.S.C. § 7482] of the Internal Revenue Code provides for court review of Tax Court decisions. From the time this appellate review was established by the Revenue Act of 1926 until the Dobson decision in 1943, there had been no suggestion that the review of the Tax Court decisions was any more limited than the appellate review of decisions of the United States district courts. It was assumed by the courts that, on appeal from the Tax Court, questions of law were fully reviewable and questions of fact were subject to the same sort of limited review that prevailed on appeals from the United States district courts. The Supreme Court in the Dobson case, however, created a new rule of law . . . . This provision . . . restores to the circuit courts of appeal the power to review cases from the Tax Court in the same manner and to the same extent as they have power to review other cases—whether tax cases or nontax cases—coming from a district court in a case tried without a jury.

Views of the Committee on the Judiciary with Respect to Senate Amendments to H.R. 3214, 94 CONG. REC. 8500-01 (1948) (statement of Rep. Reed) (quoted in *InverWorld*, 979 F.2d at 873).

43. *See, e.g.*, Ryan v. Commissioner, 680 F.2d 324, 325 (3d Cir. 1982) (holding the Tax Court unable to hear a second claim because of dismissal of the first claim).

44. Estate of Yaeger v. Commissioner, 801 F.2d 96, 97 (2d Cir. 1986) ("[T]he Tax Court . . . lacks a certification procedure analogous to Rule 54(b).").

and for the appellate court needing to determine its own jurisdiction.[45] Likewise, the lack of a certification procedure is not consistent with the "in the same manner" language of section 7482(a)(1) because without the same procedural rules, an appeal from the Tax Court will necessarily differ in some respects from an appeal from the district courts.[46] Consequently, the circuits have reached divergent results as to whether parties may appeal Tax Court orders that dispose of one or more claims, but do not resolve an entire case.

Although not directly confronted with the issue,[47] in *Commissioner v. Smith Paper, Inc.*,[48] the First Circuit declared that a party may immediately appeal a Tax Court decision even if the decision does not dispose of an entire case.[49] The court stated that if a taxpayer brought a petition contesting alleged deficiencies for several tax years, each year constituting a separate claim, and the Tax Court determined the validity of a deficiency for only one of the years contested (one claim) without ruling on the other years, the taxpayer could immediately appeal that decision.[50] Thus, the court implicitly concluded that a party may appeal a Tax Court decision disposing of one or more, but not all, joined claims.[51] However, because other courts later rejected the court's conclusion as to what constitutes a

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45. *See, e.g.*, Estate of Smith v. Commissioner, 638 F.2d 665, 668 (3d Cir. 1981) (attempting to decide, without the benefit of Rule 54(b), whether taxpayer may appeal Tax Court order).

46. *See, e.g., Estate of Yaeger*, 801 F.2d at 98 (deciding that accepting jurisdiction would not constitute review "in the same manner").

47. The court attempted to determine the meaning of the word "decisions" in § 1141(a) of the Internal Revenue Code of 1939, now codified at 26 U.S.C. 7482(a)(1). The court also had to decide whether the Tax Court erred in granting a taxpayer's motion to dismiss an amended answer that would have converted a proceeding examining the disallowance of claims for abnormality refunds into a proceeding examining standard deficiencies. 222 F.2d at 127. The court held that "decisions" refers to those situations listed in § 1117 of the Internal Revenue Code of 1939, now codified at 26 U.S.C. § 7459(c), *see supra* note 38, and then dismissed the appeal for lack of jurisdiction because the Tax Court order in question was not a "decision" as established by the court. 222 F.2d at 128-30.

48. 222 F.2d 126 (1st Cir. 1955).

49. *Id.* at 129.

50. *Id.* The court stated:

> If a taxpayer's petition before the Tax Court asks for a redetermination of deficiencies for several tax years, and the Tax Court for some reason or other chooses to enter a decision determining a deficiency for one of the tax years, reserving action on the remaining tax years covered by the petition, it may be that such a decision would not be deemed a final decision in the proceeding before the Tax Court; but however such a decision might properly be classified in that regard, we take it that the decision might be brought before the court of appeals upon a petition for review, without awaiting the action of the Tax Court on the asserted deficiencies for the other tax years.

