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AN EMPIRICAL ASSESSMENT OF PARTY CAPABILITY THEORY IN FEDERAL TAX CASES

by

Ying Wang, M.B.A., C.P.A.

A Dissertation Presented in Partial Fulfillment
of the Requirements for the Degree
Doctor of Business Administration

COLLEGE OF BUSINESS
LOUISIANA TECH UNIVERSITY

August 2007

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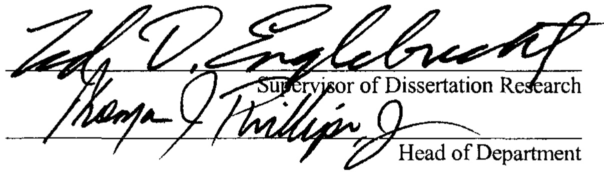

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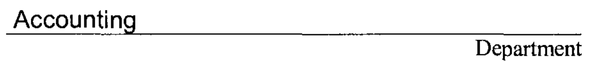

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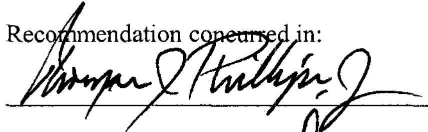

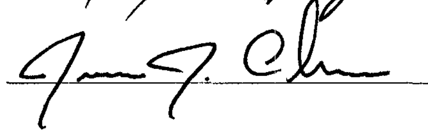

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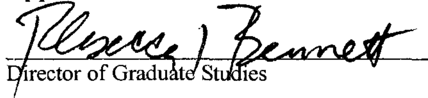

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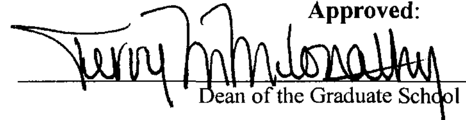

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ABSTRACT

Party Capability Theory hypothesizes that parties with greater resources, usually "repeat players," fare better in the judicial system and are better able to influence legal changes than "one shotters." The theory also points out that "parties who have lawyers do better." The theory has become most influential since its publication and has been tested by several studies. However, its importance has not been addressed in the accounting academic arena.

The intent of this inquiry is to generalize Party Capability Theory to federal tax cases. The research sample consists of 1,010 trial court cases, 744 federal appellate court cases, and 29 U.S. Supreme Court cases rendered in 1992-2006. Summary statistics indicate that around 34.5% of trial court cases and 16.4% of federal appellate court cases involve pro se litigants.

Success rate analysis indicates that the presumed stronger party does win more often in court than the presumed weaker party. However, logistic regression results show the opposite direction. That is, the presumed weaker litigant is positively correlated with case results and the presumed stronger litigant is negatively associated with case results. Surprisingly, pro se representation is positively associated with case results and it reaches a statistically significant level in trial courts. The findings of this study have practical implications for those subject to litigation.

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CHAPTER 1

INTRODUCTION

Background

"Who gets what?" has traditionally been viewed as one of the central questions in the study of politics. In the United States, the courts are recognized as key institutions for the legitimate settlement of a wide spectrum of conflicts between individuals and groups that have important implications for the distribution of material and symbolic goods. Therefore, understanding who wins in court is an essential component of a full appreciation of the authoritative allocation of values in society (Easton 1953). Marc Galanter's Party Capability Theory (Galanter 1974) is exceptionally influential in the legal literature for investigating the judicial allocation of values in society. It formulates the hypothesis that parties with greater resources, usually "repeat players," fare better in courts and are better able to influence legal changes than "one shotters." The theory also points out that "parties who have lawyers do better." Strong evidence in support of Party Capability Theory is reported in several studies (Wheeler et al. 1987, Atkins 1991, Songer and Sheehan 1992). However, no empirical research in the accounting/tax arena has been attempted to date. Investigating the generalizability of Party Capability Theory to federal tax cases is important in understanding the judicial allocation in federal taxation.

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The Judicial System in the US

Federal courts are located in every state of the United States as are separate state court systems. Except for the U.S. Tax Court, all of the subsequently mentioned federal courts are established under Article III of the U.S. Constitution. The U.S. Tax Court is formed under Article I.

Article III. Article III, Section 1, of the Constitution provides that the judicial power of the United States shall be vested in one Supreme Court and in such lower courts as the Congress may establish over time. The judges, both of the Supreme and lower courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Thus, judges of federal courts established under Article III enjoy tenure and unreduced salary protection. The tenure and salary provisions were inserted as prophylactic measures to ensure the independence of the judiciary from the executive and legislative branches.

Article I. Article I, Section 1 of the Constitution provides that all legislative powers granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives.

Article I does not provide tenure and unreduced salary protection to officers of the institutions established under it.

The Structure of Federal Courts. The federal judiciary is a totally separate, self-governing branch of the government. With certain exceptions, federal courts have jurisdiction to hear a broad variety of cases. The same federal judges handle both civil

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and criminal cases, public and private law disputes, cases involving individuals, and cases involving corporations and government entities.

Trial Courts. In the United States, U.S. District Courts are the principal trial courts in the federal court system. There are 94 federal judicial districts and U.S. District Courts that have jurisdiction to hear nearly all categories of federal cases.

The United States Court of Federal Claims operates as a single court that resides in Washington, D.C. It has jurisdiction over disputes involving federal contracts, the taking of private property by the federal government, and a variety of other monetary claims against the United States.

The United States Tax Court is another single court located in Washington, D.C. It is a special court with jurisdiction limited almost exclusively to litigation under the Internal Revenue Code. Its hearings are held in several cities throughout the nation, usually with only a single judge present who submits his/her opinion to the chief judge. It consists of 19 judges appointed by the President for 15-year terms. Different from all other federal courts discussed in this paper, it is established under Article I instead of Article III. Correspondingly, Tax Court judges do not have tenure or unreduced salary protection. Tax Court judges may be removed by the President, after notice and opportunity for public hearing, on grounds that are very broad: inefficiency, neglect of duty, or malfeasance in office.

Appellate Courts. If either party of the litigants is not satisfied with a trial court decision, the unsatisfied party can appeal to the appellate court. Currently there are 13 courts of appeals. The 11 numbered regional circuits and the D.C. Circuit are geographically defined. The United States Court of Appeals for the Federal Circuit is not

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geographically defined and has nationwide jurisdiction over certain appeals based on subject matter. Appeals from all the trial courts mentioned above, except the United States Court of Federal Claims, may be taken to the United States regional circuit court of appeals. Jurisdiction is based upon the location of the litigant's residence. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals from the United States Court of Federal Claims.

The United States Supreme Court. If either party of the litigants is dissatisfied with the appellate court decision, the unsatisfied party can then appeal to the United States Supreme Court. The United States Supreme Court is the highest court in the country, and cases come before it via a discretionary review writ of certiorari. It consists of a Chief Justice and eight associate justices. In general, the United States Supreme Court only agrees to decide cases where there is a split of opinion among the courts of appeals or where there is an important constitutional issue of federal law that needs to be clarified. As a result, tax cases find a very limited audience before the U.S. Supreme Court.

The Jurisdiction of Federal Courts. In general, federal courts may decide cases that involve the United States government or its officials, the United States Constitution or federal laws, or controversies between states or between the United States and foreign governments. A case can be filed in federal court even if no question arising under federal law is involved if the litigants are citizens of different states or the dispute arises between citizens of the United States and those of another country or countries.

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The Structure of State Courts. The majority of legal disputes in America are addressed in separate state court systems established in each of the 50 states. Most state court systems have trial courts of general jurisdiction, intermediate appellate courts, and a state supreme court.

The Jurisdiction of State Courts. State courts have jurisdiction over a wider variety of disputes than the federal courts. State courts preside over virtually all divorce and child custody matters, probate and inheritance issues, real estate questions, and other issues.

Representation before Courts

The litigation process in United States Courts is referred to as an "adversary" system because it relies on the litigants to present their dispute before a neutral fact-finder. The work of collecting evidence and presenting it to the court is accomplished by the litigants and their attorneys, normally without assistance from the court. Traditionally, litigants will use professional representation (solo law practitioners or a law firm) to represent them before the court. The decision to self-represent is evidence that such litigants are pursuing an unsound legal strategy because it is assumed that legal representation is required in order that the issues in a dispute can be effectively presented to the court (Barclay 1996). Recently, pro se representation has become more frequent, and Swank (2005) calls it "the Pro Se Phenomenon."

United States Courts have seen an exponential growth rate in pro se representation. For instance, in 1971, only one percent of litigants in divorce cases in California were pro se. By 1985, the rate had risen to 47% and in 2005 it was approaching 75%. Federal courts as well as state courts have seen an increase in pro se

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litigants. Pro se litigants appeared in 37% of all federal cases. The number of pro se litigants in Federal Appellate Courts increased by 49% in a two-year period (Swank 2005).

"A national conference held in November of 1999 signals the rising importance of the pro se litigants, as forty-nine states sent teams of judges, bar leaders and administrators to discuss ways of making the court system more accessible to pro se litigants (Buxton 2002)."

There are numerous reasons for the so called pro se phenomenon. The high cost of attorneys and litigation is only one of the reasons. Other popular reasons include increased literacy rates, increased sense of consumerism, increased sense of individualism, and belief in one's own abilities. Sometimes litigants are advised to appear pro se either because their case was uncontested or was simple enough to handle on their own. Whatever the reason is, pro se representation is growing fast and demanding attention.

Not having representation can negatively affect both the litigant and others. Pro se litigants are more likely to neglect time limits and miss court deadlines. They are believed to be unduly burdensome on judges, clerks, and court processes (Swank 2005). When a pro se case succeeds in reaching court, the pro se litigant's lack of knowledge of legal terminologies and trial tactics typically results in the opposing attorney taking control of the process (Buxton 2002).

The Use of the Legal System

Individuals, organizations, and governments make demands on the civil courts to settle their disputes, enforce the performance of obligations, and direct the redistribution

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of resources. Only some individuals, some organizations, and some governments use the court systems. Furthermore, not all types of legal actions are demanded. The most frequent plaintiffs are not necessarily the most frequent defendants. Some litigants predominate as plaintiffs, while others appear most often as defendants.

Party Capability Theory

In 1974, Galanter formulated the ground-breaking hypothesis that repeat players (RP) come out ahead in courts and are better able to influence legal change than one-shotters (OS) (Galanter 1974). RP is defined as "a unit which has had and anticipates repeated litigation, which has low stakes in the outcome of any one case, and which has the resources to pursue its long-run interests." OS is defined as "a unit whose claims are too large (relative to his size) or too small (relative to the cost of remedies) to be managed routinely and rationally." RPs enjoy considerably more advantages in litigation than do OSs. First of all, RPs have the advantage of "having done it before." They have the necessary experience and intelligence, have ready access to specialists, and enjoy the economy of scale, with lower start up costs for any case. Second, RPs have opportunities to develop informal relations with courts and other relevant institutions. Third, RPs can afford to play odds. They can adopt strategies to maximize gain over a long series of cases. Finally, RPs have the necessary resources to influence rules. It pays RPs to expend resources, such as lobbying, to influence the making of relevant rules. By choosing to settle cases where they expect unfavorable rule outcomes and to adjudicate those cases that they regard as most likely to produce favorable rules, RPs can establish favorable precedent in litigation. The study also refers to RPs as "haves." The word "haves"

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nowadays is frequently used to refer to a stronger party who has relatively more resources.

Galanter (1974) further points out that "parties who have lawyers do better." "...RPs who can buy legal services more steadily, in larger quantities, in bulk and at higher rates, would get services of better quality." How much the legal services factor accentuates the RP advantage relates to the way in which the profession is organized. That is, the more members of the profession are identified with their clients, the closer and more enduring the lawyer-client relationship, then the more advantages become cumulative in nature.

Since Galanter's (1974) hypothesis, numerous studies have tested the hypothesis. Some studies cite it as "Galanter hypothesis" or "Galanter's analysis" (Songer and Sheehan 1992, Wheeler et al. 1987, Sheehan et al. 1992, etc) while others cite it as "Party Capability Theory" (Atkins 1991, McCormick 1993). Hereafter, this study will use the term "Party Capability Theory."

The general approach to test Party Capability Theory is to classify litigants into groups and make general assumptions about the strength of the groups (Wheeler et al. 1987, Songer and Sheehan 1992, Haynie 1994, Songer et al. 1999, etc). Wheeler et al. (1987) classify litigants into individual litigants, individual business proprietorships, business corporations, and government parties. The assumption is that individual litigants are the weakest litigants because they generally have less resources. When business and government parties contend, the assumption is that governmental parties will generally be stronger, for they are more likely to be repeat players in the system.

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Most of the studies for testing the Party Capability Theory have ignored Galanter's assumption that "parties who have lawyers do better" and that the legal services factor accentuates the RP advantage. To date, only Wheeler et al. (1987) consider the impact of lawyers on different groups of litigants' chances of winning. They identify three legal representation types: pro se, solo practitioner, and law firm. They do not compare pro se representation with the other two types of representation (due to the tiny amount of pro se cases). They conclude that "...the weaker appellant, when represented by a law firm against the stronger respondent's solo practitioner, did far better than when the reverse occurred."

Significance of the Problem

"Although Party Capability Theory has been 'exceptionally influential'" (Epp 1999) and is "the most visible, widely cited, and influential article ever published in the law and society field" (Grossman et al. 1999), Galanter's (1974) work has not been utilized in the academic accounting arena. Since federal taxation has undeniable importance in the United States, understanding the judicial reallocation in the federal taxation area will offer guidelines for tax reform to improve both horizontal and vertical equity.

As mentioned earlier in this study, most prior Party Capability Theory studies have ignored legal representation, especially pro se representation and its influence. The omission of legal representation in testing Party Capability Theory makes the study incomplete. One of the reasons for its omission is the scarcity of pro se representation in the past. Pro se representation is growing exponentially, making the complete investigation of Party Capability Theory possible.

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The negative effect of pro se representation on both litigant parties and judicial systems has increasingly attracted more attention. However, virtually no empirical research has been undertaken to investigate the negative effect of pro se representation. Because of the growing importance of pro se representation in federal tax cases, empirical evidence is needed on this vital topic.

Objectives of the Study

The primary objective of this study is to examine whether Party Capability Theory applies to federal tax cases. No empirical research of Party Capability Theory has been attempted in the accounting/tax arena, and this study addresses this void.

In the investigation of Party Capability Theory, this inquiry tries to gauge the effect of pro se representation and professional legal representation. As mentioned earlier, only Wheeler et al. (1987) consider the effect of representation when testing Party Capability Theory. Yet, they are unable to test the pro se representation effect due to the scarcity of pro se representation. Furthermore, Wheeler et al. (1987) do not correct for self-selection bias when investigating solo vs. firm representation. Lack of correction for self-selection bias makes the result of Wheeler et al. (1987) questionable. By taking into consideration representation effect, including pro se representation effect, and by using Heckman's correction to address self-selection bias, this study attempts to augment the extant literature.

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Research Focus

Research Question One

The first research question for investigation is: Who litigates? Not everyone exercises his or her right in court. Wanner (1974) uses court records of 1965-1970 and categorizes plaintiffs of civil trial courts into individuals, organizations (including all businesses and voluntary associations), and governments. Organizations make up almost half of the plaintiffs, individuals approximately 42%, and governments only constitute about 9% of the plaintiffs. To date, no other research has been attempted concerning who litigates. The current study categorizes the litigants for federal tax issues into five groups: individuals, businesses, the federal government, state and local governments, and other. Unions; nonprofit organizations; private, nonprofit schools; social, charitable and fraternal organizations; political parties; and litigants who could not be unambiguously categorized are classified as other. The focus of this inquiry is on the first three groups. This study investigates the litigation activities of the first three groups in trial courts, Federal Appellate Courts, and the United States Supreme Court for federal tax issues. State and local governments are rarely parties in federal tax cases. There is no generally agreed standard to code the litigation strength of the "other" group. Therefore, the fourth and fifth groups are excluded from the analysis.

Research Question Two

What do parties litigate? This study investigates the kinds of federal tax issues upon which legal actions are taken by the first three groups of litigants mentioned in research question one.

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Research Question Three

Who is being sued or appealed? Wanner (1974) study concludes that, for civil trial courts, the most often chosen defendants are individuals. Individuals make up about 67% of the defendants, organizations about 26%, and governments less than 6%. For the three groups of litigants mentioned in research question one (individuals, businesses, and the federal government), this study attempts to answer which group(s) is(are) being sued and/or appealed for federal tax issues.

Research Question Four

Why defendant/appellee is being sued/appealed? For the three groups of defendants/appellees (individuals, businesses, and the federal government), this study investigates the major reasons the three groups of defendants/appellees are being brought to court.

Research Question Five

What are the success rates of individuals, businesses, and the United States government in litigation for federal tax issues? Following prior research, this study investigates this issue by looking individually at federal trial courts, Federal Appellate Courts, and the United States Supreme Court.

Research Question Six

Do different types of representation before the judiciary (pro se, solo, and group representation) affect success rates of the three groups of litigants (individuals, businesses, and the federal government) in litigation? Wheeler et al. (1987) classify legal representation into firm, solo, and pro se representation. They find that weaker parties, when represented by a law firm against the stronger respondent represented by a solo

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practitioner, did far better than when the reverse occurred. However, they do not analyze pro se representation's influence on litigation successes of different parties due to the scarcity of pro se representation. Due to difficulties in distinguishing between a solo practitioner and a law firm with the limited information provided in a case, this study uses a different classification of representation types than Wheeler et al. (1987). This study classifies representation into pro se, solo, and group representation. If only one attorney is mentioned in the head note, this study supposes the representation type is solo. If two or more attorneys are mentioned in the head note, this study supposes the representation type is group representation. With the high growth rate of pro se representation, this study is able to analyze solo and group representation's influence as well as pro se representation's influence on the judicial success of different litigation parties.

Organization of the Dissertation

This dissertation is divided into five chapters. Chapter One serves as an introduction to the topic of Party Capability Theory and includes a discussion of the importance of the issue and associated problems. The purpose of the study is also presented.

