

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-215525**DATE:** January 17, 1985**MATTER OF:** U.S. Tax Court - Travel Entitlements of
Special Trial Judges**DIGEST:**

Prior to October 1, 1982, the travel entitlements of commissioners (Special Trial Judges) of the U.S. Tax Court (established under Article I of the Constitution), were tied by 26 U.S.C. § 7456(c) to the entitlements of commissioners of the U.S. Court of Claims (established under Article III of the Constitution). Upon abolishment of the Court of Claims and its commissioner system in 1982, 26 U.S.C. § 7456(c) was amended to designate subchapter I of chapter 57 of Title 5, U.S. Code, as governing Tax Court commissioner's travel, effective October 1, 1982. Under subchapter I, travel of judicial branch employees is governed by regulations of the Administrative Office of the U.S. Courts, and travel of other employees covered by that subchapter is governed by the Federal Travel Regulations (FTR). Since the U.S. Tax Court as an Article I court is not within the judicial branch, the travel entitlement of its commissioners is governed by the provisions of the FTR, effective October 1, 1982.

This decision is in response to a request from the Court Administrator, United States Tax Court, on the question of which regulations govern the travel entitlements of Special Trial Judges of the Tax Court. We conclude that their travel entitlements are governed by the Federal Travel Regulations, for the following reasons.

BACKGROUND

From 1954, when the Internal Revenue Code was revised and reenacted (the Act of August 16, 1954, ch. 736, 68A

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Stat. 1), until 1982, the travel and per diem allowance entitlements of commissioners of the Tax Court of the United States authorized by 26 U.S.C. § 7456(c) (1976), were based on the travel and per diem entitlements authorized for commissioners of the United States Court of Claims (28 U.S.C. § 792(b) (1976)).

In 1975, the provisions of subchapter I of chapter 57, Title 5, United States Code, were amended by the Travel Expense Amendments Act of 1975, Pub. L. No. 94-22, 89 Stat. 84 (1975). Those amendments, among other things, amended 5 U.S.C. § 5707 to authorize the Administrator of General Services to prescribe travel regulations for Government agencies, except that the Director of the Administrative Office of the United States Courts shall prescribe regulations governing official travel by employees of the judicial branch of government, which included commissioners of the Court of Claims. On June 10, 1975, pursuant to that authority, the Administrative Office of the United States Courts authorized the commissioners of the Court of Claims to be reimbursed for official travel expenses on the same basis as the supporting personnel of the U.S. Courts, with one exception. That exception was that the commissioners were permitted to claim either per diem or actual subsistence, not to exceed the statutory maximum, whichever would provide them the greater expense reimbursement, regardless of their temporary duty location outside Washington, D.C.

Since 26 U.S.C. § 7456(c) authorized commissioners of the Tax Court to receive the same "travel and subsistence allowances provided by law for commissioners of the United States Court of Claims," the provisions of the regulations issued by the Administrative Office of the United States Courts for Court of Claims commissioners controlled the travel entitlements of commissioners of the Tax Court, as well.

Additionally, by Tax Court General Order No. 4, October 2, 1975, the title "Special Trial Judge" was

administratively substituted for "commissioner," in view of the nature of their duties and functions within the court.^{1/}

In 1982, pursuant to section 121 of the Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25, 34 (1982), the position of commissioner of the Court of Claims was abolished. Since the travel entitlements of the Special Trial Judges (commissioners) of the Tax Court had been dependent on the travel entitlements of the commissioners of the Court of Claims, 26 U.S.C. § 7456(c) was amended by section 153(a) of the same act, effective October 1, 1982, to provide that their travel entitlements would be governed by subchapter I of chapter 57, of Title 5, United States Code. 96 Stat. 25, 47.

The issue which has arisen is whether those amending provisions have altered the travel entitlements of the commissioners of the Tax Court from the travel entitlements previously enjoyed. There is a disagreement within the Tax Court on this issue. Apparently, because of the changes in the law and the ensuing disagreement, the Chief Judge of the Tax Court, by memorandum to the Clerk of the Court dated September 29, 1983, stated:

"Irrespective of section 7456(c) of the Internal Revenue Code, as amended, you are hereby directed to continue to authorize the same traveling expenses and per diem allowances for the Special Trial Judges as provided * * * prior to October 1, 1983."