Id.

51. *Id.*

"decision" under section 7482(a)(1),[52] circuits addressing the jurisdictional issue have given little or no recognition to the *Smith Paper* dictum.[53]

Over twenty years later, in *Wilson v. Commissioner*,[54] the Ninth Circuit, although not directly addressing the issue,[55] implicitly agreed with the First Circuit[56] that parties may immediately appeal Tax Court decisions that do not dispose of the entire case.[57] The court concluded that a taxpayer could immediately appeal a Tax Court order that denied a motion to amend a petition to contest an additional deficiency for lack of jurisdiction without a decision rendered on the claims brought in the original petition.[58] However, the court based its decision on a rule that the Ninth Circuit[59] had since rejected: that appellate courts must review Tax Court orders that dismiss a petition for lack of jurisdiction.[60] Nevertheless, the court set the stage for the debate by indicating that the taxpayer could also appeal immediately because the Tax Court made an otherwise unreviewable decision, and the party had no other recourse.[61]

Against this backdrop, in *Estate of Yaeger v. Commissioner*,[62] the Second Circuit directly addressed whether parties may appeal Tax Court

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52. *See supra* note 39 and accompanying text.

53. *See, e.g.*, Estate of Yaeger v. Commissioner, 801 F.2d 96, 96 (2d Cir. 1986) (devoting only one sentence to the *Smith Paper* dictum).

54. 564 F.2d 1317 (9th Cir. 1977) (per curiam), *cert. denied*, 439 U.S. 832 (1978).

55. The court first addressed whether the Tax Court erred in dismissing a petition naming ten "Does" as petitioners. *Id.* at 1318. The court dismissed the appeal for lack of jurisdiction, reasoning that the Tax Court order did not rule on any deficiency and that the court could not consider the cases of unknown, unnamed persons. *Id.* The court then decided whether the Tax Court erred in denying a motion to amend a petition to contest a deficiency for one year of a multi-year petition after the amendment period had run in light of the taxpayer's argument that he did not receive the deficiency notice. *Id.* at 1319. The court held that the Tax Court did not err because the taxpayer need not actually receive the deficiency notice or have actual notice of the claimed deficiency. *Id.*

56. The court did not cite *Smith Paper*. *Id.* at 1317-19.

57. *Id.* at 1318.

58. *Id.*

59. At the time of the case, the Ninth Circuit had not clearly established the criteria for appealability under § 7482(a)(1). Estate of Dixon v. Commissioner, 666 F.2d 386, 388 (9th Cir. 1982). However, in *Dixon*, the Ninth Circuit held that appellate courts have jurisdiction under § 7482(a)(1) over final decisions of the Tax Court. 666 F.2d at 387. See *supra* notes 39-41 and accompanying text for a discussion of the problems courts had in construing the language of § 7482(a)(1).

60. 564 F.2d at 1318. At the time, the Ninth Circuit followed the holding of the First Circuit that "decisions" in § 7482(a)(1) refers only to those types of decisions listed in § 7459(c). *Id.* See *supra* notes 39-41 and accompanying text for a discussion of the early debate surrounding § 7482(a)(1).

61. 564 F.2d at 1318 ("Dismissal of a petition to contest a deficiency for lack of jurisdiction because of late filing leaves the Commissioner's determination of tax liability for the year in question final, and unreviewable by the Tax Court.").

62. 801 F.2d 96 (2d Cir. 1986).

orders that do not dispose of all joined claims.[63] The court held that a party may immediately appeal a Tax Court decision only if the Tax Court has disposed of the entire case.[64] In *Yaeger*, the Tax Court granted a taxpayer's motion to dismiss one of several claims.[65] The IRS appealed the dismissal before the Tax Court determined the existence of any deficiencies for the remaining years.[66] The Second Circuit dismissed the appeal for lack of jurisdiction.[67] The court stated that it could not determine whether the Tax Court had issued a final or interlocutory order because the Tax Court had no system for certification similar to the Rule 54(b) scheme.[68] Consequently, the court concluded that judicial economy and the final judgment rule utilized in district court proceedings mandated that the appeal should wait until the Tax Court disposed of the entire case.[69]