Chapter Two reviews the prior analytical and empirical research in the area of Party Capability Theory and relevant topics. Chapter Three presents the research questions and hypotheses to be investigated and discusses the data analyzed and the research methodologies used in the study. Chapter Four reports the empirical findings of the experiment; results of the tests of hypotheses are provided and descriptive statistics are reported.

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Chapter Five contains a discussion of the research findings. Conclusions and ideas for future research are presented. In addition, limitations of the study are noted.

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CHAPTER 2

SELECTED LITERATURE REVIEW

Party Capability Theory Research

Since the formation of Party Capability Theory, several scholars have provided empirical insights into the extent to which stronger parties enjoy advantages in litigation.

Empirical Research Using Trial Court Cases

Wanner (1974) analyzes the principal users of the civil court system, and the issues they sought to adjudicate. The sample is civil trial courts cases (Baltimore, Cleveland, and Milwaukee) from 1965 to 1970 and are selected randomly without replacement. According to the results, the most frequent users of civil trial courts are organizations (businesses, voluntary associations, and appearances of individuals in their occupational roles). They account for about half of all plaintiffs. The trial courts used in the sample resolve a relatively narrow range of disputes. Of the vast number of legal actions and remedies available, only ten types of action are litigated frequently by plaintiffs. The burden of defense is shown to fall unevenly on the litigants. The most numerous defendants are individuals, composing about two-thirds of the defendants. Finally, all categories of defendants most often appear in three types of suits: liens, contract actions, and summary debt proceedings.

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Wanner (1975) analyzes who wins and loses at litigation using the same data as Wanner (1974). T-test results show that success and failure at litigation are unequally distributed among the litigants. Government plaintiffs are more successful at litigation than business plaintiffs. Business plaintiffs are more successful at litigation than individual plaintiffs. Business and government plaintiffs enjoy complete victory in 65% of the cases they bring against individuals while individuals enjoy complete victory in only 20% of the cases they bring against business or government defendants. About two-thirds of the t-tests resulted in statistically significant differences among individual, business, and government plaintiffs' distribution of success. The results also show that business and government plaintiffs spend significantly less time in court than individual plaintiffs. Time spent is defined as the average number of months a court case takes from filing to the last recorded docket entry.

Empirical Research Using State Supreme Court Cases

Wheeler et al. Wheeler et al. (1987) is a classic study of Party Capability Theory. It uses cases from 16 state supreme courts over the period of 1870-1970. Wheeler et al. (1987) suggest a number of reasons why Party Capability Theory's prediction might not be sustained. Prominent in the discussion is the "rational actor hypothesis" that suggests litigants would consider carefully whatever biases and advantages existed in the system and choose to litigate only in cases in which both parties, as advised by counsel, feel that there is a substantial possibility of winning. The litigating parties are divided into five categories: individuals, business proprietors, business organizations, small town governments, and city or state governments. This represents the first time that a study makes assumptions about the relative strength of different parties. With

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acknowledgement that there could be exceptions, the study postulates that organizations on average are stronger than individuals. When business and government parties contend, the study assumes that bigger is stronger—that larger business organizations are stronger than small town governments. Where business and government parties of similar size contend, the study assumes that government parties will generally be stronger, for they are more likely to be repeat players in the system. Despite all the reasons listed in the paper regarding why there might be no difference between the success rates of stronger and weaker parties, the result does imply that stronger parties enjoy statistically higher success rates in litigation.

The study defines four types of business parties (railroads, banks, manufacturing companies, and insurance companies) that seem likely to be repeat players and have substantial financial and legal resources as big interests. The analysis of the four types of business parties' litigation success shows that big interests did achieve a significant net advantage over other kinds of businesses, although it only holds a modest net advantage over individual opponents. The results of big interest versus government are mixed.

A combined success rate calculated by aggregating each party's litigation results as appellant and respondent is affected by the frequency with which a type of party is appellant rather than respondent. To offset this bias, Wheeler et al. (1987) for the first time use net advantage. Net advantage is the difference between the success rate of the party at issue when the party is plaintiff/appellant and the success rate of the opponent party when the party at issue is defendant/respondent. The net disadvantage of weaker parties is less than 5% to 6% on many measures in Wheeler et al. (1987), causing the authors to conclude that the advantage of the stronger parties is "rather small."

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The study also tested the time effect on different parties' success rates in litigation. Three time periods are identified: 1870-1900, 1905-1935, and 1940-1970. Results indicate that the trend is different between the private law arena and the public law domain. In the private law arena, relatively stronger parties enjoy a slight advantage over relatively weaker parties, although this advantage has diminished over time. However, in the public law arena, government parties win far more often than their adversaries, with great gains in the early twentieth century and more modest gains in the latter period of the study.

Wheeler et al. (1987) also address Galanter's (1974) assumption about the role of legal counsel ("parties who have lawyers do better"). That is, the type of legal counsel is classified into three categories: pro se, solo, and firm representation. Due to the scarcity of pro se cases, the study is unable to investigate the pro se representation influence on the success rate at litigation of the party at issue. The study does conclude that, with few exceptions, the weaker appellant, when represented by a law firm against the stronger respondent's solo practitioner, does far better than when the reverse occurs.

Farole. Farole (1999) examines litigant success in five states' supreme courts (Alabama, Kansas, New Jersey, South Dakota, and West Virginia) during the years 1975, 1980, 1985, and 1990. Each litigant is identified as either a state government, local government, business group, or individual. Following Wheeler et al. (1987), a big business category is also created. Besides railroads, banks, manufacturing companies, and insurance companies, the study adds airlines and oil companies to this category. His findings lend support for the thesis that advantaged litigants are more successful in state supreme courts than other litigants.

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The success rates of appellants show that individual appellants are less successful than businesses appellants, which are less successful than local government appellants, which in turn, are less successful than state government appellants. Farole ascribes the success of government appellants to the greater selectivity in choosing which cases to appeal. According to his data, governments are appellants far less frequently than other litigants. Big businesses enjoy substantial advantages over small, locally based businesses or individual litigants. Comparison between big businesses and government litigants is not available due to the scarcity of the cases.

Following Wheeler et al. (1987), this study uses net advantage as well as combined success rate as appellant and respondent. The two results are consistent with the success rates of appellants.

To provide further systematic analysis, Farole (1999) uses the logistic regression model. After controlling for policy preferences of the state supreme court, type of legal issue involved in the case, and the year the case is decided, stronger litigants' advantages remain.

Empirical Research Using Federal Appellate Court Cases

Songer and Sheehan. Songer and Sheehan (1992) focus on the success of appellants appearing before United States Courts of Appeals. Their findings show stronger parties are substantially more successful in U.S. Courts of Appeals. The study uses only one year of data from three circuits. It uses all cases terminated by judicial action in calendar year 1986 in the Fourth, Seventh, and Eleventh circuits. This study differs from most other studies in that the cases used in this study include both published and unpublished decisions. Songer (1988) demonstrates that restricting analyses to the

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published opinions of the courts can produce seriously distorted results. By using both published and unpublished decisions, conclusions are more generalizable.

Four types of litigants are identified in this study: individuals, businesses, state and local governments, and the United States government. Following Wheeler et al. (1987), a big business category is created. Besides the four types of business included in Wheeler et al. (1987), airlines and oil companies are also added to the big business category. The final types of businesses included in the big business category are, thus, the same as in Farole (1999). This study creates a category of "underdog individuals" that included the poor and racial minorities. These individuals are assumed to be weaker on average than other individuals.

Appellant success rates and net advantage analysis show that the United States government enjoys the highest success rate at litigation, followed by state and local governments. Business litigants have a lower success rate than government litigants, but have a higher success rate than individual litigants. Consistent with Wheeler et al. (1987), big businesses held a decided advantage over other businesses but only a very modest advantage over individuals. "Underdog individuals" appellant success rate is lower than the total category of individuals against the other three categories. The net advantage of "underdog individuals" is -50.2, which is much lower than the total category of individuals' net advantage of -18.2.

Logistic regression is used for further analysis. After accounting for types of legal issues, party effect (whether majority of judges are appointed by Democratic presidents or Republican presidents), and region of the cases (South/Midwestern), stronger litigants' advantages remain. While the strength of both the appellants and the

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respondents makes a contribution to the final case result, appellants' strengths are more important.

Songer et al. In order to improve generalizability, Songer et al. (1999) again examine the success of various types of litigants appearing before U.S. Courts of Appeals. The data constitute a random sample of published decisions from each circuit for each year from 1925 through 1988.

As in Songer and Sheehan (1992), four types of litigants are identified in this study: individual litigants, businesses, state and local governments, and the United States government.

To analyze changes over time, the 64 years of data are divided into five periods. Instead of simply dividing the 64 years into five equal periods as in Wheeler et al. (1987), Songer et al. (1999) divide the time period according to the legal and political history of the twentieth century. During the first period, 1925-1936, the legal system is dominated by conservative, pro-business judges at all levels of the judicial system. The second period, 1937-1945, is dominated by the Roosevelt Court and its aggressive pro-New Deal policies. It has a decidedly pro-underdog orientation. The third period, 1946-1960, is characterized by economic prosperity and the selection of lower court judges without much regard for their policy preferences. The fourth period, 1961-1969, is characterized by the leadership of a liberal Supreme Court (Warren Court) which advocated the welfare of poor people. During the final period, 1970-1988, the Supreme Court becomes steadily more conservative.

The overall success rate as appellants and respondents and the net advantage show that the "haves" win consistently throughout three of the five periods examined. For these

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three periods, the U.S. government consistently has the highest success rate at litigation, followed by state and local governments. Business litigants have a lower success rate at litigation than governments but a higher success rate than individual litigants. For the second period, 1937-1945, which is dominated by the Roosevelt Court and has a decidedly pro-underdog orientation, individuals appear to fare about as well as businesses, though both fare substantially worse than either level of government. State and local governments are more successful than the federal government at litigation. For the third period, 1946-1960, characterized by economic prosperity and the selection of lower court judges without much regard for their policy preferences, state and local governments again are more successful than the federal government at litigation.

Logistic regression is employed in this study. After controlling for types of legal issues, and party effect (whether the majority of judges are appointed by Democratic or Republican presidents), stronger litigants' advantages remain. Consistent with Songer and Sheehan (1992), the strength of both the appellants and the respondents make a contribution to the final case result. However, appellants' strengths are more important.

Empirical Research Using United States Supreme Court Cases

Although support for Party Capability Theory is found in trial courts, state supreme courts, and Federal Appellate Courts, no support has been found in the United States Supreme Court.

Sheehan et al. (1992) examine the success rate of 10 categories of parties in the United States Supreme Court over a 36-year period, from 1953 to 1988, and conclude there is little evidence litigant resources have a major impact on success in that forum. Instead, the success of different classes of litigants is closely related to the changing

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ideological composition of the Court. Unions and poor individuals fare substantially better in liberal courts, and state governments are most successful in conservative courts.

To test if court ideology affects litigation success rates of different groups, the 36 year period tested is divided into three time periods: Warren Court (1953-1970), the early Burger Court (1971-1980), and the later Burger and Rehnquist Courts (1981-1988). The overall success rates show that individual litigant's success rates at litigation against all other parties decrease steadily throughout the three periods. The study ascribes the decreasing success rates of individual litigants at litigation to the growing conservatism of the court. However, the study does not provide the net advantages of the litigating parties during these three periods. Instead of due to the increasing conservatism of the court, the decreasing overall success rates of individual litigants could be caused by increasing rates of individual litigants being respondents rather than appellants. (The Supreme Court has a well-established tendency of reversing decisions from appellate courts. For this study period, the Supreme Court's reversal rate is 67%.)

To test the relationship between ideology and the litigation success rate of different groups, the study also uses multivariate logit models. Four models are established, respectively, for individuals, businesses, state and local governments, and the federal government. Ideology is significant in three of the four models. Ideology is not significant in the model for the business group. Litigant group (resources factor) is significant in the models for the business group and for the state and local government group. The resources factor is no longer significant in the business model and is reduced to borderline significance in the state and local government model after the cases involving the federal government are removed. This evidence proves that the resources

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factor is significant in the business model and, for the most part, the state and local government model because these two groups lose consistently to the federal government.

A series of transfer function models are then used to further analyze the ideological effects on the litigant's success. The ideology of each justice is measured on a scale of 1 (most liberal) to -1 (most conservative). The impact of ideology on the success rate of individuals is especially dramatic; each unit increase in the conservatism of the court has reduced the success rate of individuals against state or local governments by slightly less than four percentage points.

Empirical Research Using Data Outside of the United States

Several studies have been attempted using data outside of the United States to generalize Party Capability Theory. The results are mixed. In general, Party Capability Theory does not get as much support from using data outside of the United States as it does from using domestic data.

Atkins. Atkins (1991) uses data from English Court of Appeals for 1983-1985. The data includes both published and unpublished cases. The analysis method of this study is different from other studies in that discriminant analysis instead of logistic analysis is used. The dependent variable is the case result. This study is the first to use the lower forum as one of the independent variables. This inquiry also, for the first time, introduced panel size of the Court of Appeal as an indicator of the importance of cases. The study concludes that although governments have higher success rates at litigation than individuals, the relationships of governments vs. corporations and corporations vs. individuals are not clear.

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McCormick. The McCormick (1993) study uses data from the Supreme Court of Canada during the time period of 1949 to 1992 to generalize Party Capability Theory to Canada. The general conclusion from appellant success rate analysis, combined success rate analysis, and net advantage analysis strongly supports the theoretical prediction that governments are most successful at litigation, followed by businesses. Individuals are the most disadvantaged group at litigation. This finding is quite different from the Sheehan et al. (1992) finding using data of the U.S. Supreme Court. Sheehan et al. (1992) do not find support for Party Capability Theory in the U.S. Supreme Court.

Haynie. The Haynie (1994) study uses data from the Philippine Supreme Court during the time period of 1961 to 1986. Consistent with Sheehan et al. (1992) and in contrast to McCormick (1993), Haynie (1994) does not find support for Party Capability Theory. In fact, logistic regression, net advantage analysis, and combined success rate analysis all show that individuals have the greatest likelihood of success at litigation in the Philippine Supreme Court. Haynie concludes that in developing societies there may be pressure for courts to support redistributive policies as a means of enhancing their legitimacy as a political institution. Such a concern for legitimacy may tend to outweigh the advantage that the stronger parties would normally receive from superior experiences and resources.

Summary of Party Capability Theory Research

Prior empirical research of Party Capability Theory has two branches. One branch uses U.S. data. This branch has generalized Party Capability Theory to trial courts, United States Courts of Appeals, and state supreme courts. No evidence in support of Party Capability Theory has been found in the U.S. Supreme Court. Another branch of

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Party Capability Theory research uses data outside of the United States. Evidence in support of Party Capability Theory is found using data from developed countries, but no evidence has been found using data from developing countries that supports Party Capability Theory. No prior research has tried to specifically generalize the Party Capability Theory to cases involving federal tax issues. Thousands of litigants seek legal recourse of federal tax disputes each year in the United States. [1] Whether or not Party Capability Theory applies to those cases has profound implications for analysis of judicial allocation. The study of Party Capability Theory in the federal tax context is long overdue.

Pro Se Representation Research

Swank

Swank's (2005) "Pro Se Phenomenon" analysis examines the rise of pro se litigation and the various reasons for this phenomenon.

> The right to represent oneself in United States courts dates back to the founding of the country. The development of pro se rights in the United States has been tied to the rights of indigents to have access to the courts. The Judiciary Act of 1789 was an early codification of this belief. It granted parties the right to plead and conduct their own case personally in any court of the United States. Many states, either through their constitutions or statutorily, also provide individuals with the right to proceed pro se. It is unclear, however, if there is a right to self-representation pursuant to the United States Constitution. The Sixth Amendment guarantees criminal defendants the right to have assistance of counsel; by implication, the Amendment has served as a basis to hold that criminal defendants can waive that right and appear pro se. The right has been extended by the Supreme Court to civil cases.

[1] A simple examination of the federal tax cases in the Lexis-Nexis database revealed that thousands of cases were entered into verdict each year by the U.S. Tax Court, U.S. District Courts, the U.S. Court of Appeals, or the U.S. Supreme Court during the time period of 1940 to 2006.

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This study summarizes numerous research and survey results and cogently shows the exponential growth of pro se representation in the United States. Reasons for the "Pro Se Phenomenon" are summarized from various survey results. One of the reasons is the high cost of attorneys and litigation. Other popular reasons include increased literacy rates, sense of consumerism, and sense of individualism; and belief in one's own abilities. Sometimes a litigant is advised to appear pro se either because his or her case was uncontested or was simple enough to handle on their own.

Buxton

Buxton (2002) investigates the traditional problems associated with the appearance of pro se litigants and the countermeasures currently in place to assist them.

The pro se party's unfamiliarity with evidentiary rules often leads to a failure to meet the burden of proof. The pro se party's lack of knowledge of legal terminology and trial tactics typically results in the opposing attorney taking control of the process. There are currently a lot of programs aimed at making the pro se parties' journey easier. While pro se programs take a variety of forms, these programs consistently represent the desire of the judiciary to educate pro se litigants about the process of proceeding with a suit. The general forms of the programs include provision of instructional brochures, videotaped programs, teaching sessions, and internet-based services.

Barclay

Barclay (1996) argues that self-representation could be part of a sound legal strategy that forces the court to focus on issues the litigant views as important. Through a phone interview with 95 civil appellants, the author identifies a salient disjuncture between the focus of the legal system and the litigants' own views of the issues in their

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disputes. By choosing to self-represent, the courts are forced to deal with those issues that self-represented litigants choose to place on their dockets.

Ross

Ross (1970) finds that automobile injury claimants represented by attorneys recover claims more frequently than unrepresented claimants; among those who do recover, represented claimants recover significantly more than do unrepresented claimants with comparable cases. Claimants represented by firms recovered considerably more than claimants represented by solo practitioners.