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Section 7441 of Title 26, United States Code (1982), provides that, "[t]here is hereby established, under

^{1/} The term "Special Trial Judge" was statutorily substituted for the term "commissioner" by section 464 of Pub. L. No. 98-369, 98 Stat. 494 (1984).

Article I of the Constitution of the United States, a court of record to be known as the United States Tax Court." As an Article I or executive branch court, the Tax Court is not within the judicial branch (as created under Article III of the United States Constitution). Therefore, the Tax Court is not within the jurisdiction of the Administrative Office of the U.S. Courts in contrast to the United States Claims Court or its predecessor, the United States Court of Claims.

Within the Tax Court, three categories of positions are statutorily authorized: (1) Judges, whose appointments are by the President, requiring Senate confirmation, whose salaries are the same as judges of the United States District Courts and whose travel expenses on official business are on the same basis as judges of the United States Court of International Trade (26 U.S.C. § 7443); (2) Special Trial Judges (Commissioners), whose appointments are by the chief judge of the Tax Court and do not require Senate confirmation, whose salaries are set under 2 U.S.C. §§ 351-361, as adjusted by 28 U.S.C. § 461, and whose travel expenses on official business are reimbursable under subchapter I of chapter 57 of Title 5, United States Code (26 U.S.C. § 7456(c)); and (3) other support personnel, whose appointments are by the Tax Court under Title 5, United States Code, and whose travel expenses on official business are those provided in chapter 57 of Title 5, United States Code (26 U.S.C. § 7471).

As previously noted, official travel entitlements of commissioners of the Tax Court had been based on those of commissioners of the Court of Claims. Effective October 1, 1982, however, 26 U.S.C. § 7456(c) was amended to provide, in part:

"* * * Each commissioner [Special Trial Judge of the U.S. Tax Court] shall receive * * * necessary traveling expenses and per diem allowances, as provided in subchapter I of chapter 57 of title 5, United States Code [5 U.S.C. §§ 5701 et seq.], while traveling on official business and away from Washington, District of Columbia."

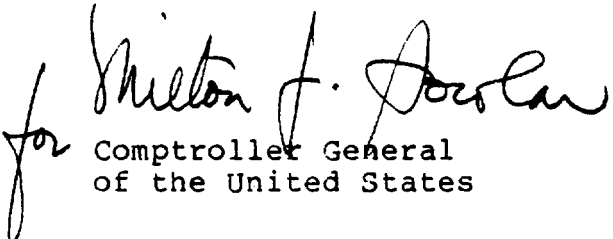
Thus, while commissioners of the Tax Court (Special Trial Judges) may, under the rules promulgated by the Tax Court, enjoy certain power and authority similar to that statutorily authorized to judges of the Tax Court, their travel expenses entitlements are not similarly based.

Section 5707 of Title 5, United States Code, (1982), provides in subsection (a):

"The Administrator of General Services shall prescribe regulations necessary for the administration of this subchapter, except that the Director of the Administrative Office of the United States Courts shall prescribe such regulations with respect to official travel by employees of the judicial branch of the Government."

Since the position of commissioner of the Tax Court--even though now designated as Special Trial Judge--is a position under a court system established under Article I of the United States Constitution, rather than under Article III of the United States Constitution, Special Trial Judges are not employees of the judicial branch, and their travel entitlements are governed by the regulations issued by the Administrator of General Services, not the Administrative Office of the U.S. Courts.

Therefore, it is our view that on and after October 1, 1982, the official business travel entitlements of those who occupy positions as commissioners of the Tax Court, or as later redesignated, Special Trial Judges, are governed by the provisions of the Federal Travel Regulations, FPMR 101-7 (September 1981), and in the absence of other statutory authority, the applicability of those provisions as to them may not be waived or modified by their employing agency, the United States Tax Court.


for Comptroller General
of the United States