In *Schrader v. Commissioner*,[70] the Sixth Circuit joined the Second Circuit and held that parties may not appeal Tax Court orders until the Tax

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63. *Id.* at 97. The court phrased the issue as "whether disposition of that portion of a proceeding concerning one of several tax years is appealable." *Id.*

64. *Id.* at 98 ("The better course is to hold that the Tax Court's entry of a formal decision document terminating a proceeding renders the action appealable and that appeal of an order concerning only one of several tax years is premature.").

65. *Id.* at 97. The IRS charged Yaeger with deficiencies for 1979, 1980, and 1981. *Id.* Yaeger died on May 11, 1981, thus ending his tax year on that date; but the deficiency notice for 1981 incorrectly claimed that the tax year ended on December 31, 1981. *Id.* Yaeger's estate sought a redetermination of the deficiencies for 1979, 1980, and 1981. *Id.* The estate tried to have the court dismiss the case regarding the deficiency for 1981 arguing that the deficiency notice stated the wrong tax year and the Tax Court therefore lacked jurisdiction without a sufficient deficiency notice. *Id.* The Tax Court granted the motion. *Id.*

66. *Id.* The Tax Court suspended the rest of the proceedings concerning the deficiencies for 1979 and 1980 until the Second Circuit ruled on the appeal. *Id.*

67. 801 F.2d at 98. The court examined § 7482(a)(1) and stated, "Accepting jurisdiction of a Tax Court ruling dismissing a cause of action relating to a single tax year would not be review 'in the same manner' as review of non-jury actions in the district courts." *Id.* (citations omitted). The court concluded that the IRS could not bring an appeal because the Tax Court had not disposed of the entire proceeding. *Id.*

68. *Id.* at 97 ("It is an open question, however, when such an order [dismissing one year of a multi-year petition] may be appealed when entered by a Tax Court which lacks a certification procedure analogous to Rule 54(b).").

69. *Id.* at 98. The court found this rule analogous to the final judgment rule utilized by the district courts and gave two reasons for concluding that the appeal must wait: (1) "Courts have a compelling interest in avoiding multiple appeals from the same proceeding and the unnecessary workload and delays those appeals would inevitably generate"; and (2) "allowing immediate appeals of a Tax Court determination regarding a single year while other years in the same proceeding are still pending might create confusion as to the proper time to file an appeal." *Id.*

70. 916 F.2d 361 (6th Cir. 1990) (per curiam).

Court resolves all claims.[71] A taxpayer brought three claims by petitioning the Tax Court to redetermine deficiencies for three years.[72] The Tax Court granted the IRS' motion to dismiss the claim for the earliest year.[73] Without a ruling on the other two years,[74] the taxpayer appealed the order.[75] The Sixth Circuit dismissed for lack of jurisdiction,[76] noting that the taxpayer could bring an appeal upon resolution of all claims.[77] The court also concluded that the policy reasons behind the final judgment rule warranted making the petitioner wait until the lower court decided the entire case.[78]

In *InverWorld, Ltd. v. Commissioner*,[79] the D.C. Circuit rejected the Sixth and Second Circuits' emphasis on judicial economy and instead focused on the potential injustice parties may incur in having to wait to bring an appeal.[80] Although the *InverWorld* court heard a different substantive issue than that faced by the Sixth or Second Circuit, the jurisdictional issue was the same.[81] The court concluded that parties may appeal final Tax Court decisions regardless of whether the order disposes

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71. *Id.* at 363.

72. *Id.* at 362. The IRS charged Schrader with deficiencies for 1983, 1984, and 1985. *Id.* Schrader petitioned the Tax Court *pro se* for a redetermination on all three years. *Id.*

73. Schrader apparently asked the Tax Court to redetermine the 1983 deficiency after the statutory period for such petitions had elapsed. *Id.* Accordingly, the court dismissed the 1983 claim. *Id.* See *supra* note 9 for a discussion of the rules regarding the time allowed to petition the Tax Court.