Summary of Pro Se Representation Research

Although several analytical inquires have been made regarding pro se representation, there are very few empirical studies. This lack of research is partly due to the scarce amount of pro se representation in the past. The unavailability of data makes empirical research especially difficult. With the exponential growth rate of pro se representation, empirical research under the current environment is not only important but also possible.

Relevant Research in the Accounting Arena

As mentioned before, no Party Capability Theory study uses tax cases solely for sample selection. This section reviews some relevant studies in the accounting area.

Judge Bias Studies

Analytical studies have been completed to report the different chances of success at litigation for taxpayers and the IRS. The purpose of these studies is to evaluate judge bias instead of evaluating Party Capability.

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Maule. Maule (1999) analyzes judge bias by looking at two aspects: the opportunity for bias and the taxpayer prevalence scores of judges. For issues clearly and unquestionably established by statute and case law, there is little opportunity for bias. For cases decided between 1976 and 1997, 60.2% of them do not provide opportunity for bias. Of these cases, the Service prevails in 95% of sampled memorandum decisions and 75% of the sampled regular decisions. For the cases with bias opportunities, taxpayers prevailed in 29% of the sampled memorandum opinions and 48% of the sampled regular opinions. Maule ascribes the difference to the much higher percentage of pro se taxpayer litigants subject to memorandum opinions. The analysis of taxpayer prevalence scores of judges strongly favors taxpayers and does not favor the IRS.

Maule concludes that the "Tax Court, like the umpires, does not make the rules…law requires the Court to reject, they ought to direct their criticism to the Congress." Actually, this comment sharply points out one of the strengths of the Service as a repeat player: the IRS as a repeat player can influence rules, either by lobbying or by choosing to settle cases where they expect unfavorable outcomes and to adjudicate those cases that they regard as most likely to produce favorable results and set precedent.

Geier. Geier (1991) compares U.S. Tax Court cases and U.S. District Courts cases of the period from 1965 to 1986. The government won or partially won an average of 70.5% of U.S. District Court cases in the years indicated. The percentage of cases won or partially won by the government in the Tax Court averaged 90.4% for the same period. Geier ascribes the 24-point difference to a pro-government trend in the Tax Court. As mentioned earlier, the U.S. Tax Court is formed under Article I and U.S. District Courts are formed under Article III. Therefore, U.S. Tax Court judges do not have tenure and

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unreduced salary protection like U.S. District Courts judges. Geier believes that the lack of protection of Tax Court judges contributes to the pro-government trend of the U.S. Tax Court.

Empirical Study about Pro Se Representation

According to Nichols and Price (2004), final tax assessment is significantly less for taxpayers with professional representation[2] during an IRS office audit, both in dollars and as a percentage of the potential deficiency. Here self-selection bias exists because non-randomness arises from individual choices. In order to correct for self-selection bias, this study adopts Heckman's correction technique (Heckman 1976, 1979).

Summary of Relevant Research in the Accounting Arena

Research of judicial decisions in the accounting arena focuses on Tax Court decisions. Analytical studies about the decisions of the Tax Court generally argue about whether Tax Court judges have pro-government bias. One side of the argument is that Congress is biased against taxpayers. The other side of the argument is that Tax Court judges are biased against taxpayers because of the lack of Article III protection. No research has looked at the Tax Court decisions from the point of view of Party Capability Theory. Some studies do notice the influence of pro se representation, but there is no systematic research about pro se representation's influence on court decisions. A study of court decisions from the Party Capability Theory point of view will fill this void.

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[2] Instead of using tax professionals, Nichols and Price (2004) treat students who were well prepared for the audit issues identified in the IRS audit notice and had a significantly greater level of knowledge than the taxpayers as professional representation.

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CHAPTER 3

METHODOLOGY

Research Questions

The following research questions are presented in Chapter One as worthy of investigation to gain insight into the strength of tax litigation groups in the United States:

1. Who litigates? This study investigates the litigation activities of individuals, businesses, and the federal government in trial courts, Federal Appellate Courts, and the United States Supreme Court in federal tax issues.
2. What do litigants seek satisfaction in the courts? This study seeks to answer what kinds of federal tax issues are litigated by individuals, businesses, and the federal government.
3. Who is being sued/appealed? This study seeks to answer which group(s) of the three groups (individuals, businesses, and the federal government) is(are) being sued and/or appealed for federal tax issues.
4. Why defendant/appellee is being sued/appealed? This inquiry investigates the three groups (individuals, businesses, and the federal government) of defendants/appellees are being brought to court for what kinds of federal tax issues.

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5. What are the success rates of individuals, businesses, and the United States government in litigation on federal tax issues?
6. Do different types of representation before the court (pro se, solo, and group representation) have an effect on the judicial success rates of individuals, businesses, and the federal government?

Hypotheses

Corresponding to the research questions, the following hypotheses are presented for empirical investigation.

H_{a1}: Individuals, businesses, and the federal government have unequal frequencies of using legal recourse.

H_{a2}: Different categories of tax issues have unequal frequencies of being brought to court.

H_{a3}: Individuals, businesses, and the federal government have unequal frequencies of being sued or appealed.

H_{a4}: Individuals, businesses, and the federal government are sued or appealed on different categories of tax issues.

H_{a5}: Different groups of litigants have unequal success rates at litigation for federal tax issues, with the United States government being the most successful entity, businesses being the second, and individuals being the least successful.

H_{a6}: The three representation types before the courts (pro se, solo, and group representation) have significant influence on the success rates of individuals, businesses, and the federal government in litigation.

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Research Sample

The research sample is obtained from the Lexis-Nexis database. This study divides cases collected into three categories: trial court cases, Federal Appellate Court cases, and United States Supreme Court cases. Trial court cases include the cases that are entered by the U.S. Tax Court, U.S. District Courts, and the U.S. Court of Federal Claims. Federal Appellate Court cases include cases that are entered by U.S. Courts of Appeals. The U.S. Courts of Appeals includes the eleven numbered circuits and additional unnumbered circuits for the District of Columbia Circuit and the Federal Circuit. The United States Supreme Court cases include those entered by the United States Supreme Court.

The first internal revenue code of the United States is the Internal Revenue Code of 1939. It codifies various revenue acts that are legislated between 1913 and 1939. Subsequently, with the growing complexity of the tax law, the Code was rewritten as the Internal Revenue Code of 1954. The Tax Reform Act of 1986 was so significant and the scope of the changes so comprehensive that the tax law was renamed the Internal Revenue Code of 1986. The research sample in this study includes only cases that are entered according to the current Internal Revenue Code (i.e., the Internal Revenue Code of 1986).

This study investigates court decisions for the period 1992-2006. For the period under study, over 20,000 U.S. District Court decisions are entered each year. Among them, only a few hundred decisions are about federal tax issues. This research finds 5,112 U.S. District Court federal tax issue decisions in total from 1992-2006. A total of 8,613 Tax Court judgments are found for the period under study. The U.S. Court of Federal Claims decides around 500 cases each year. But only around 20 of those cases are about

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federal tax issues. For years 1992 to 2006, 25 Tax Court cases and 25 U.S. District Court cases are randomly selected each year. All of the U.S. Court of Federal Claims federal tax cases from 1992 to 2006 are chosen. For the period under study, over 30,000 Federal Appellate Court cases are decided each year. This inquiry finds 2,590 appellate court federal tax cases from 1992 to 2006. A total of 50 appellate court federal tax cases are obtained randomly for each year during the period under study. Around 7,500 cases each year are presented to the U.S. Supreme Court for writ of Certiorari but only 80-150 cases are granted certiorari each year for the period under study. Federal tax issues find very limited representation before the U.S. Supreme Court. A total of 30 Supreme Court federal tax cases are found for period 1992-2006. All of the 30 Supreme Court federal tax cases are chosen.

Cases involving litigants that cannot be classified into any of the four groups (individuals, businesses, state and local governments, the federal government) are eliminated. Those cases include litigation involving unions; nonprofit organizations; private, nonprofit schools; social, charitable, and fraternal organizations; political parties; and litigants who could not be unambiguously categorized. Cases in which the primary issue is not a federal tax issue are deleted. When a case is eliminated, another case is chosen randomly as a substitution.

Examination of the sample reveals that state or local governments are seldom involved in federal tax cases. Out of the 375 Tax Court cases, no state or local government litigants are involved. Only six of the 375 U.S. District Court cases, and one of the 267 U.S. Court of Federal Claims cases involve state or local government litigants. For the 750 Federal Appellate Court cases, there are also six cases involving state or local

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governments. Only one out of the 30 U.S. Supreme Court cases involves state or local governments. Due to the scarcity of state or local government litigants in federal tax cases, these cases are deleted from further analysis.

The final sample includes 375 Tax Court cases, 369 U.S. District Court cases, 266 U.S. Court of Federal Claims cases, 744 Federal Appellate Court cases, and 29 U.S. Supreme Court cases[3].

Research Methods

For the analysis, each plaintiff/appellant and defendant/appellee is classified as belonging to one of the four major classes: individuals, businesses, state and local governments, and the United States government. Sole proprietor is treated as an individual. If the party listed in the case citation is a specific, named individual, but the person's involvement in the suit is due directly to his/her role as an official of a government agency or as an officer, partner, or owner of a business, he/she is coded according to his/her organizational affiliation and not as an individual. When multiple parties are plaintiffs, defendants, appellants, or appellees, they are treated as one party, coded according to the strongest member on their side.

[3] Independence captures the intuition of non-interaction and lack of information. In modeling it is often assumed rather than verified. This study assumes that the verdicts of trial court cases, Federal Appellate Court cases, and U.S. Supreme Court cases are independent from each other. There are 18 out of the 744 Federal Appellate Court cases that are appealed from the trial court cases sample of this study. A total of seven out of the 29 U.S. Supreme Court cases are appealed from the Federal Appellate Court cases sample of this study. The assumption is that the results will not be distorted. So, this inquiry is looking at marginal association among variables instead of partial association among variables. The information conveyed by marginal association can be quite different from that conveyed by partial association. Whenever possible, variables should be controlled that may affect the association between the variables of interest (Agresti 1984). However, this study believes that the cost of excluding higher forum cases which are appealed from lower forum cases sample outweigh its benefit, especially for Supreme Court cases (exclusion of the seven Supreme Court cases which are from the Federal Appellate Court cases sample cut Supreme Court cases sample to only 22 observations).

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For the period 1992-2006, this research finds 8,613 Tax Court cases, 5,112 U.S. District Court cases, and 267 U.S. Court of Federal Claims cases deal with federal tax issues. This study does not use proportional sampling to make the proportion of subsamples match the population. In order to adjust for the influence of unproportional sampling, the cases from different judicial forums are weighted when performing analysis for trial court decisions.

Research Question One

This study investigates the frequency of different groups using litigation to settle federal tax issues for the three categories of cases (trial court decisions, Federal Appellate Court decisions, and U.S. Supreme Court decisions).

For trial court cases, chi-square test of goodness of fit[4] is used to test the equal frequency of individual, business, and the federal government appearing as plaintiffs. As this study mentioned earlier, the U.S. Tax Court is an Article I Court while U.S. District Courts are Article III Courts. The U.S. Court of Federal Claims deals with monetary claims against the United States. In order to detect any differences among these three judicial forums, the trial court cases are divided into cases from the U.S. Tax Court, U.S. District Courts, and the U.S. Court of Federal Claims. Chi-square test of goodness of fit is run separately for the three different judicial forums. Chi-square test for independence[5]

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[4] Chi-square goodness of fit statistic is defined as: $\chi^2 = \sum_{i=1}^{k} \frac{(n_i - E_i)^2}{E_i}$. For equal frequency test, H_0 is that the values of the multinomial probabilities $\rho_1 = \rho_2 = \ldots \rho_k$ (Bowerman and O'Connell 1997).

[5] Chi-square test for independence is defined as: $\chi^2 = \sum_{AllCells} \frac{(n_{ij} - \hat{E}_{ij})^2}{\hat{E}_{ij}}$. H_0 is that the two classifications are statistically independent (Bowerman and O'Connell 1997).

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is used to detect any relationship between the type of plaintiff and the judicial forum used.

For Federal Appellate Court cases and U.S. Supreme Court cases, Chi-square test of goodness of fit is used to test the equal frequency of individuals, businesses, and the federal government appearing as appellants.

Research Question Two

To address the tax issues involved in each case, this study codes all the IRC Sections mentioned in each case. They are then classified into ten categories of tax issues according to the classification of the Internal Revenue Code of 1986. The ten categories of tax issues are income taxes; estate and gift taxes; employment taxes; miscellaneous excise taxes; alcohol, tobacco, and certain other excise taxes; procedure and administration; financing of presidential election campaigns; trust fund code; coal industry health benefits; and group health plan requirements. If one case involves more than one tax issue, only the major tax issue is coded.

This study separately investigates the subject of litigants' adjudication in the three different categories of cases. For the trial court decisions, chi-square test of goodness of fit is used to test the equal frequency of different tax issues being brought to court. Chi-square test for independence is used to further test if there exists any relationship between the type of the plaintiff(s) and the tax issue(s) being brought to court. The trial court decisions are then divided into cases from the U.S. Tax Court, U.S. District Courts, and the U.S. Court of Federal Claims. Chi-square test of goodness of fit is separately run for the three judicial forums. Chi-square for independence is used to test if there is any

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relationship between the type of tax issues being brought to court and the judicial forum used.

For Federal Appellate Court cases, chi-square test of goodness of fit is used to test the equal frequency of different tax issues being brought to court. Chi-square test for independence is used to further test if there exists a relationship between the type of the appellant(s) and the tax issue(s) being appealed. The U.S. Supreme Court cases sample is not big enough for a valid chi-square test. No formal test of Ha2 is done for U.S. Supreme Court cases. Sample description is provided.

Research Question Three

This inquiry investigates the frequency of different groups being sued or appealed in the three categories of cases. For trial court decisions, chi-square test of goodness of fit is used to test the equal frequency of individuals, businesses, and the federal government appearing as defendant. Chi-square test for independence is used to test if there is any relationship between the type of defendant and the legal forum chosen.

For Federal Appellate Court and U.S. Supreme Court cases, chi-square test of goodness of fit is used to test the equal frequency of individuals, businesses, and the federal government appearing as appellee.

Research Question Four

This study investigates what defendant (appellee) is being sued (appealed) in three different categories of tax cases. For trial court decisions, chi-square test for independence is used to test if there exists any relationship between the type of defendant and the tax issue being brought to court. Only the major tax issue in each case is considered. For Federal Appellate Court cases, chi-square test for independence is used to

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test if there exists any relationship between the type of appellee and the tax issue being appealed. The size of the U.S. Supreme Court cases sample is not sufficient for a valid chi-square test and only data description is presented. No statistical method is attempted to formally test Ha4 for U.S. Supreme Court cases.

Research Question Five

The available data does not permit this research endeavor to code the strength of the litigants according to their size of financial resources and frequency of dealing with courts. This study follows Wheeler et al. (1987) to make general assumptions of the strength of the different groups of litigants. As a result, this study assumes that individuals usually have fewer resources than either businesses or the federal government. When business and federal government parties confront each other, the assumption is that the federal government is usually stronger because even when the financial resources of the federal government is no greater than those of the businesses, the government agencies are more likely to be repeat players. These assumptions are consistent with Songer and Sheehan (1992), and Songer et al. (1999).

Prior researches have analyzed the relative strength of different groups using trial courts, Federal Appellate Courts, or the United States Supreme Court data. In order to make comparisons with prior studies, this inquiry analyzes case results separately for trial courts, Federal Appellate Courts, and the United States Supreme court.

For trial court, the case result is coded as "1" if the plaintiff wins, "0" if the defendant wins. For other courts, the case result is coded as "1" if the appellant wins, "0" if the appellee wins.

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For trial court, the plaintiff is coded as a win when the plaintiff wins a judgment or verdict; the defendant is coded in the same manner. In the event of a partial judgment for the plaintiff and a partial judgment for the defendant, the party who prevails is coded as a win. Following Maule (1999), the prevailing party is determined by comparing the dollar difference between the parties with the dollar difference between the court's determination and the amount allowed by the IRS.

For Federal Appellate Courts and the United States Supreme Court, following the approach of Wheeler et al. (1987), this study defines winners and losers by looking at "who won the appeal in its most immediate sense, without attempting to view the appeal in some larger context." If the decision of the trial court is "reversed," "reversed and remanded," "vacated," or "vacated and remanded," the appellant is coded as a win. This study ignores "the possibility that an appellant who sought primarily to postpone the day of judgment might have 'won' in terms of successfully obtaining a profitable delay, although the legal grounds for its appeal are rejected."

For the comparison of the success rates of the three groups in trial courts, this study first looks at the success rates of the three groups in litigation when they are plaintiffs. Second, this study examines the combined success rates of the three groups in litigation as plaintiffs and as defendants. Third, in order to eliminate the influences of the different frequencies of the three groups that appear as plaintiffs vs. defendants, this study calculates the net advantages of the three groups. The calculation of the net advantage is as defined by Wheeler et al. (1987). That is, net advantage is the difference between the success rate of the party at issue when the party is plaintiff/appellant and the success rate of the opponent party when the party at issue is defendant/appellee. Fourth,

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to further explore the advantage that the stronger party appears to have, this study follows the lead of Wheeler et al. and selects only those cases in which parties in different categories directly confronted each other. The net advantages of the three groups using only direct comparison cases are calculated. Fifth, this study divides the trial court cases into three groups according to the judicial forum: Cases from the U.S. Tax Court, cases from U.S. District Courts, and cases from the U.S. Court of Federal Claims. Steps one through four are repeated separately for the three groups of trial court cases. Finally, this study uses logistic regression to formally test hypothesis five. The dependant variable is dichotomous. It is coded as "1" if the plaintiff wins and "0" if the defendant wins. Three types of independent variables are developed. The first type includes litigant party strength variables. The strengths of plaintiffs and defendants are coded. Litigant strength variable is coded as "1" for individuals, "2" for businesses, and "3" for the federal government. The second type of independent variables includes dummy variables for different types of tax issues. The types of tax issues are defined in research question two. Dummy variables are used for each type of tax issues. For example, if the case's major issue is an income tax issue, the dummy variable for income tax issues is coded "1", the dummy variables for other tax issues are coded zero. The third type of independent variables includes dummy variables for different judicial forums.

For the comparison of success rates in litigation for the three groups in Federal Appellate Courts, this study first looks at the success rates of the three groups in litigation when they are appellants. Second, this investigation examines the combined success rates of the three groups at litigation as appellants and as appellees. Third, in order to eliminate the influences of the different frequencies the three groups appear as appellants

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vs. appellees, this inquiry calculates the net advantages of the three groups. Fourth, to further explore the advantage that the stronger party appears to have, this study selects only those cases in which parties in different categories directly confronted each other. The net advantage of the three groups using only direct comparison cases is calculated. Finally, logistic regression is used to formally test hypothesis five. The dependant variable is dichotomous (it is coded as "1" if the appellant wins and "0" if the appellee wins). Three types of independent variables are developed. The first type includes litigant party strength variables. The strengths of the appellant and appellee are separately coded. The second type of independent variables includes dummy variables for different types of tax issues. Pursuant to Atkins (1991), this investigation defines the third type of independent variables which includes dummy variables for different types of lower forums.

For comparison of the success rates of the three groups at the U.S. Supreme Court, the first four steps of analysis are the same as the first four steps used for the Federal Appellate Court cases. Then, this study uses logistic regression to formally test hypothesis five. The dependant variable is dichotomous. It is coded as "1" if the appellant wins and "0" if the appellee wins. Two types of independent variables are developed. The first type includes litigant party strength variables. The strengths of the appellant and appellee are separately coded. The second type of independent variables includes dummy variables for different types of tax issues.

Research Question Six

Representation Type. To test whether representation type affects the success of the three groups at litigation, this inquiry categorizes the representation type into pro se,

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solo, and group representation. It is not always clear whether an attorney mentioned in the head note is representing the client on his own or whether that attorney is the member of a firm. In order to maintain the consistence of the coding, if only one attorney is mentioned in the head note, this study assumes the representation type is solo. If two or more attorneys are mentioned in the head note, this study assumes the representation type is group representation.

Heckman's Correction. Selection bias arises whenever there is non-random sampling. Self-selection bias arises when the non-randomness arises from individual choices. In this investigation, litigants self-select the kind of representation type. OLS procedures that ignore the non-randomness of the sample may be biased. To correct for self-selection bias, this study uses the methodology developed by Heckman (1976, 1979).

Consider an observation equation (Equation 1) and a selection equation (Equation 2) of the form:

$$Y_{1i} = \beta_1 X_{1i} + U_{1i} \tag{1}$$

$$Y_{2i}^* = \beta_2 X_{2i} + U_{2i} \tag{2}$$

Heckman's correction is comprised of two stages. The first stage is the estimation of a selection equation.

$$Y_{2i}^* = \beta_2 X_{2i} + U_{2i} \qquad U \sim N(0,1)$$

$$Y_{2i} = 1 \text{ if } Y_{2i}^* > 0$$

$$Y_{2i} = 0 \text{ if } Y_{2i}^* <= 0$$

The selection equation is estimated by maximum likelihood as an independent probit model. A vector of the inverse of Mills ratios (λ) is then generated from the parameter estimates.

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$$\lambda = \frac{\phi(z_i)}{1-\phi(Z_i)},\ Z_i = -\frac{X_{2i}\beta_2}{\sqrt{\sigma_{22}}}$$

The second stage is the estimation of the observation equation. Instead of using Equation 1, Heckman's two-stage estimation introduced λ into Equation 1 as another independent variable, thus get Equation 3:

$$Y_{1i} = \beta_1 X_{1i} + \frac{\sigma_{12}}{\sqrt{\sigma_{22}}}\lambda_i + V_{1i} \quad (3)$$

Pro Se Choice Model. The pro se choice model is developed to control for self-selection bias, which is shown as Equation 4:

$$\text{Lawyer} = \alpha_0 + \alpha_1\text{TaxIssue} + \alpha_2\text{Amount} + \alpha_3\text{Individual} + \alpha_4\text{Company} + \epsilon_i \quad (4)$$

Where:

$$\text{“Lawyer”} = \begin{cases} 1 & \text{if lawyer(s) represented.} \\ 0 & \text{if pro se.} \end{cases}$$

"TaxIssue" is a group of dummy variables that represent the type of tax issues involved in the case. Tax issue type is as defined in research question two.

"Amount" is the total of the dollar amount in dispute.

"Individual" and "Company" are dummy variables for the type of litigant involved.

Solo Choice Model. Solo choice model is developed as shown in Equation 5:

$$\text{Group} = \beta_0 + \beta_1\text{TaxIssue} + \beta_2\text{Amount} + +\beta_3\text{Individual} + \beta_4\text{Company} + \epsilon_i \quad (5)$$

"Group" is a dummy variable coded as "1" if a group represents the litigant and "0" otherwise.

Application of Heckman's Correction. This study uses logistic regression to formally test hypothesis six. Because estimation of Equation 4 and Equation 5 needs

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specified potential tax deficiency amount and potential penalty amount, cases that do not provide such information are deleted from the analysis.

For trial court cases, the dependant variable is dichotomous. It is coded as "1" if the plaintiff wins and "0" if the defendant wins. Four types of independent variables are developed. The first type includes dummy variables for different tax issues. The second type includes litigant party strength variables. The coding of party strength is as described in research question five. The third type of independent variables includes dummy variables for different types of judicial forums. The fourth type of independent variables is dummy variables for the representation type of the plaintiff and the representation type of the defendant. Representation dummy variable is coded as "1" if lawyer(s) representation and "0" otherwise. Heckman's correction is applied to minimize self-selection bias. Equation 4 is estimated. To further test representation influence on litigants' successes at trial, this study then uses only the cases that do not involve pro se representation and recalculates the above described logistic regression. The definition of the fourth type of independent variables is different from above. Representation dummy variable is coded as "1" if group representation and "0" if solo representation. Heckman's correction is applied to minimize self-selection bias and Equation 5 is estimated.

For Federal Appellate Court cases, the dependant variable is coded as "1" if appellant wins and "0" if appellee wins. Four types of independent variables are developed. The first type includes dummy variables for different tax issues. The second type of independent variables includes litigant party strength variables. The third type includes dummy variables for different lower forums. The fourth type of independent variables includes dummy variables for the representation type of the appellant and the

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representation type of the appellee. Representation type is coded “1” if lawyer(s) representation and “0” otherwise. Equation 4 is estimated for Heckman’s correction. Furthermore, this study uses only the cases that do not involve pro se representation and rerun pursuant to the described procedure. The definition of the fifth type of independent variables is different from above. Representation type is coded “1” if group representation and “0” if solo representation. Equation 5 is estimated for Heckman’s correction.

For U.S. Supreme Court cases, the method of testing hypothesis six is the same as the method used for federal appellate cases except for the following two changes. First, no lower forum dummy variable is developed. Second, the sample size prohibits the application of Heckman’s correction.

Summary

Affluent Party Capability Theory inquires have been performed in the legal and sociological fields. However, no research on Party Capability Theory has been attempted in the accounting/tax arena. This study fills the void by providing such research. Six questions are presented in Chapter One. This chapter discusses the approaches by which these questions are investigated. Specifically, the research sample is stipulated, variables identified, the coding scheme for the variables is presented, and appropriate statistical tools are discussed. Results of the analysis are presented in Chapter Four.

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CHAPTER 4

ANALYSIS OF RESULTS

Introduction

Previous chapters contain: (1) a discussion of Party Capability Theory and the need for further research, (2) a review of prior researches of Party Capability Theory in the legal area and a review of relevant researches in the accounting area, and (3) development of the methodology used in this study. This chapter presents the results of the data analysis and tests of hypotheses. Summary statistics are presented first, followed by a discussion of the results pertaining to each of the hypothesis presented in Chapter Three.

Summary of Input Data

A total of 1,010 trial court cases, 744 Federal Appellate Court cases, and 29 U.S. Supreme Court cases are used in this study. A summary of the cases are listed in Appendix A. The 1,010 trial court cases are comprised of 375 Tax Court cases, 369 U.S. District Court cases, and 266 U.S. Court of Federal Claims cases. This study randomly chose 100 of the 1783 selected cases for validation of coding precision. One doctoral student coded half of the 100 chosen cases and another doctoral student coded the other half. The coding of the two doctoral students is compared with the coding of the author.

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Pearson correlation analysis shows that the two independent coding sets are highly correlated ($p<0.0001$).

There are 178 Tax Court cases, 117 U.S. District Court cases, and 53 U.S. Court of Federal Claims cases that involve pro se representation. Hence, 348 (34.5%) out of the 1,010 trial court cases involve pro se litigants, with 122 (16.4%) of the 744 appellate court cases that involve pro se litigants. Pro se litigants do not reach the U.S. Supreme Court level.

Test Results for Research Question One

Individuals, businesses, and various governments entities make demands in the civil courts to settle their disputes, enforce the performance of obligations, and direct the redistribution of resources. However, only some individuals, businesses, and governments use court systems to settle their issues, others choose not to use legal recourse. Research question one attempts to answer who utilizes legal recourse.

Test Results for Trial Court Cases

Out of the 375 U.S. Tax Court cases, 319 cases are initiated by individuals, which is about 85% of all the Tax Court cases under study. The remaining 56 Tax Court cases are initiated by businesses. No Tax Court cases are initiated by the U.S. government. Out of the 369 U.S. District Court cases, 220 cases are initiated by individuals, which is about 60% of all the U.S. District Court cases under study. Businesses and the U.S. government each initiates about 20% of the U.S. District Court cases under study. Unlike the U.S. Tax Court and U.S. District Courts, in which most cases are brought by individuals, more than half of the U.S. Court of Federal Claims cases are initiated by businesses. Businesses initiate 142, which is about 53% of all the U.S. Court of Federal Claims cases under

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study. The remaining 124 U.S. Court of Federal Claims cases under study are brought to court by individuals. In sum, 663 out of the 1,010 trial court cases under study are initiated by individual litigants, which constitute about 66% of all trial court cases under study; 273 (27%) cases are initiated by business litigants; only 74 (7%) cases are initiated by the U.S. government. As mentioned earlier, this study uses unproportional sampling. To correct for the influence of unproportional sampling, the percentage of each group appearing in trial court as plaintiff is recalculated after proper weighting. After weighting, individuals still are the most frequent litigants. They start about 75% of all the trial court cases involving only the three groups under study; businesses initiate about 17% of those cases; the U.S. government initiates only around 7% of those cases. The only trial court forum the U.S. government uses to start litigation is U.S. District Courts. Table 4.1 summarizes who litigates in trial courts.

Table 4.1

Summary of Plaintiffs in U.S. Trial Courts

Forum	Group	Frequency of Occurrence
Tax Court	Individual	319
Tax Court	Business	56
Tax Court	U.S. Government	0
District Court	Individual	220
District Court	Business	75
District Court	U.S. Government	74
Claims Court	Individual	124
Claims Court	Business	142
Claims Court	U.S. Government	0

For U.S. Tax Court cases, the chi-square test of goodness of fit reveals that individual and business litigants have a significantly different frequency of using the U.S.

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Tax Court ($p < 0.0001$). Chi-square test of goodness of fit shows that the three groups of litigants under investigation have significantly different frequencies when using the U.S. District Court ($p < 0.0001$). No significant difference of using the U.S. Court of Federal Claims is found between individuals and businesses ($p=0.2697$).

For all the 1,010 trial court cases under investigation, with adjustment of unproportional sampling, chi-square test of goodness of fit shows that the three groups of litigants under investigation have significantly different frequencies of suing in trial court ($p<0.0001$). Furthermore, chi-square test for independence shows a significant relationship between litigation groups and trial court forums chosen ($p < 0.0001$).

The Tax Court's jurisdiction is generally limited to redetermining deficiencies in income taxes, estate and gift taxes, and certain specified excise taxes that are subject to deficiency procedures (26 U.S.C. §§6212, 6213, 6214). It has exclusive jurisdiction over petitions for the redetermination of tax deficiencies (26 U.S.C. §6213) and over appeals of levy determinations as long as it has jurisdiction over the underlying tax liability that the IRS has alleged (26 U.S.C. §6330(d)(1)(A)). Section 6330(d) presumes that judicial review of an assessed tax liability should be sought in the Tax Court and that the taxpayer could seek review in a U.S. District Court only where the Tax Court lacks jurisdiction (*Voelker v. Nolen,* 365 F.3d 580). United States Code §1346(a)(2) establishes that U.S. District Courts' jurisdiction is concurrent with the Court of Federal Claims over claims against the United States that do not exceed $10,000. Whether different jurisdictions of the three judicial forums contribute to the significant relationship between litigant groups and judicial forums chosen is outside the scope of this study.

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Test Results for Federal Appellate Court Cases

Of the 744 Federal Appellate Court cases, 465 cases are initiated by individuals, which is about 63% of all the Federal Appellate Court cases under study; business litigants initiate 188 (25%) cases; the U.S. government initiates the remaining 91 (12%) cases.

Chi-square test of goodness of fit shows that the three groups of litigants under investigation have significantly different frequencies of using Federal Appellate Courts ($p<0.0001$).

Test Results for U.S. Supreme Court Cases

Of the 29 U.S. Supreme Court cases under study, 19 cases are initiated by the U.S. government, which constitute about 66% of all the U.S. Supreme Court cases under study; individual and business litigants each start five (17%) cases. Observation of the data indicates that the composition of initiators in trial courts, Federal Appellate Courts, and the U.S. Supreme court is different.

Chi-square test of goodness of fit reveals that the three groups of litigants under investigation have significantly different frequencies of using the U.S. Supreme Court ($p=0.0012$).

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Comparison of Trial Court, Federal Appellate Court, and U.S. Supreme Court Cases

As mentioned earlier, observation of the data indicates that the composition of initiators in trial courts, Federal Appellate Courts, and the U.S. Supreme Court is different. Table 4.2 illustrates the composition of initiators in the three levels of forums. Businesses have a relatively even usage of the three forums. Individuals are the majority users of trial courts and Federal Appellate Courts, but are minor users of the U.S. Supreme Court. The U.S. government shows a reverse pattern compared with individuals. The different abilities of the three groups in securing a writ of certiorari might contribute to the increase of the federal government appellant in the U.S. Supreme Court[6].

Table 4.2

Summary of Initiators in Courts

Court	Individual	Business	U.S. Government
Trial Court	75.29	17.42	7.29
Federal Appellate Court	62.50	25.27	12.23
The U.S. Supreme Court	17.24	17.24	65.52

In order to further investigate the composition of initiators in different levels of court, chi-square test of goodness of fit is used for the test of multinomial distribution. The compositions of initiators in different levels of court are significantly different from each other ($p < 0.0001$).

[6] Four of the nine justices must vote to grant a writ of certiorari. The great majority of cases brought to the Supreme Court are denied certiorari (approximately 7,500 petitions are presented each year; between 80 and 150 are granted and only a small proportion of them are tax cases).

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Conclusion-Research Question One

The first alternative hypothesis presented for investigation in this study is:

H_{a1}: Individuals, businesses, and the federal government have unequal frequencies of using legal recourse.

The alternative hypothesis should not be rejected if chi-square test shows that the three groups of litigants under investigation do have significantly different chances of starting litigations. Test results for trial court, Federal Appellate Court, and U.S. Supreme Court cases show that the three groups of litigants have significantly different frequencies of using legal recourse. Individuals initiate the majority of trial court and Federal Appellate Court cases under study. The U.S. government starts most of the U.S. Supreme Court cases under study. The alternative hypothesis is therefore not rejected.

Test Results for Research Question Two

In order to investigate what tax issues the opposing parties litigate over, the IRC Sections mentioned in each case are classified into ten categories of tax issues according to their classification within the Internal Revenue Code of 1986. The ten categories of tax issues are income taxes; estate and gift taxes; employment taxes; miscellaneous excise taxes; alcohol, tobacco, and certain other excise taxes; procedure and administration; financing of presidential election campaigns; trust fund code; coal industry health benefits; and group health plan requirements.

Test Results for Trial Court Cases

In the 375 Tax Court cases, 226 are income tax cases, 124 are procedure and administration cases, 18 are estate and gift tax cases, five are employment tax cases, and two are miscellaneous excise tax cases. The major issues brought to the U.S. Tax Court

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are income tax as well as procedure and administration issues. Income tax cases comprise about 60% of all Tax Court cases under study; procedure and administration disputes comprise about 33% of the cases. For the 369 U.S. District Court cases, 301 are procedure and administration cases; 47 are income tax cases; 10 are employment tax cases; five are estate and gift tax cases; five are miscellaneous excise tax cases; and one is alcohol, tobacco, and other excise tax cases. The major issue brought to U.S. District Courts is the procedure and administration issue. It constitutes about 82% of all U.S. District Court cases under study. Procedure and administration issue is brought to the U.S. Court of Federal Claims 131 times (49%) out of the 266 cases under study. The remainder consists of 99 (37%) cases concerning income tax disagreements; 19 cases concerning employment taxes; 10 cases concerning miscellaneous excise taxes; six cases about estate and gift taxes; and one case about alcohol, tobacco, and other excise taxes. For all the 1,010 trial court cases under study, 556 are procedure and administration cases, 372 are income tax cases, 29 are estate and gift tax cases, 34 are employment tax cases, 17 are miscellaneous excise tax cases, and two are alcohol, tobacco, and other excise tax cases. After adjusting for unproportional sampling, the major issues brought to trial court are procedure and administration, and income tax disputes. Procedure and administration disputes comprise about 51% of all the trial court cases under study and income tax cases around 43%. Table 4.3 summarizes what litigants sue for in trial courts.