74. At the time of the appeal, the Tax Court had not yet ruled on the claims for 1984 and 1985. 916 F.2d at 362.

75. *Id.*

76. Although neither party contested the court's jurisdiction, the court raised the issue sua sponte because "reason for inquiry exist[ed]." *Id.* (citations omitted).

77. *Id.* at 363 (The court stated "the taxpayer is in no way impeded from challenging the Tax Court's order regarding the 1983 deficiency upon resolution of the remaining claims.").

78. *Id.* The court stated that in resolving such issues, district courts use a balancing test weighing the "'the inconvenience and costs of piecemeal review' . . . against 'the danger of denying justice by delay.'" *Id.* (citing United States v. Michigan, 901 F.2d 503, 506 (6th Cir. 1990)) (quoting Gillespie v. United States Steel Corp., 379 U.S. 148, 152 (1964)). The court concluded that the public "has a compelling interest in avoiding multiple appeals from a single proceeding whenever possible." *Id.*

79. 979 F.2d 868 (D.C. Cir. 1992).

80. *Id.* at 872-75.

81. *Id.* at 871. The court phrased the issue as "whether parties may appeal Tax Court orders which dispose of one or more but not all joined claims." *Id.* The other circuits declared that the issue was whether parties may appeal one year of a multi-year petition. *See e.g.*, Estate of Yaeger v. Commissioner, 801 F.2d 96, 97 (2d Cir. 1986) ("[T]he issue on this appeal from an order of the Tax Court . . . is whether disposition of that portion of a proceeding concerning one of several tax years is appealable.").

of the entire case.[82]

In reaching its conclusion, the court first established a framework for review. The court found that under section 7482(a)(1), parties may only appeal final, as opposed to interlocutory, decisions of the Tax Court.[83] Next, the court examined whether the Tax Court order in the instant case constituted a final decision.[84] The court examined other cases in which appellate courts heard appeals from the district courts,[85] and reasoned that because the Tax Court could no longer address the claim,[86] a court would consider a similar district court decision final.[87]

Acknowledging the split of opinion on the issue, the court then addressed whether InverWorld could appeal the Tax Court decision because although final, it did not dispose of all claims.[88] To make the determination, the court used a balancing test.[89] The court weighed the injustice caused to the taxpayer by delaying an appeal against the inconvenience caused to an appellate court in hearing separate appeals.[90] The court determined that the possibility of forcing InverWorld to pay $900 million while preventing

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82. 979 F.2d at 875 ("[W]e are aware of no statutory or policy bar under § 7482 or otherwise that requires us to decline the appeal.").

83. *Id.* at 872. The court acknowledged the circuit split on the issue, but determined that the *Smith Paper* approach had been applied most often in denying review of interlocutory, not final, orders. *Id.* The court concluded that § 7459(c) should not govern § 7482(a)(1) because § 7459(c) appears to deal exclusively with the date of decision. *Id.* See *supra* note 38 for text of § 7459(c). According to the court, the *Smith Paper* rule would prevent parties from appealing many final orders of the Tax Court, such as denials of motions to intervene, until the end of the trial. *Id.* The court stated, "we can find no reason to believe that the definition of decision in § 7459(c)—a provision that appears to deal exclusively with the date on which decisions are rendered—in any way meant to limit appellate jurisdiction over those decisions; § 7482(a)(1) is the controlling provision dealing with appellate review." *Id.* (citing Estate of Smith v. Commissioner, 638 F.2d 665, 668 (3d Cir. 1981)).

84. 979 F.2d at 872-75.

85. *Id.* at 871-75. The court examined the final judgment rule. *See supra* notes 21-29 and accompanying text.

86. The court stated that the Tax Court "has made an unequivocal determination that, because of the inadequacy of InverWorld's original petition . . . [t]here is nothing left to be done by the Tax Court as to that claim for relief, and InverWorld is legally subject to immediate collection action on that deficiency." 979 F.2d at 872.