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Table 4.3
Summary of Federal Tax Issues in Trial Courts

Court	Group	Tax Issue	Frequency
Tax Court	Individual	Income Taxes	182
Tax Court	Individual	Estate and Gift Taxes	17
Tax Court	Individual	Employment Taxes	5
Tax Court	Individual	Miscellaneous Excise Taxes	1
Tax Court	Individual	Procedure and Administration	114
Tax Court	Business	Income Taxes	44
Tax Court	Business	Estate and Gift Taxes	1
Tax Court	Business	Miscellaneous Excise Taxes	1
Tax Court	Business	Procedure and Administration	10
Dis. Court	Individual	Income Taxes	30
Dis. Court	Individual	Estate and Gift Taxes	4
Dis. Court	Individual	Employment Taxes	5
Dis. Court	Individual	Miscellaneous Excise Taxes	1
Dis. Court	Individual	Procedure and Administration	180
Dis. Court	Business	Income Taxes	15
Dis. Court	Business	Employment Taxes	3
Dis. Court	Business	Miscellaneous Excise Taxes	2
Dis. Court	Business	Alcohol, Tobacco, and other Excise Taxes	1
Dis. Court	Business	Procedure and Administration	54
Dis. Court	U.S. Gov.	Income Taxes	2
Dis. Court	U.S. Gov.	Estate and Gift Taxes	1
Dis. Court	U.S. Gov.	Employment Taxes	2
Dis. Court	U.S. Gov.	Miscellaneous Excise Taxes	2
Dis. Court	U.S. Gov.	Procedure and Administration	67
Claims Court	Individual	Income Taxes	39
Claims Court	Individual	Estate and Gift Taxes	6
Claims Court	Individual	Employment Taxes	1
Claims Court	Individual	Miscellaneous Excise Taxes	1
Claims Court	Individual	Procedure and Administration	77
Claims Court	Business	Income Taxes	60
Claims Court	Business	Employment Taxes	18
Claims Court	Business	Miscellaneous Excise Taxes	9
Claims Court	Business	Alcohol, Tobacco, and other Excise Taxes	1
Claims Court	Business	Procedure and Administration	54

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Further, analysis of the data shows that some IRC Sections tend to be more frequently contended.[7] §§61, 162, 3121, 6330, 6511, 6672, 7421, 7422, 7430, 7433, 7602, and 7609 are the most often disputed sections in trial courts. Section 61 defines gross income. Section 162 is about deduction of trade or business expenses. Section 3121 gives definition of wages, employment, employee, employer and other related concepts for employment tax. Section 6330 requires notice and opportunity for hearing before levy. Section 6511 sets time limitations on credit or refund. Section 6672 holds the responsible person personally liable for failing to collect taxes. Section 7421 prohibits suits to restrain assessment or collection. Section 7422 stipulates that no suit is allowed prior to filing claim for refund and sets limits on right of action for refund. Section 7430 awards costs and certain fees for prevailing parties. Section 7433 is civil damages for certain unauthorized collection actions. Section 7602 gives the Secretary rights to examine books and witnesses. Section 7609 stipulates special procedures for third-party summons. Generally, sections about procedure and administration are most often under dispute in trial court, especially sections dealing with levies, summons, and damages.

For the 375 Tax Court cases under study, the most often disputed IRC Sections are §162 (29 times under dispute) and §6330 (21 times). Other frequently argued sections include §61 (14 times), §7430 (14 times), §152 (12 times), §165 (12 times), §183 (12 times), §6015 (11 times). Section 3121 (five times) is the center of controversy for all the employment tax cases of the Tax Court decisions under study. For the 369 U.S. District Court cases under study, the most often disputed IRC Sections are §7433 (38 times), §7609 (28 times), §7421 (26 times), and §7602 (21 times). Section 6330 (19 times), §6672 (18 times), §7422 (17 times), §6321 (16 times), §6323 (14 times), §7402 (13

[7] Appendix B provides a summary of IRC Sections analyzed in this study.

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times), and §6103 (10 times) are also very often under disputes. U.S. Court of Federal Claims cases have more diverse focuses. That is, of the 266 U.S. Court of Federal Claims cases under investigation, §7422 (23 times), §6511 (20 times), §6672 (13 times), §3121 (12 times), and §6532 (10 times) are the sections contended most often. Taking all the trial court cases together, the most frequently disputed IRC Sections are §6330 (40 times), §7422 (40 times), §7433 (40 times), §162 (38 times), §6672 (32 times), §7421 (30 times), §6511 (29 times), §7609 (28 times), §7430 (26 times), §3121 (22 times), §61 (21 times), and §7602 (21 times). Other often disputed sections include §6103 (19 times), §6321 (18 times), §165 (17 times), §7402 (17 times), §104 (16 times), §6532 (16 times), §183 (15 times), §6501 (15 times), §152 (14 times), §6323 (14 times), §6015 (13 times), §72 (12 times), §170 (12 times), §6320 (12 times), §446 (11 times), §6229 (11 times), §6402 (11 times), §6653 (11 times), §166 (10 times), §6331 (10 times), and §6651 (10 times). For the 1,010 trial court cases, 34 are employment tax cases, and 22 times the issue involves §3121. Table 4.4 summarizes the IRC Sections that are brought to trial courts.

As this study illustrated earlier, around 94% of the trial court cases are income tax cases or procedure and administration cases. This inquiry combines all the remaining tax issues as other tax issues to proceed chi-square test of goodness of fit for hypothesis two. Data are further adjusted to take into consideration unproportional sampling. The chi-square test of goodness of fit shows that the frequencies of different issues being brought to the trial courts are significantly different ($p < 0.0001$).

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Table 4.4

Summary of IRC Sections Brought to Trial Courts

	IRC Section	Frequency		IRC Section	Frequency
Tax Court	§162	29	Trial Court	§6330	40
	§6330	21		§7422	40
	§61	14		§7433	40
	§7430	14		§162	38
	§152	12		§6672	32
	§165	12		§7421	30
	§183	12		§6511	29
	§6015	11		§7609	28
District Court	§7433	38		§7430	26
	§7609	28		§3121	22
	§7421	26		§61	21
	§7602	21		§7602	21
	§6330	19		§6103	19
	§6672	18		§6321	18
	§7422	17		§165	17
	§6321	16		§7402	17
	§6323	14		§104	16
	§7402	13		§6532	16
	§6103	10		§183	15
Claims Court	§7422	23		§6501	15
	§6511	20		§152	14
	§6672	13		§6323	14
	§3121	12		§6015	13
	§6532	10		§72	12
				§170	12
				§6320	12
				§446	11
				§6229	11
				§6402	11
				§6653	11
				§166	10
				§6331	10
				§6651	10

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There exists a significant relationship between the type of plaintiff and the type of tax issue being brought to the trial courts ($p < 0.0001$). As shown in Table 4.5, after proper weighting, the major tax issues brought to court by individuals and businesses are procedure and administration disagreements and income tax issues. In contrast, the U.S. government goes to court over 90% of the time to settle procedure and administration issues.

Table 4.5

Summary of Issues Brought by Different Groups to Trial Courts

Group	Tax Issue	Percentage
Individual	Income Taxes	44.33
Individual	Procedure and Administration	49.23
Individual	Other	6.44
Business	Income Taxes	52.20
Business	Procedure and Administration	41.67
Business	Other	6.13
U.S. Government	Income Taxes	2.7
U.S. Government	Procedure and Administration	90.54
U.S. Government	Other	6.76

Judicial forum is also significantly related to the type of tax issues being brought to court ($p < 0.0001$). As noted previously, the U.S. Tax Court, U.S. District Courts and the U.S. Court of Federal Claims have different jurisdiction over federal tax issues. This might contribute to the types of tax issues being brought in these different judicial forums. The Tax Court's jurisdiction is generally limited to redetermining deficiencies in income taxes, estate and gift taxes, and certain specified excise taxes that are subject to deficiency procedures (26 U.S.C. §§ 6212, 6213, 6214). Section 6330(d) presumed that the taxpayer could seek review in a U.S. District Court only where the Tax Court lacks

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jurisdiction (*Voelker v. Nolen,* 365 F.3d 580). Consequently, around 60% of cases being brought to the Tax Court are income tax disputes while about 82% are procedure and administration disagreements in U.S. District Courts. United States Code §1346(a)(2) establishes that U.S. District Courts' jurisdiction is concurrent with the Court of Federal Claims over claims against the United States that do not exceed $10,000. Around half of the U.S. Court of Federal Claims cases under study are about procedure and administration.

Test Results for Federal Appellate Court Cases

Table 4.6 illustrates what issues are litigated in Federal Appellate Courts. For the total of 744 Federal Appellate Court cases, 379 are procedure and administration cases; 293 are income tax cases; 35 are estate and gift tax cases; 16 are miscellaneous excise tax cases; 14 are employment tax cases; five are coal industry health benefits cases; and two are alcohol, tobacco, and other excise tax cases. In sum, over 50% of the appellants go to Federal Appellate Courts to settle procedure and administration issues and around 39% for income tax disputes.

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Table 4.6

Summary of Federal Tax Issues in Federal Appellate Courts

Group	Tax Issue	Frequency
Individual	Income Taxes	166
Individual	Estate and Gift Taxes	27
Individual	Employment Taxes	2
Individual	Miscellaneous Excise Taxes	4
Individual	Alcohol, Tobacco, and Other Excise Taxes	2
Individual	Procedure and Administration	263
Individual	Coal Industry Health Benefits	1
Business	Income Taxes	94
Business	Estate and Gift Taxes	2
Business	Employment Taxes	6
Business	Miscellaneous Excise Taxes	8
Business	Procedure and Administration	75
Business	Coal Industry Health Benefits	3
U.S. Government	Income Taxes	33
U.S. Government	Estate and Gift Taxes	6
U.S. Government	Employment Taxes	6
U.S. Government	Miscellaneous Excise Taxes	4
U.S. Government	Procedure and Administration	41
U.S. Government	Coal Industry Health Benefits	1

Closer examination of the data shows that §162 (24 times), §6672 (24 times), and §104 (22 times) are most often under dispute. Other contended sections include §7201 (19 times), §7433 (19 times), §7206 (17 times), §7602 (15 times), §7430 (14 times), §7609 (14 times), §6331 (12 times), §6511 (12 times), §163 (11 times), §6321 (11 times), §6330 (11 times), §7212 (11 times), and §61 (10 times). There are only 35 estate and gift tax disputes for all the Federal Appellate Court cases under study. Seven times they concern retained life estate (§2036) and five times the marital deduction (§2056). For the 14 Federal Appellate Court employment tax cases under study, §3121 (eight times) and §3401 (four times) are the center of the disputes.

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Federal Appellate Court cases cover more diverse issues than trial court cases. Furthermore, the most often disputed sections for Federal Appellate Court and trial court cases are not quite the same. Section 104 is one of the three most often disputed sections in Federal Appellate Courts, but it is not the most often disputed sections in trial courts. Specifically, §104 offers exemptions from taxes for damages due to personal physical injuries or physical sickness.

The major arguments in Federal Appellate Courts are procedure and administration issues (51%) and income tax disputes (39%). After combining all the remaining issues as other disputes, the chi-square test of goodness of fit shows that the frequencies of different issues being brought to Federal Appellate Courts are significantly different ($p < 0.0001$).

Chi-square also rejects the independence of the type of litigant and the issue being brought to court ($p < 0.0001$). While the major issues being brought by all three groups of litigants under study are income tax and procedure and administration disputes, businesses bring more income tax cases than procedure and administration cases to court, while individuals and the U.S. government bring more procedure and administration cases than income tax cases to court.

Test Results for U.S. Supreme Court Cases

Table 4.7 summarizes the types of issues that litigants bring to the U.S. Supreme Court. Individuals litigate for income taxes and procedure and administration issues. All the cases brought by businesses are income tax cases. The federal government brings to the U.S. Supreme Court diverse issues. Due to the limited number of observations, no chi-square test is used to formally test H_{a2}.

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Table 4.7

Summary of Federal Tax Issues in the U.S. Supreme Court

Group	Tax Issue	Frequency
Individual	Income Taxes	2
Individual	Procedure and Administration	3
Business	Income Taxes	5
U.S. Government	Income Taxes	4
U.S. Government	Estate and Gift Taxes	3
U.S. Government	Employment Taxes	2
U.S. Government	Miscellaneous Excise Taxes	4
U.S. Government	Procedure and Administration	6

Appellants bring to the U.S. Supreme Court a very broad range of issues. Even so, this study detects that §6511 occurs four times, and §104 occurs three times out of the 29 Supreme Court cases under examination.

Conclusion-Research Question Two

The second alternative hypothesis presented for investigation in this study is:

H_{a2}: Different categories of tax issues have unequal frequencies of being brought to court.

The alternative hypothesis should not be rejected if the chi-square test shows that different categories of tax issues under investigation do have significantly unequal chances of being brought to court. Test results for trial court and Federal Appellate Court cases reveal significantly unequal frequencies of different categories of tax issues being contended. The sample size of U.S. Supreme Court cases does not permit a valid chi-square analysis. Consequently, the alternative hypothesis is not rejected for trial court and Federal Appellate Court cases. No conclusion is made for U.S. Supreme Court cases.

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Test Results for Research Question Three

Who is being sued or appealed? For the three groups of litigants (individuals, businesses, and the federal government), this study attempts to answer which group(s) is(are) being sued and/or appealed for federal tax issues.

Test Results for Trial Court Cases

Table 4.8 reveals that the federal government is the predominant defendant in trial courts. It is the only defendant in the U.S. Tax Court and the U.S. Court of Federal Claims and it is the defendant in about 75% of the U.S. District Court cases under examination. This result is the opposite of Wanner's (1974) finding. For trial court cases, in general, Wanner (1974) concludes that individuals make up about 67% of the defendants, organizations around 26%, and governments less than 6%. Chi-square test of goodness of fit affirms that the three groups under study have significantly different frequencies of appearing as defendant in trial courts ($p<0.0001$). Also, the chi-square test for independence shows that there is a significant relationship between the type of defendant and the judicial forum chosen ($p<0.0001$). As shown in Table 4.7, for federal tax disputes, individuals or businesses are possible defendants only in U.S. District Courts.

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Table 4.8

Summary of Defendants in U.S. Trial Courts

Forum	Group	Frequency of Occurrence
Tax Court	Individual	0
Tax Court	Business	0
Tax Court	U.S. Government	375
District Court	Individual	42
District Court	Business	49
District Court	U.S. Government	278
Claims Court	Individual	0
Claims Court	Business	0
Claims Court	U.S. Government	266

Test Results for Federal Appellate Court Cases

The U.S. government is the appellee in 622 out of the 744 Federal Appellate Court cases under study. Businesses and individuals are appellees for 68 and 54 times, respectively. Chi-square test of goodness of fit shows that the three groups under examinaion have significantly different frequencies of being appellees in Federal Appellate Courts ($p<0.0001$).

Test Results for U.S. Supreme Court Cases

U.S. Supreme Court appellees show a diverse pattern. That is, individuals, businesses, and the U.S. government are appellees for 11, eight, and 10 times, respectively, for the Supreme Court cases under study. The frequencies of the three groups appearing as appellee in the U.S. Supreme Court are not significantly different ($p> 0.7855$).

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Conclusion-Research Question Three

The third alternative hypothesis presented for investigation is:

H_{a3}: Individuals, businesses, and the federal government have unequal frequencies of being sued or appealed.

The alternative hypothesis should not be rejected if chi-square test shows that individuals, businesses, and the federal government have significantly different frequencies of being sued or appealed. Test results for trial court cases and Federal Appellate Court cases show that the three groups under study have significantly different frequencies of being sued. The federal government is the major defendant/appellee for the trial court and Federal Appellate Court cases under study. The alternative hypothesis is not rejected. However, the alternative hypothesis is rejected for the Supreme Court cases.

Test Results for Research Question Four

Why is the defendant/appellee being sued/appealed? This study investigates what defendant (appellee) is being sued (appealed) for in three different categories of tax cases.

Test Results for Trial Court Cases

The U.S. government is sued in the Tax Court over 60% of the time for income tax issues and over 33% of the time for procedure and administration disputes. Other issues comprise less than 7% of the total cases. The U.S. government is sued in the U.S. Court of Federal Claims about 49% of the time for procedure and administration disputes and around 37% for income tax issues. The remaining 14% is for other controversies. The major issue brought to U.S. District Courts is procedure and administration (82%). Individuals, businesses, and the U.S. government are sued in U.S. District Courts over

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88%, 71%, and 82% of the times, respectively, over procedure and administration issues. Taking all the trial court cases together, and after proper adjustment for unproportional sampling, the U.S. government is brought to trial courts about 46% of the time over income tax issues, and around 48% of the time for procedure and administration disputes. Individuals and businesses are sued in U.S. District Courts only and for procedure and administration disagreements over 88% and 71% of the time respectively. Chi-square test for independence reveals that there exists a significant relationship between the type of defendant and the federal tax issue being brought to court ($p<0.0001$). Table 4.9 displays issues that defendants are being sued for in the trial courts.

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Table 4.9

Summary of Issues that Defendants Are Being Sued for in Trial Courts

Court	Group	Tax Issue	Frequency
Tax Court	U.S. Gov.	Income Taxes	226
Tax Court	U.S. Gov.	Estate and Gift Taxes	18
Tax Court	U.S. Gov.	Employment Taxes	5
Tax Court	U.S. Gov.	Miscellaneous Excise Taxes	2
Tax Court	U.S. Gov.	Procedure and Administration	124
Dis. Court	Individual	Income Taxes	3
Dis. Court	Individual	Estate and Gift Taxes	1
Dis. Court	Individual	Employment Taxes	1
Dis. Court	Individual	Procedure and Administration	37
Dis. Court	Business	Income Taxes	7
Dis. Court	Business	Employment Taxes	4
Dis. Court	Business	Miscellaneous Excise Taxes	3
Dis. Court	Business	Procedure and Administration	35
Dis. Court	U.S. Gov.	Income Taxes	37
Dis. Court	U.S. Gov.	Estate and Gift Taxes	4
Dis. Court	U.S. Gov.	Employment Taxes	5
Dis. Court	U.S. Gov.	Miscellaneous Excise Taxes	2
Dis. Court	U.S. Gov.	Alcohol, Tobacco, and other Excise Taxes	1
Dis. Court	U.S. Gov.	Procedure and Administration	229
Claims Court	U.S. Gov.	Income Taxes	99
Claims Court	U.S. Gov.	Estate and Gift Taxes	6
Claims Court	U.S. Gov.	Employment Taxes	19
Claims Court	U.S. Gov.	Miscellaneous Excise Taxes	10
Claims Court	U.S. Gov.	Alcohol, Tobacco, and other Excise Taxes	1
Claims Court	U.S. Gov.	Procedure and Administration	131

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Test Results for Federal Appellate Court Cases

Table 4.10 illustrates what appellees are being sued for in Federal Appellate Courts. Individuals are being brought to Federal Appellate Courts over 48% of the time for procedure and administration issues, and about 41% for income tax disputes. Businesses are sued in Federal Appellate Courts over 41% of the time for income tax issues, and around 37% for procedure and administration disagreements. The U.S. government is sued in Federal Appellate Courts over half of the time (53%) for procedure and administration disputes, and about 39% for income tax issues. In summary, appellees are sued in Federal Appellate Courts mostly for procedure and administration and income tax issues. Chi-square tests for independence show a significant relationship between the type of appellee and the federal tax issue being brought to appellate courts ($p<0.0001$).

Table 4.10

Summary of Issues that Appellees Are Being Sued for in Federal Appellate Courts

Group	Tax Issue	Frequency
Individual	Income Taxes	22
Individual	Estate and Gift Taxes	6
Individual	Procedure and Administration	26
Business	Income Taxes	28
Business	Employment Taxes	6
Business	Miscellaneous Excise Taxes	5
Business	Procedure and Administration	25
Business	Coal Industry Health Benefits	4
U.S. Government	Income Taxes	243
U.S. Government	Estate and Gift Taxes	29
U.S. Government	Employment Taxes	8
U.S. Government	Miscellaneous Excise Taxes	11
U.S. Government	Alcohol, Tobacco, and other Excise Taxes	2
U.S. Government	Procedure and Administration	328
U.S. Government	Coal Industry Health Benefits	1

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Test Results for U.S. Supreme Court Cases

Table 4.11 summarizes issues that appellees are being sued for in the U.S. Supreme Court. Appellees are litigated over a wide range of issues. Individuals are sued five out of the 11 times on procedure and administration issues and four times on income tax disputes. Business appellees are in the U.S. Supreme Court four out of the eight times for miscellaneous excise tax disputes. The U.S. government is sued seven out of the 10 times on income tax issues. Due to the limitation of the sample size, no formal statistical test is applied to test H_{a4} for Supreme Court cases.

Table 4.11

Summary of Issues that Appellees Are Being Sued for in the U.S. Supreme Court

Group	Tax Issue	Frequency
Individual	Income Taxes	4
Individual	Estate and Gift Taxes	2
Individual	Procedure and Administration	5
Business	Estate and Gift Taxes	1
Business	Employment Taxes	2
Business	Miscellaneous Excise Taxes	4
Business	Procedure and Administration	1
U.S. Government	Income Taxes	7
U.S. Government	Procedure and Administration	3

Conclusion-Research Question Four

The fourth alternative hypothesis presented for investigation in this study is:

H_{a4}: Individuals, businesses, and the federal government are sued or appealed on different categories of tax issues.

The alternative hypothesis should not be rejected if chi-square test of independence shows that there exists a significant relationship between the type of defendant/appellee

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and the issue under dispute. Test results for trial court and Federal Appellate Court cases show a significant relationship between the type of defendant/appellee and the issue involved. Consequently, the alternative hypothesis is not rejected. Due to limitations on sample size, this inquiry does not perform a formal test of H_{a4} for Supreme Court cases.

Test Results for Research Question Five and Research Question Six

This study investigates the success rates of individuals, businesses, and the U.S. government in litigation by looking individually at federal trial courts, Federal Appellate Courts, and the United States Supreme Court. The available data do not permit this inquiry to code the strength of the litigants according to their size of financial resources and frequency of dealing with courts. As a result, this inquiry assumes that individuals usually have fewer resources than either businesses or the government and, thus, are weaker. When business and government parties confront each other, the assumption is that the federal government is usually stronger.

Test Results for Trial Court Cases

Success Rates Analysis. This inquiry first looks at the success rates of the three groups in litigation when they are plaintiffs. The results for trial court cases are summarized in Table 4.12. As plaintiffs, individuals win 16.3% of cases in the U.S. Tax Court, 10.5% in U.S. District Courts, and 13.7% in the U.S. Court of Federal Claims. Businesses win 33.9% of cases in the U.S. Tax Court, 25.3% in U.S. District Courts, and 31.7% in the U.S. Court of Federal Claims. The U.S. government only appears as plaintiff in U.S. District Courts and it wins 73% of the cases. Individual and business plaintiffs have the lowest (highest) chance of winning a case in U.S. District Courts (the

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U.S. Tax Court). Taking trial court cases together, individuals, businesses, and the U.S. government win 13.9%, 30.4%, and 73% respectively as plaintiffs. The weighted results are 14.6%, 30.2%, and 73%.

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Table 4.12

Winning and Losing by Nature of Party (Trial Courts)

	Respondent							
	Tax Court							
	Ind.		Bus.		U.S. Gov.		Total	
Plaintiff	%	N	%	N	%[a]	N[b]	%	N
Individual	NA	NA	NA	NA	16.3	319	16.3	319
Business	NA	NA	NA	NA	33.9	56	33.9	56
U.S. Gov.	NA	NA	NA	NA	NA	NA	NA	NA
Total	NA	NA	NA	NA	18.9	375	18.9	375
	District Court							
	Ind.		Bus.		U.S. Gov.		Total	
Plaintiff	%	N	%	N	%	N	%	N
Individual	0	1	28.6	14	9.3	205	10.5	220
Business	50.0	2	NA	NA	24.7	73	25.3	75
U.S. Gov.	76.9	39	68.6	35	NA	NA	73.0	74
Total	73.8	42	57.1	49	13.3	278	26.0	369
	Claims Court							
	Individual		Business		U.S. Gov.		Total	
Plaintiff	%	N	%	N	%	N	%	N
Individual	NA	NA	NA	NA	13.7	124	13.7	124
Business	NA	NA	NA	NA	31.7	142	31.7	142
U.S. Gov.	NA	NA	NA	NA	NA	NA	NA	NA
Total	NA	NA	NA	NA	23.3	266	23.3	266
	Trial Court							
	Individual		Business		U.S. Gov.		Total	
Plaintiff	%	N	%	N	%	N	%	N
Individual	0	1	28.6	14	13.6	648	13.9	663
Business	50.0	2	NA	NA	30.3	271	30.4	273
U.S. Gov.	76.9	39	68.6	35	NA	NA	73	74
Total	73.8	42	57.1	49	18.5	919	22.7	1010
	Trial Court (Weighted)							
	Individual		Business		U.S. Gov.		Total	
Plaintiff	%	N	%	N	%	N	%	N
Individual	0	1.0	28.6	13.9	14.4	745.5	14.6	760.4
Business	50.0	2.0	NA	NA	30.0	174.0	30.2	175.9
U.S. Gov.	76.9	38.8	68.6	34.8	NA	NA	73.0	73.7
Total	73.8	41.8	57.2	48.8	17.4	919.4	21.6	1010

[a] Percentage of cases in which plaintiff won.
[b] Total cases on which percentage is based.

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As summarized in Table 4.13, the combined success rates of individuals as plaintiffs and as defendants are 16.3%, 13%, and 13.7% in the U.S. Tax Court, U.S. District Courts, and the U.S. Court of Federal Claims, respectively. The combined success rates of businesses are 33.9%, 32.3%, and 31.7% and the combined success rates of the U.S. government are 81.1%, 83.8%, and 76.7%, respectively, in the U.S. Tax Court, U.S. District Courts, and the U.S. Court of Federal Claims. Taking all the trial court cases together, the combined success rates for individuals, businesses, and the U.S. government are 14.6%, 32.3%, and 80.9%, respectively. The weighted combined success rates are 15.2%, 32.9%, and 81.9%.

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Table 4.13

Success Rates by Nature of Party (Trial Courts)

Type of Party	Success Rate as Appellant	When Respondent, Opponents Success Rate	=	Net Advantage	Combined Success Rate as Appellant and Respondent
	Tax Court				
Individual	16.3	NA	=	NA	16.3
Business	33.9	NA	=	NA	33.9
U.S. Gov.	NA	18.9	=	NA	81.1
	District Court				
Individual	10.5	73.8	=	-63.3	13.0
Business	25.3	57.1	=	-31.8	32.3
U.S. Gov.	73.0	13.3	=	59.7	83.8
	Claims Court				
Individual	13.7	NA	=	NA	13.7
Business	31.7	NA	=	NA	31.7
U.S. Gov.	NA	23.3	=	NA	76.7
	Trial Court				
Individual	13.9	73.8	=	-59.9	14.6
Business	30.4	57.1	=	-26.7	32.3
U.S. Gov.	73.0	18.5	=	54.5	80.9
	Trial Court (Weighted)				
Individual	14.6	73.8	=	-59.0	15.2
Business	30.2	57.2	=	-27.0	32.9
U.S. Gov.	73.0	17.4	=	55.6	81.9

The plaintiff success rates and the combined success rates of different parties in the U.S. Tax Court and U.S. District Courts do not support the conclusion of Geier (1991). Geier (1991) compares U.S. Tax Court and U.S. District Court cases from 1965-1986. The cases won or partially won by the U.S. government is 24% higher in the U.S. Tax Court than in U.S. District Courts. Geier ascribes the 24-point difference to the pro-government trend of the U.S. Tax Court. The U.S. Tax Court is formed under Article I

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and therefore U.S. Tax Court judges do not have tenure and unreduced salary protection like U.S. District Court judges. This study reaches an opposite conclusion. Individuals and businesses have both a higher plaintiff success rate and a higher combined successes rate in the U.S. Tax Court than in U.S. District Courts. The different time frames of the two studies might contribute to the conflicting conclusions. The fact that Geier(1991) ignores the different frequencies of the U.S. government appearing as plaintiffs and as defendants in the U.S. Tax Court vs. U.S. District Courts might also contribute to the opposite results. By combining the cases in which the U.S. government is plaintiff and the cases in which it is defendant, Geier's (1991) results ignore that the success rate of a litigant as a plaintiff is different from the success rate of a litigant as a defendant. The combined success rate of the U.S. government is 2.7 points higher in U.S. District Courts (83.8%) than in the U.S. Tax Court (81.1%) for this study. This is misleading because, as mentioned earlier, individuals and businesses have both higher plaintiff success rates and higher combined successes rates in the U.S. Tax Court than in U.S. District Courts.

The net advantages for different parties in litigation are shown in Table 4.13. The net advantages of individuals, businesses, and the U.S. government in trial courts are -59.9%, -26.7%, and 54.5% respectively. The weighted net advantages are -59%, -27%, and 55.6%, respectively. The U.S. government does far better than businesses. Businesses do considerably better than individuals. Individuals occupy the bottom of the order. To further investigate the interactions between specific categories of parties, cases in which two parties confront each other directly are selected. Table 4.14 summarizes the results. The U.S. government not only wins far more often overall, it also has an advantage vis-à-vis each other type of litigant. Its net advantage over businesses is

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38.6%, and 62.5% over individuals. Individuals lose against all other types of parties. The margin of disadvantage of individuals over businesses is 21.4%.

Table 4.14

Net Advantage for Different Combination of Parties (Trial Courts)

Combination of Parties	Net Advantage	Net Advantage(Weighted)
Individual vs. Business	Business by 21.4%	Business by 21.4%
Individual vs. U.S. Gov.	U.S. Gov. by 63.3%	U.S. Gov. by 62.5%
Business vs. U.S. Gov.	U.S. Gov. by 38.3%	U.S. Gov. by 38.6%

Logistic Regression Results for H_{a5} without Considering Representation Types. At this point, the investigation results for trial court cases suggest that "haves" do tend to have certain advantages. Although the analysis presented above produces results that are consistent with Party Capability Theory, the thesis can be only provisionally supported until the effects of potential intervening variables are examined. This inquiry further clarifies the results by using logistic regression to formally test H_{a5}. As mentioned earlier, the major tax issues brought to court by individuals and businesses are procedure and administration disagreements and income tax issues. In contrast, the U.S. government goes to court over 90% of the time to settle procedure and administration issues. The U.S. government is brought to trial courts about 46% of the time for income tax issues, and around 48% of the time for procedure and administration disputes. Individuals and businesses are sued in U.S. District Courts over 88% and 71% of the time, respectively, for procedure and administration disagreements. Thus, tax issue type is included in the regression and dummy variables are also created for the different legal forums.

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Table 4.15 illustrates the influence of litigant strength on case outcomes.[8] Overall, the model performs moderately well. That is, the full model is significant at the 0.001 level and it has explanation power of 19.1%.[9] However, the signs of the variables are opposite of the predicted direction. Contrary to Songer et al. (1999) and Farole (1999), which report a positive coefficient for plaintiff strength variable and a negative coefficient for defendant strength variable, this study reports a negative coefficient for plaintiff strength variable and a positive coefficient for defendant strength variable. The variable measuring the status of the defendant's strength is positively related to the likelihood of plaintiff success, and the relationship is significant (p=0.0021). It indicates that plaintiffs have significantly higher success probabilities when confronting presumably stronger parties. Although the magnitude is less, the variable measuring the status of the plaintiff's strength is negatively related to the likelihood of plaintiff success, and the relationship also reaches a significant level ($p<0.0001$), indicating that, holding all other variables constant, the presumed stronger plaintiffs have significantly lower success probabilities. The unexpected results could be due to the conventional assumption of party strength. Prior literature generally assumes that the strengths of the litigating parties have measurable values. This study follows the norm and assumes that

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[8] The plaintiff and defendant type interaction is not significant and is deleted from the model. For all the subsequent models mentioned in this study, plaintiff and defendant type/appellant and appellee type interaction is checked and then deleted because the result is not significant.

Year of decision is also not significant and is deleted from the model. The Pearson residuals vs. year and deviance residuals vs. year plots indicate no obvious split point of time. For all the subsequent models in this research, year of decision is first included as independent variable and then deleted due to insignificance; the Pearson residuals vs. year and deviance residuals vs. year plots indicate no obvious division of time. Thus, this study does not divide the data into multiple time periods.

[9] The deviance and Pearson goodness-of-fit statistics indicate that the model does not fit well ($p<0.05$). The model does fit well after inclusion of representation types as independent variables.

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the strength of individuals, businesses, and the U.S. government are 1, 2, and 3 respectively. The assumption is not necessarily an approximation of reality.

Table 4.15

Logistic Regression Estimates for the Likelihood of Success in Trial Courts

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	0.4865	0.8898	0.5845	
Plaintiff Strength	-1.0439	0.1647	<0.0001	0.352
Defendant Strength	0.7202	0.2347	0.0021	2.055
Income Tax Issue	-0.0214	0.2996	0.9431	0.979
Procedure and Administration Issue	0.2094	0.2946	0.4772	1.233
District Court	0.4224	0.2417	0.0805	1.526
Claims Court	0.1329	0.2187	0.5434	1.142

Note: Dependent Variable = Verdict. Model $p<0.0001$, Max-rescaled R-Square[10]=0.1910.

To take into consideration that the party strength assumption might not follow reality, this inquiry uses dummy variables for different litigation parties to reexamine the data. The results are illustrated in Tables 4.16 and 4.17.[11] Holding all other variables constant, individual plaintiffs have significantly higher chances of winning a case than the U.S. government plaintiff ($p=0.0012$) and business plaintiffs ($p<0.0001$). Business and the U.S. government plaintiffs' chances of winning a case do not differ significantly. The plaintiff has a marginally significantly lower chance of winning a case if the

[10] Pseudo-R-Square is an Aldrich and Nelson's coefficient which serves as an analog to the squared contingency coefficient, with an interpretation like R-square. Its maximum is less than 1. It may be used in either dichotomous or multinomial logistic regression. The Max-rescaled R-square adjusts the pseudo R-square to the full range of 0.0 to 1.0. Both values are a rough approximation of the explanatory power of the model (Hosmer & Lemeshow 2000).

[11] The deviance and Pearson goodness-of-fit statistics indicate that the models are not good fits ($p<0.05$). However, the models do fit well after inclusion of representation types as independent variables.

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defendant is an individual or a business than when the defendant is the U.S. government ($0.05<p<0.10$); a plaintiff's chance of winning does not differ significantly when the defendant is an individual than when the defendant is a business.

Table 4.16

Logistic Regression Estimates for the Likelihood of Success in Trial Courts (Individual vs. Government and Business vs. Government)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-0.4362	0.7111	0.5396	
Individual Plaintiff	2.0468	0.6336	0.0012	7.743
Business Plaintiff	1.0303	0.6581	0.1175	2.802
Individual Defendant	-1.3358	0.7020	0.0571	0.263
Business Defendant	-1.0308	0.5973	0.0844	0.357
Income Tax Issue	-0.0354	0.3002	0.9060	0.965
Procedure and Administration Issue	0.1936	0.2991	0.5174	1.214
District Court	0.4588	0.2491	0.0655	1.582
Claims Court	0.1196	0.2241	0.5936	1.127

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1922.

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Table 4.17

Logistic Regression Estimates for the Likelihood of Success in Trial Courts (Individual vs. Business)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	0.3245	0.7469	0.6639	
Business Plaintiff	-1.0113	0.1922	<0.0001	0.364
The U.S. government Plaintiff	-1.9196	0.6295	0.0023	0.147
Business Defendant	0.2557	0.4767	0.5917	1.291
The U.S. government Defendant	1.2848	0.6955	0.0647	3.614
Income Tax Issue	-0.0363	0.2995	0.9035	0.964
Procedure and Administration Issue	0.1912	0.2980	0.5212	1.211
District Court	0.4478	0.2484	0.0714	1.565
Claims Court	0.1169	0.2239	0.6017	1.124

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1918.