87. *Id.* (citing Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 435 (1956)); Lockett v. General Fin. Loan Co. of Downtown, 623 F.2d 1128, 1129-30 (5th Cir. 1980) (holding that a district court has finally adjudicated a claim when it has denied a motion to amend).

88. 979 F.2d at 873.

89. *Id.* (citing Gillespie v. United States Steel Corp., 379 U.S. 148, 152-53 (1964)).

90. *Id.* The court acknowledged that InverWorld could still appeal the Tax Court's decision at the end of the proceeding and that this fact convinced the Sixth and Second Circuits to decide as they did. *Id.* (citing Schrader v. Commissioner, 916 F.2d 361, 362-63 (6th Cir. 1990) (per curiam); Estate of Yaeger v. Commissioner, 801 F.2d 96, 98 (2d Cir. 1986)).

it from obtaining immediate review of the conceivably erroneous Tax Court decision outweighed any concerns regarding the waste of judicial resources.[91] The court concluded that accepting jurisdiction now could save judicial resources in the long run by potentially avoiding the expenses associated with a second trial, which would result if the court later overturned the Tax Court's decision.[92] However, the court then went beyond its balancing test and established a bright-line rule in an effort to avoid confusion in determining the appealability of a claim.[93] The court's bright-line rule allows parties to appeal immediately Tax Court orders disposing of at least one, but not all, joined claims.[94]

Cognizant that it had created a circuit split, the court further addressed the arguments made by the Sixth and Second Circuits in denying jurisdiction.[95] First, the court discounted the lack of a rule analogous to Rule 54(b) by emphasizing that the rule does not create finality but simply indicates to an appellate court when a party may bring an appeal.[96] The court also criticized the ambiguity behind the "in the same manner" language of section 7482[97] by stating that the legislative history[98] clearly

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91. *Id.* ("[I]f we deny jurisdiction, [InverWorld] must immediately pay an entire deficiency without review of a potentially erroneous Tax Court determination until some later point when the Tax Court has resolved an entirely different deficiency claim.").

92. *Id.* The court determined that if it later overturned the Tax Court's decision, a second trial would have to take place, which would entail the "expenditure of additional judicial resources." *Id.*

93. 979 F.2d at 873. The court stated:

> Confusion among taxpayers and lawyers will result only if the court does not establish any clear-cut rule at all. A bright-line rule that allows an appeal from a denial of jurisdiction over one but not all the separate claims in a petition would provide the explicit guidance litigants and the Commissioner [of the IRS] seek.

Id.

94. *Id.*

95. *Id.* at 874-75.

96. *Id.* at 874 (citing CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2658, at 71 (2d ed. 1983)). The court then explained that the Supreme Court has "stressed" that Rule 54(b) creates a means for determining the appealability of decisions but does not change the "basic concept of finality." *Id.*

> [T]he enactment of Rule 54(b) "authoriz[ed] a limited relaxation of the former [general] practice that, in multiple claims actions, *all* the claims had to be finally decided before an appeal could be entertained from a final decision upon any of them . . . [but it] does not relax the finality required of each decision, as an individual claim, to render it appealable. . . ."

979 F.2d at 874 (quoting Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 434-35 (1956)). See also *supra* notes 32-36 and accompanying text for a discussion of Rule 54(b).

97. *See supra* text accompanying notes 38-39.

98. The court quoted from the legislative history to show that Congress intended § 7482 to overturn the Supreme Court's decision in Dobson v. Commissioner, 320 U.S. 489 (1943), which made the appellate jurisdiction of the tax court different from the appellate jurisdiction of district courts. See

indicates that Congress intended the phrase to refer solely to the "scope" of review and not to require the courts to follow the procedural rules of the district courts.[99] Finally, the court concluded that applying a more liberal rule furthered the legislative intent of Congress and "harmoniz[ed] procedures" for appealing Tax Court and district court decisions.[100]

Concurring in the court's resolution of the substantive issue in *InverWorld*, one judge stated that the court should not have addressed the jurisdictional issue because of its complexity.[101] Noting the "intricate and unsettled" state of the issue,[102] the judge concluded that neither side had the better argument.[103] The judge would have left the jurisdictional question to a case that presented a closer question on the merits.[104]

The D.C. Circuit reached the proper conclusion for the case before it. However, by establishing a bright-line rule, the court set a precedent that may not promote judicial economy in all cases.[105] The court correctly established finality as the criteria for section 7482(a)(1) jurisdiction.[106] However, when addressing finality in the context of multiclaim litigation, the court should have stopped short of establishing a bright-line rule and instead relied only on its balancing test, weighing the possible injustice to the taxpayer against the inconvenience to the court,[107] in light of the congressional silence on the matter.[108]

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supra note 42 for the legislative history of § 7482.