Logistic Regression Results for H_{a5} (after Inclusion of Representation Types) and H_{a6}. The above logistic analysis for trial court cases is contrary to Party Capability Theory. The results tend to support that individuals have comparative advantages in litigation over businesses and the U.S. government. Businesses and the U.S. government have about the same strength in litigation. The results could be due to the omission of representation type in the logistic models. This study further introduces representation type into the logistic models. By applying Heckman's correction to take care of self-selection bias, this inquiry also indirectly considers the influence of amounts in disputes on case results.

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Table 4.18 reports the comparison of lawyer vs. pro se representation.[12] After control for the representation type and indirectly control of the amount in dispute, the signs of plaintiff and defendant strength variables are still contrary to the expected direction but are no longer significant. Opposite to the general belief that lawyer representation holds an advantage compared to pro se representation, the signs of plaintiff and defendant representation variables indicate that lawyer representation reduces litigants' winning possibilities in comparison with pro se representation. In other words, a lawyer represented plaintiff has a significantly lower chance of winning a case than pro se plaintiff ($p>0.0009$). Although to an insignificant level, the sign of defendant representation type indicates that a defendant is better off pro se than with lawyer representation. In addition, plaintiffs using the U.S. Court of Federal Claims have significantly higher chances of winning than plaintiffs using the U.S. Tax Court ($p>0.0375$).

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[12] The Pearson residuals vs. representation types and deviance residuals vs. representation types plots do not show obvious evidence of deviation from homogeneity between different representation types. The above procedure is also run for Federal Appellate Court and U.S. Supreme Court cases with the plots showing no obvious deviation from homogeneity.

The opponent parties' representation type interaction, litigant parties' type and representation type interactions are all insignificant and therefore are deleted from the model. The above procedure is also run for Federal Appellate Court and U.S. Supreme Court cases with no significant results.

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Table 4.18

Logistic Regression Estimates for Influence of Representation Type on Party Success (Trial Courts: Lawyer vs. Pro Se)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-3.3250	5.1298	0.5159	
Plaintiff Strength	-0.5102	0.6777	0.4515	0.600
Defendant Strength	0.5902	0.6321	0.3504	1.804
Income Tax Issue	-0.0242	0.5204	0.9629	0.976
Procedure and Administration Issue	-0.0727	0.4853	0.8810	0.930
District Court	0.6302	0.3428	0.0660	1.878
Claims Court	0.5942	0.2856	0.0375	1.812
Plaintiff (Lawyer Representation)	-0.9557	0.2882	0.0009	0.385
Defendant (Lawyer Representation)	3.5993	4.2923	0.4017	36.571

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1820.

Because party strength assumption does not necessarily resemble reality, plaintiff and defendant strength variables are substituted by dummy variables for litigant parties and the model for comparison of lawyer vs. pro se representation is recalculated. The results are reported in Tables 4.19 and 4.20. After control for representation types and indirect control of amounts in dispute, the plaintiff chance of winning does not differ significantly across plaintiff and defendant types. Furthermore, three out of the four defendant dummy variables have the expected sign. Again, contrary to general belief, the lawyer represented plaintiff has a significantly lower chance of winning than pro se plaintiff ($p<0.01$). Although insignificant, a defendant is better off pro se than with attorney representation.

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Table 4.19

Logistic Regression Estimates for Influence of Representation Type on Party Success (Lawyer vs. Pro Se, Individual vs. Government, and Business vs. Government) (Trial Courts)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-3.4302	4.4248	0.4382	
Individual Plaintiff	1.462	1.7640	0.4156	4.205
Business Plaintiff	1.3116	1.6479	0.4261	3.712
Individual Defendant	1.1723	2.0167	0.5610	3.229
Business Defendant	-1.4110	1.3057	0.2799	0.244
Income Tax Issue	-0.1980	0.5470	0.7174	0.820
Procedure and Administration Issue	-0.1567	0.4991	0.7535	0.855
District Court	0.6762	0.3508	0.0539	1.966
Claims Court	0.5491	0.2865	0.0553	1.732
Plaintiff (Lawyer Representation)	-0.9710	0.2893	0.0008	0.379
Defendant (Lawyer Representation)	3.3150	4.0639	0.4147	27.523

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1970.

Table 4.20

Logistic Regression Estimates for Influence of Representation Type on Party Success (Trial Courts: Lawyer vs. Pro Se, Individual vs. Business)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	0.9251	3.3831	0.7845	
Business Plaintiff	-0.0626	0.7597	0.9343	0.939
Government Plaintiff	-1.9657	1.9074	0.3028	0.140
Business Defendant	-2.8517	1.6969	0.0928	0.058
Government Defendant	-1.6221	2.1305	0.4464	0.197
Income Tax Issue	-0.2934	0.5386	0.5859	0.746
Procedure and Administration Issue	-0.2372	0.4898	0.6281	0.789
District Court	0.5732	0.3376	0.0896	1.774
Claims Court	0.4762	0.2776	0.0863	1.610
Plaintiff (Lawyer Representation)	-0.7261	0.2706	0.0073	0.484
Defendant (Lawyer Representation)	1.7397	2.6197	0.5066	5.696

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1901.

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To further investigate the influence of representation type on case results, decisions involving only solo or firm representations are selected for additional analysis. Logistic regression results are depicted in Table 4.21. Plaintiff and defendant strength variables still have opposite signs than expected but are at insignificant levels. Surprisingly, group represented plaintiff has a significantly lower chance of winning than solo represented plaintiff (p>0.0005). A plaintiff's chance of winning is also higher when confronting a group represented defendant as contrasted to a solo represented defendant. However, this result is at an insignificant level.

Table 4.21

Logistic Regression Estimates for Influence of Representation Type on Party Success (Trial Courts: Solo vs. Group)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	0.4736	8.4519	0.9553	
Plaintiff Strength	-0.6366	2.1030	0.7621	0.529
Defendant Strength	0.2214	0.8715	0.7995	1.248
Income Tax Issue	0.5207	1.1817	0.6595	1.683
Procedure and Administration Issue	0.0410	0.4042	0.9192	1.042
District Court	0.6598	0.3844	0.0861	1.934
Claims Court	0.5087	0.3569	0.1541	1.663
Plaintiff (Group Representation)	-0.8892	0.2568	0.0005	0.411
Defendant (Group Representation)	0.2291	0.2996	0.4446	1.257

Note: Dependant Variable=Verdict. Model p<0.0001, Max-rescaled R-Square=0.1447.

Tables 4.22 and 4.23 report solo vs. firm representation results using dummy variables for various litigant types instead of litigant strength variables. The results are consistent with the conclusions using litigant strength variables. Although the plaintiff type variables still have unexpected signs, they are at insignificant levels. All the

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defendant type variables have expected signs. A plaintiff has a lower chance of winning when confronting a stronger defendant than a weaker defendant, but it is at an insignificant level of significance. Again, group represented plaintiff does significantly worse than solo represented plaintiff ($p<0.001$). A defendant seems to be better off using solo representation instead of group representation, although the effect is insignificant.

Table 4.22

Logistic Regression Estimates for Influence of Representation Type on Party Success (Trial Courts: Solo vs. Group, Individual vs. Government, and Business vs. Government)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-5.0841	5.7990	0.3790	
Individual Plaintiff	11.8371	7.8009	0.1292	>999.999
Business Plaintiff	7.9873	6.2539	0.2015	>999.999
Individual Defendant	6.7065	6.1086	0.2723	817.690
Business Defendant	2.4692	5.6469	0.6619	11.813
Income Tax Issue	-1.3557	1.5754	0.3895	0.258
Procedure and Administration Issue	-0.0920	0.4120	0.8233	0.912
District Court	0.7296	0.3888	0.0606	2.074
Claims Court	0.5319	0.3586	0.1380	1.702
Plaintiff (Group Representation)	-0.9252	0.2597	0.0004	0.396
Defendant (Group Representation)	0.1551	0.3046	0.6106	1.168

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1682.

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Table 4.23
Logistic Regression Estimates for Influence of Representation Type on Party Success
(Trial Courts: Solo vs. Group, Individual vs. Business)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	12.1512	8.1171	0.1344	
Business Plaintiff	-3.7876	2.8003	0.1762	0.023
Government Plaintiff	-10.5990	6.3522	0.0952	<0.001
Business Defendant	-3.9430	2.1735	0.0697	0.019
Government Defendant	-5.4415	4.1659	0.1915	0.004
Income Tax Issue	-1.4326	1.5600	0.3584	0.239
Procedure and Administration Issue	-0.0949	0.4066	0.8154	0.909
District Court	0.6365	0.3792	0.0932	1.890
Claims Court	0.4832	0.3523	0.1701	1.621
Plaintiff (Group)	-0.8687	0.2547	0.0006	0.420
Defendant (Group)	0.1179	0.2987	0.6931	1.125

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1654.

Further Analysis of Pro Se Plaintiffs in Trial Courts. Pro se plaintiffs are predominantly individuals. Out of the 318 Tax Court cases with available disputed amounts, 159 are initiated by pro se litigants. For the 159 cases with pro se plaintiffs, 156 of the pro se plaintiffs are coded as individuals. For the remaining three cases with pro se plaintiffs coded as businesses, one case involved a trustee representing a trust[13], and the other two cases had individual plaintiffs whose involvement in the suit was directly related to their roles as an officer or owner of the business. Thus, the above three cases'

[13] It is well established that a corporation (including a trust) must appear through an attorney. Except in extraordinary circumstances, corporations cannot be represented by lay persons (783 F.2d 771, 773; 65 App. D.C. 255; 82 F.2d 861,863).

In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law. The words "the parties," as used in the statute, mean the parties in interest -- the real, beneficial owners of the claims asserted in the suit. By implication, it excludes agents in fact and confines the representation, where the party whose rights are actually involved does not appear in person, to attorneys and counselors at law (65 App. D.C. 255).

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plaintiffs are coded according to their organizational affiliation and not as individuals. This study has collected 153 U.S. District Court cases with available disputed amounts. Among these decisions, 27 are initiated by pro se individual plaintiffs. For the 166 U.S. Court of Federal Claims cases with amounts in dispute, 37 have pro se plaintiffs. A total of 35 pro se plaintiffs are coded as individuals. The remaining two are coded as businesses according to the individual plaintiffs' organizational affiliation. The above results are summarized in Table 4.24,

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Table 4.24
Comparison of Trial Court Cases
(Pro Se vs. Lawyer or Undisclosed Representation)

Court	No. of Cases with Pro Se Plaintiffs	Issues Involved		No. of Cases with Lawyer or Undisclosed Representation Plaintiffs	Issues Involved	
Tax Court	159	Income Taxes	107	159	Income Taxes	99
		Procedure and Administration	49		Procedure and Administration	42
		Employment Taxes	3		Estate and Gift Taxes	15
					Miscellaneous Excise Taxes	2
					Employment Taxes	1
District Court	27	Procedure and Administration	25	126	Procedure and Administration	98
					Income Taxes	18
		Employment Taxes	2		Estate and Gift Taxes	4
					Employment Taxes	4
					Miscellaneous Excise Taxes	2
Claims Court	37	Procedure and Administration	27	129	Procedure and Administration	56
					Income Taxes	49
		Income Taxes	10		Employment Taxes	12
					Estate and Gift Taxes	6
					Miscellaneous Excise Taxes	6

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For the 159 Tax Court cases with pro se plaintiffs, 107 involve income tax issues, three are about employment tax issues, and 49 about procedure and administration concerns. Of the 159 Tax Court cases with lawyer represented plaintiffs or with plaintiffs' representation type undisclosed, 99 are about income tax issues, 42 are about procedure and administration concerns, 15 are about estate and gift taxes, two are about miscellaneous excise taxes, and one is about employment tax. For the 27 U.S. District Court cases with pro se plaintiffs, 25 involve procedure and administration concerns and the remaining two are about employment taxes. Out of the 126 U.S. District Court cases with lawyer represented plaintiffs or with plaintiffs' representation type undisclosed, 98 involve procedure and administration concerns, 18 involve income tax issues, four are estate and gift tax cases, four are employment tax cases, and two are miscellaneous excise tax cases. Of the 37 U.S. Court of Federal Claims cases with pro se plaintiffs, 27 are procedure and administration disputes and 10 are income tax cases. For the 129 U.S. Court of Federal Claims cases with attorney represented plaintiffs or with plaintiffs' representation unavailable, 56 are procedure and administration cases, 49 are income tax cases, 12 are employment tax cases, six are about estate and gift taxes, and six about miscellaneous excise taxes. In sum, pro se plaintiffs appear in trial courts about 98% of the time for income tax or procedure and administration issues for the sample under study.

Pro se plaintiffs in the Tax Court most often sue over §§61, 72, 104, 151, 152, 162, 274, 6330, and 7491; while plaintiffs with lawyer or undisclosed representation in the Tax Court most often contest §§162, 165, 170, 183, 6653, and 7430. Pro se plaintiffs in U.S. District Courts most often disagree on §§6330, 7421, and 7422; while plaintiffs

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with attorney or undisclosed representation in U.S. District Courts most often clash on §§6321, 6322, 6323, 6331, 6672, and 7433. The two most often disputed Sections by pro se plaintiffs in the U.S. Court of Federal Claims are §§6511 and 7422. Also, these sections are the most disputed Sections by plaintiffs with lawyer or undisclosed representation. Therefore, except in the U.S. Court of Federal Claims, the most often disputed Sections by pro se plaintiffs are usually different from the most often contested Sections by plaintiffs with attorney or undisclosed representation. Table 4.25 displays the most often disputed IRC Sections for trial court cases with available disputed amounts.

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Table 4.25

Most Often Disputed IRC Sections for Trial Court Cases
(Pro Se vs. Lawyer or Undisclosed Representation)

Court	Cases with Pro Se Plaintiffs		Cases with Lawyer or Undisclosed Representation Plaintiffs	
	IRC Section	Times Appearing as Major Issue	IRC Section	Times Appearing as Major Issue
Tax Court	§104	5	§170	5
	§274	6	§6653	7
	§7491	6	§7430	7
	§151	6		
	§72	9	§165	8
	§6330	11		
	§61	11	§183	11
	§152	12		
	§162	15	§162	12
District Court	§6330	4	§6331	6
			§6322	7
	§7421	4	§7433	8
			§6672	10
	§7422	5	§6323	11
			§6321	11
Claims Court	§7422	5	§6532	5
			§6402	5
			§6511	8
	§6511	9	§3121	8
			§7422	8
			§6672	10

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Table 4.26 displays the amount in dispute for trial court cases. Plaintiffs who choose pro se usually have a lower amount in dispute compared with plaintiffs who choose to hire attorney(s) or whose representation information is unavailable. The median amount in dispute for pro se plaintiffs in the Tax Court is $11,462.56 while it is $100,000 for plaintiffs with lawyer or undisclosed representation. The median amounts in dispute for plaintiffs with pro se and lawyer or undisclosed representation in U.S. District Courts are $5,142.10 and $96,123.84, respectively. The medians are $10,182.03 and $427,640.67, respectively, in the U.S. Court of Federal Claims.

Table 4.26

Amount in Dispute for Trial Court Cases
(Pro Se vs. Lawyer or Undisclosed Representation)

Court	Cases with Pro Se Plaintiffs			Cases with Lawyer or Undisclosed Representation Plaintiffs		
	High	Low	Median	High	Low	Median
Tax Court	$17,732,639	$398	$11,462.56	$551,510,819	$298	$100,000
District Court	230,000	500	5,142.10	61,649,000	500	96,123.84
Claims Court	2,900,000	571.34	10,182.03	140, 314.41	569.93	427,640.67

In summary, choosing pro se representation is quite common for plaintiffs in the U.S. Tax Court. For the 318 Tax Court cases with amounts in dispute available, half are initiated by pro se plaintiffs. Pro se representation is much less popular in U.S. District Courts and the U.S. Court of Federal Claims. 18% plaintiffs in U.S. District Courts and 22% in the U.S. Court of Federal Claims choose to represent themselves. Pro se plaintiffs try to settle income tax or procedure and administration issues in trial courts 98% of the

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time. Trial court cases with pro se plaintiffs have a much lower median amount in dispute than cases with attorney or undisclosed representation.

Further Analysis of Solo Represented Plaintiffs in Trial Courts. For Tax Court cases where the amount in dispute is available, 103 are initiated by solo represented plaintiffs and 53 are initiated by group represented plaintiffs. Individual plaintiffs use solo representation three times as often as group representation. On the other hand, business plaintiffs use group representation more often than solo representation. A total of 54 U.S. District Court cases are initiated by solo represented plaintiffs and 46 are initiated by group represented plaintiffs. Individual plaintiffs use solo representation twice as often as group representation while business and the federal government plaintiffs use group representation more often than solo representation. A total of 70 U.S. Court of Federal Claims cases are initiated by solo represented plaintiffs and 49 by group represented plaintiffs. Individual plaintiffs use solo representation twice as often as group representation. Business plaintiffs use group representation almost as often as solo representation. Specifically, in trial courts, individual plaintiffs tend to choose solo over group representation while business and the federal government plaintiffs tend to choose group over solo representation.

This research does not find a distinct difference between solo and group represented plaintiffs in regard to what kind of issue they brought into the trial courts. In the Tax Court, solo represented plaintiffs most often sue over §§162, 165, 183, 6653, and 7430 while group represented plaintiffs most often sue over §§162 and 183. In U.S. District Courts, the most often disputed Sections by solo represented plaintiffs are §§6321 and 7433 while they are §§6321, 6322, 6323, and 6672 for group represented

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plaintiffs. Solo represented plaintiffs in the U.S. Court of Federal Claims most often disagree on §§6511, 6672, and 7422. Group represented plaintiffs bring to the U.S. Court of Federal Claims a wide range of issues and they do not focus on any specific IRC Section. The above results are summarized in Table 4.27 and 4.28.