99. 979 F.2d at 874.

100. *Id.* at 874-75.

> Short of judicially imposing Rule 54(b) on the Tax Court, we can never attain precisely the same manner of review from both courts. Of the two choices, allowing immediate review of Tax Court decisions that dispose of entirely separate claims seems to be more consistent with the general congressional intent behind § 7482(a)(1).

Id. at 875.

101. *Id.* at 879 (Mikva, C.J., concurring).

102. *Id.*

103. *Id.*

104. 979 F.2d at 879 (Mikva, C.J., concurring).

> [T]his case is an especially poor vehicle for deciding the jurisdictional issue. Because both parties want us to decide the appeal on the merits, we do not have the benefit of an adversarial presentation of the jurisdictional problem, and the supplemental briefs addressing the issue are not illuminating.

Id. (citations omitted).

105. *See, e.g.*, Schrader v. Commissioner, 916 F.2d 361, 363 (6th Cir. 1990) (per curiam) (holding that waiting to appeal all claims together promotes judicial economy and "enhances the decision making process").

106. *See supra* note 83 and accompanying text.

107. *See supra* note 89 and accompanying text.

108. In addressing the notion of congressional silence, the Supreme Court has stated:

> In some cases, Congress intends silence to rule out a particular statutory application, while

If the court had done so, future courts could have addressed the issue on a case by case basis instead of establishing a rule in an area in which Congress has yet to act.[109] A taxpayer faced with a large assessment could bring an immediate appeal instead of paying for a possibly erroneous Tax Court decision.[110] On the other hand, a court presented with a claim involving a minimal amount could decide that judicial economy mandates that the appeal should wait until all claims have been resolved.[111]

Although on the surface the court's decision appears merely to resolve a procedural issue, the decision may have far-reaching effects. Confident that they may appeal decisions immediately, taxpayers may become more willing to challenge IRS deficiency claims, especially ones asserting large deficiencies.[112] Even if the taxpayer receives an adverse judgment, he or she can suspend the rest of the proceeding by starting the appeals process.[113] This will place additional stress on an already over-worked judicial system.[114] Faced with this potential for enormous judicial waste, courts should approach the issue on a case by case basis until Congress legislates on the matter.

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> in others Congress' silence signifies merely an expectation that nothing more be said in order to effectuate the relevant legislative objective. An inference drawn from Congressional silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent.

Burns v. United States, 111 S. Ct. 2182, 2186 (1991). *See also* Zuber v. Allen, 396 U.S. 168, 185 (1969) ("Legislative silence is a poor beacon to follow in discerning the proper statutory route.").

109. The *InverWorld* court claimed that it stopped "[s]hort of judicially imposing Rule 54(b) on the Tax Court," 979 F.2d at 875, however, the court did establish "[a] bright-line rule that allows an appeal from a denial of jurisdiction . . . [to] provide . . . explicit guidance." *Id.* at 873. In effect, the court judicially imposed a rule constituting the opposite of Rule 54(b).

110. *See, e.g.*, *InverWorld*, 979 F.2d at 875.

111. *See, e.g.*, *Estate of Yaeger*, 801 F.2d at 98.

112. *See supra* note 8 for statistics detailing the number of claims already filed in the Tax Court.

113. *See, e.g.*, *Estate of Yaeger*, 801 F.2d at 97 (suspending proceedings in the tax court until the Second Circuit resolved the appeal).

114. For a discussion on the increase in litigation in the federal courts, see Martineau, *supra* note 22, at 719-22.