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Table 4.27

Comparison of Trial Court Cases (Solo vs. Group Representation)

Court	No. of Cases with Solo Represented Plaintiffs	Issues Involved		No. of Cases with Group Represented Plaintiffs	Issues Involved	
Tax Court	103 in Total. 90 by Individuals; 13 by Businesses.	Income Taxes	61	53 in Total. 31 by Individuals; 22 by Businesses.	Income Taxes	35
		Procedure and Administration	29		Procedure and Administration	13
		Estate and Gift Taxes	11		Estate and Gift Taxes	4
		Employment Taxes	1		Miscellaneous Excise Taxes	1
		Miscellaneous Excise Taxes	1			
District Court	54 in Total. 29 by Individuals; 15 by Businesses; 10 by Government.	Procedure and Administration	42	46 in Total; 13 by Individuals; 19 by Businesses; 14 by Government.	Procedure and Administration	35
		Income Taxes	6		Income Taxes	8
		Employment Taxes	4		Estate and Gift Taxes	2
		Estate and Gift Taxes	1		Miscellaneous Excise Taxes	1
		Miscellaneous Excise Taxes	1			
Claims Court	70 in Total, 31 by Individuals; 39 by Businesses.	Procedure and Administration	35	49 in Total; 15 by Individuals; 34 by Businesses.	Income Taxes	25
		Income Taxes	22		Procedure and Administration	15
		Estate and Gift Taxes	5		Employment Taxes	5
		Employment Taxes	5		Miscellaneous Excise Taxes	3
		Miscellaneous Excise Taxes	3		Estate and Gift Taxes	1

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Table 4.28

Most Often Disputed IRC Sections for Trial Court Cases
(Solo vs. Group Representation)

Court	Cases with Solo Represented Plaintiffs		Cases with Group Represented Plaintiffs	
	IRC Section	No. of Times Appearing as Major Issue	IRC Section	No. of Times Appearing as Major Issue
Tax Court	§7430	5	§162	4
	§6653	6	§183	4
	§183	7		
	§162	8		
	§165	8		
District Court	§6321	5	§6672	5
			§6321	5
	§7433	5	§6322	5
			§6323	7
Claims Court	§6511	4	No IRC Section Is Mentioned More Than 3 Times	
	§7422	5		
	§6672	6		

Table 4.29 displays the high, low, and median amount in disputes for solo and group represented plaintiffs. Group represented plaintiffs have a median amount in dispute about two times larger than solo represented plaintiffs.

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Table 4.29

Amount in Dispute for Trial Court Cases
(Solo vs. Group Representation)

Court	Cases with Solo Represented Plaintiffs			Cases with Group Represented Plaintiffs		
	High	Low	Median	High	Low	Median
Tax Court	$23,213,702	$644	$70,097.35	$551,510,819	$1,545	$301,425.17
District Court	25,478,773	1,000	78,036.36	61,649,000	2,000	218,015.50
Claims Court	63,792,209	2,352.32	463,010.27	200,328,350	569.93	1,446,176

Whenever the choices are of solo or group representation, individuals tend to choose solo representation while businesses and the federal government tend to choose group representation. Even though there are no distinct differences between solo and group represented plaintiffs in regard to what kind of issue they bring to trial courts, these two groups of plaintiffs focus on different IRC Sections. Solo represented plaintiffs have a much lower median amount in dispute compared with group represented plaintiffs.

Conclusion for Trial Court Cases-Research Questions Five and Six

The fifth and sixth alternative hypotheses presented for investigation in this study are:

H_{a5}: Different groups of litigants have unequal success rates at litigation for federal tax issues, with the United States government being the most successful entity, businesses being the second, and individuals being the least successful.

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H_{a6}: The three representation types before the courts (pro se, solo, and group representation) have significant influence on the success rates of individuals, businesses, and the federal government in litigation.

Logistic regression results do not support H_{a5}. Without control for representation types, the results indicate that the individual plaintiff has a significant higher chance of winning than business or the U.S. government as plaintiff. Business and the U.S. government plaintiffs do not differ significantly in chances of winning. Defendant types do not have significant influence on case results. After control for representation types, plaintiff and defendant types both are not significantly correlated with case results.

Contrary to general belief, holding all other conditions constant, pro se plaintiffs perform significantly better than lawyer represented plaintiffs; solo represented plaintiffs significantly outperform firm represented plaintiffs. Defendant representation types do not significantly contribute to case results. Overall, H_{a6} is not rejected.

Test Results for Federal Appellate Court Cases

Success Rates Analysis. The beginning point of the analysis is to examine the appellant success rate and overall success rate for each of the three categories of litigants. The results are displayed in Tables 4.30 and 4.31. There are wide disparities in the relative success of the different classes of appellants in the courts of appeals, and those differences are quite consistent with the expectations of Party Capabilities Theory. The federal government is successful in 60.4% of its appeals and has an overall rate of success (combined success rate as appellant and as appellee) of 79.7%. Individuals and businesses are successful in their appeals for 16.1%, and 23.4%, respectively. The overall success rates for individuals and businesses are 17.9%, and 32.4%, respectively. In total,

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the United States government is more than twice as successful as individuals and businesses.

Table 4.30

Winning and Losing by Nature of Party (Appellate Courts)

	Respondent							
	Individual		Business		U.S. Gov.		Total	
Appellant	%	N	%	N	%	N	%	N
Individual	0	1	28.6	14	15.8	450	16.1	465
Business	71.4	7	11.1	9	22.1	172	23.4	188
U.S. Gov.	67.4	46	53.3	45	NA	NA	60.4	91
Total	66.7	54	42.6	68	17.5	622	23.4	744

Table 4.31

Success Rates by Nature of Party (Appellate Courts)

Type of Party	Success Rate as Appellant	When Respondent, Opponents' Success Rate	=	Net Advantage	Combined Success Rate as Appellant and Respondent
Individual	16.1	66.7	=	-50.6	17.9
Business	23.4	42.6	=	-19.2	32.4
U.S. Gov.	60.4	17.5	=	42.9	79.7

As mentioned earlier, the net advantage index may be a better indicator of litigation success than the plaintiff success rate or overall success rate. It is unaffected by the relative frequency that a given class of litigant appears as an appellant rather than as an appellee. Net advantage for each class of litigant is displayed in Table 4.31. The results reinforce the picture suggested by the plaintiff success rate and overall success rate. Only the federal government enjoys a positive net advantage of 42.9%. Businesses follow the federal government and have a negative net advantage of 19.2%. Individuals

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suffer a steep negative net advantage of 50.6%. Direct comparisons of litigation parties using only cases in which the two parties under comparison directly confront each other affirm the above results. The direct comparison results are displayed in Table 4.32. Individuals suffer tremendous negative net advantages in comparison with either businesses (-42.8%) or the federal government (-51.6%). The U.S. government enjoys a strong positive net advantage compared with individuals (51.6%) and businesses (31.2%).

Table 4.32

Net Advantage for Different Combination of Parties (Appellate Courts)

Combination of Parties	Net Advantage
Individual vs. Business	Business by 42.8%
Individual vs. U.S. Gov.	U.S. Gov. by 51.6%
Business vs. U.S. Gov.	U.S. Gov. by 31.2%

Logistic Regression Results for H_{a5} without Considering Representation Types.

To provide more systematic analysis, this study uses the logistic regression model. The results are reported in Table 4.33. The dependant variable is appellant success, coded as 1 if the appellant wins and 0 if the appellee wins. Overall, the model performs well. The full model is significant at the 0.0001 level. Most of the independent variables have a statistically significant relationship with appellant success. However, the signs of the party strength variables are not in the predicted direction. Appellant strength is significantly negatively related with appellant success ($p>0.0135$), and appellee strength is significantly positively related with appellant success ($P<0.0001$). The logistic model actually suggests that the presumed weaker party significantly outperforms the presumed

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stronger party. Income tax and procedure and administrative issues have a strong positive association with plaintiff successes compared with other issues. Different types of lower forums do not influence case results significantly.

Table 4.33

Logistic Regression Estimates for the Likelihood of Success in Appellate Courts

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-1.2615	0.8536	0.1394	
Appellant Strength	-0.4346	0.1759	0.0135	0.648
Appellee Strength	0.8241	0.2092	<0.0001	2.280
Income Tax Issue	0.8101	0.2971	0.0064	2.248
Procedure and Administration Issue	0.7877	0.2955	0.0077	2.198
District Court	0.4225	0.2175	0.0521	1.526
Claims Court	0.0668	0.4266	0.8755	1.069

Note: Dependent Variable = Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1740.

As this study previously mentioned, party strength assumption is arbitrary and might mislead test results. Test results, after using party dummy variables to substitute party strength variables, are displayed in Tables 4.34 and 4.35. Individual appellants significantly outperform the federal government appellants ($p>0.0304$) and individual appellees significantly outperform the federal government appellees ($p>0.0026$). Business and individual appellants' success probabilities do not differ significantly. However, business appellees significantly underperform individual appellees ($p>0.0288$). Business and the federal government litigants comparison does not show significant results, either as an appellant or as an appellee. Compared with other disputes, income tax or procedure

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and administration issues give the appellant a significantly better opportunity of winning ($p<0.01$). Lower forum type is not a significant factor in the appellant's success pattern.

Table 4.34

Logistic Regression Estimates for the Likelihood of Success in Appellate Courts (Individual vs. Government and Business vs. Government)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-0.2854	0.5316	0.5914	
Individual Appellant	1.0453	0.4829	0.0304	2.844
Business Appellant	0.6555	0.4787	0.1709	1.926
Individual Appellee	-1.5590	0.5177	0.0026	0.210
Business Appellee	-0.6328	0.4548	0.1642	0.531
Income Tax Issue	0.8096	0.2993	0.0068	2.247
Procedure and Administration Issue	0.8114	0.2995	0.0067	2.251
District Court	0.3977	0.2252	0.0774	1.488
Claims Court	0.0485	0.4287	0.9100	1.050

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1746.

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Table 4.35

Logistic Regression Estimates for the Likelihood of Success in Appellate Courts (Individual vs. Business)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-0.7486	0.6049	0.2159	
Business Appellant	-0.3891	0.2246	0.0832	0.678
The U.S. government Appellant	-1.0149	0.4817	0.0351	0.362
Business Appellee	0.8647	0.3957	0.0288	2.374
The U.S. government Appellee	1.5127	0.5162	0.0034	4.539
Income Tax Issue	0.8031	0.2988	0.0072	2.233
Procedure and Administration Issue	0.8054	0.2989	0.0071	2.238
District Court	0.3947	0.2247	0.0790	1.484
Claims Court	0.0479	0.4284	0.9109	1.049

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.1745.

Logistic Regression Results for H_{a5} (after Inclusion of Representation Types) and H_{a6}. The above analysis does not account for representation influence on appellant success. As displayed in Table 4.36, further clarification of the results by adding representation type into the model shows a different conclusion. The party strength variables still have the unexpected sign. However, only the appellee strength variable is significant ($p>0.0039$). The presumed weaker appellees significantly outperform the presumed stronger appellees. Compared with other issues, except procedure and administration disputes, income tax issues are associated with significantly higher appellants' success probabilities ($p>0.0277$). Despite of the unexpected signs, appellant and appellee representation types (pro se vs. lawyer) do not significantly correlate with case results.

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Table 4.36

Logistic Regression Estimates for Influence of Representation Type on Party Success (Appellate Courts: Lawyer vs. Pro Se)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-5.9914	7.4327	0.4202	
Appellant Strength	-0.1510	0.4650	0.7453	0.860
Appellee Strength	1.1060	0.3833	0.0039	3.022
Income Tax Issue	1.2432	0.5648	0.0277	3.467
Procedure and Administration Issue	0.8034	0.5900	0.1732	2.233
District Court	0.5448	0.3625	0.1328	1.724
Claims Court	0.5144	0.8406	0.5406	1.673
Appellant (Lawyer Representation)	-0.2616	0.5894	0.6571	0.770
Appellee (Lawyer Representation)	3.3231	7.1988	0.6444	27.745

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.2482.

Tables 4.37 and 4.38 display logistic regression results after substituting party strength variables with party dummy variables. First, the three parties under investigation do not have significantly different success probabilities as appellants. However, individual appellees significantly outperform business and the federal government appellees ($p<0.05$). But no significant difference is found between business and the federal government appellees. Overall, two out of the eight party dummy variables have the expected signs. Appellant and appellee representation types (pro se vs. lawyer) are not significantly correlated with appellants' success probabilities, even though they have unexpected signs.

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Table 4.37

Logistic Regression Estimates for Influence of Representation Type on Party Success (Lawyer vs. Pro Se, Individual vs. Government, and Business vs. Government) (Appellate Courts)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-3.9524	7.3014	0.5883	
Individual Appellant	0.9787	1.1059	0.3762	2.661
Business Appellant	1.0378	0.8987	0.2482	2.823
Individual Appellee	-1.8820	0.9066	0.0379	0.152
Business Appellee	0.0757	0.9184	0.9343	1.079
Income Tax Issue	1.1294	0.6705	0.0921	3.094
Procedure and Administration Issue	0.7155	0.6757	0.2896	2.045
District Court	0.4128	0.3817	0.2795	1.511
Claims Court	0.4490	0.8564	0.6001	1.567
Appellant (Lawyer Representation)	-0.2527	0.5882	0.6674	0.777
Appellee (Lawyer Representation)	3.4207	7.1988	0.6347	30.592

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.2592.

Table 4.38

Logistic Regression Estimates for Influence of Representation Type on Party Success (Appellate Courts: Lawyer vs. Pro Se, Individual vs. Business)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-5.8486	11.8617	0.6220	
Business Appellant	0.0528	0.8066	0.9478	1.054
Government Appellant	-0.9996	1.1104	0.3680	0.368
Business Appellee	1.9907	0.7661	0.0094	7.321
Government Appellee	1.9025	0.9096	0.0365	6.703
Income Tax Issue	1.1370	0.6719	0.0906	3.117
Procedure and Administration Issue	0.7157	0.6767	0.2903	2.046
District Court	0.4194	0.3829	0.2734	1.521
Claims Court	0.4554	0.8581	0.5956	1.577
Appellant (Lawyer Representation)	-0.2633	0.5916	0.6563	0.769
Appellee (Lawyer Representation)	4.4036	11.7935	0.7089	81.748

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.2594.

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Cases involve only solo or group representations are selected for comparison of solo vs. firm representation influence on case results. According to Table 4.39, party strength variables have signs that are opposite of their expected signs. Appellee strength is positively associated with appellants success possibilities ($p>0.0411$). The stronger the appellee is, then, the higher chance that the appellant wins the case. Even though the effect is not statistically significant, group represented appellants have higher chances of winning than solo represented appellants. On the other hand, group represented appellees underperform solo represented appellees ($p>0.0891$). Issues involved and forums used do not contribute significantly to case results.

Table 4.39

Logistic Regression Estimates for Influence of Representation Type on Party Success (Appellate Courts: Solo vs. Group)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-3.7891	3.3656	0.2602	
Appellant Strength	-0.8323	0.9072	0.3589	0.435
Appellee Strength	1.4905	0.7297	0.0411	4.439
Income Tax Issue	1.5615	0.9861	0.1133	4.766
Procedure and Administration Issue	1.7406	1.4526	0.2308	5.700
District Court	0.6410	0.3836	0.0947	1.898
Claims Court	0.3802	0.8585	0.6579	1.463
Appellant (Group Representation)	0.2208	0.3900	0.5714	1.247
Appellee (Group Representation)	0.6919	0.4069	0.0891	1.998

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.2695.

Tables 4.40 and 4.41 report test results after substituting party strength variables with party dummy variables. Three out of the eight party dummy variables have expected

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signs. None of the party dummy variables is significantly associated with case results. For appellants, group representation is positively associated with appellants possibilities of success, but on an insignificant level. On the other hand, appellees are better off with solo rather than group representation, but it is only marginally significant ($0.05<p<0.10$). Consistent with the test results using party strength variables, issues involved and forums used do not significantly influence case results.

Table 4.40

Logistic Regression Estimates for Influence of Representation Type on Party Success (Solo vs. Group, Individual vs. Government, and Business vs. Government) (Appellate Courts)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	-0.3401	1.4908	0.8196	
Individual Appellant	2.3965	2.1343	0.2615	10.985
Business Appellant	1.4120	1.2310	0.2514	4.104
Individual Appellee	4.8413	5.4232	0.3720	126.637
Business Appellee	5.9055	5.0180	0.2393	367.039
Income Tax Issue	3.5994	1.9600	0.0663	36.575
Procedure and Administration Issue	3.3517	2.1638	0.1214	28.550
District Court	0.6380	0.4127	0.1221	1.893
Claims Court	0.3990	0.8896	0.6537	1.490
Appellant (Group Representation)	0.2165	0.3964	0.5850	1.242
Appellee (Group Representation)	0.7367	0.4117	0.0735	2.089

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.2813.

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Table 4.41

Logistic Regression Estimates for Influence of Representation Type on Party Success (Appellate Courts: Solo vs. Group, Individual vs. Business)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	3.7595	6.7546	0.5778	
Business Appellant	-0.5472	1.0728	0.6100	0.579
Government Appellant	-1.7716	1.9255	0.3575	0.170
Business Appellee	1.4101	0.7737	0.0684	4.096
Government Appellee	-2.7178	5.1048	0.5944	0.066
Income Tax Issue	2.6750	1.6958	0.1147	14.512
Procedure and Administration Issue	2.4523	1.8805	0.1922	11.615
District Court	0.4344	0.3926	0.2685	1.544
Claims Court	0.2775	0.8556	0.7457	1.320
Appellant (Group)	0.1768	0.3817	0.6432	1.193
Appellee (Group)	0.6757	0.4072	0.0971	1.965

Note: Dependant Variable=Verdict. Model $p<0.0001$, Max-rescaled R-Square=0.2745.

Further Analysis of Pro Se Appellants in Federal Appellate Courts. Although pro se plaintiffs significantly outperform lawyer represented plaintiffs in trial courts, pro se appellants do not enjoy the same advantage in Federal Appellate Courts. This inquiry further analyzes pro se appellants in Federal Appellate Courts and compares it with trial courts results.

Table 4.42 includes Federal Appellate Court cases that disclose the amount in dispute. This study collected a total of 286 Federal Appellate Court cases with amount in dispute. Only 13% (38 cases) of them are initiated by pro se appellants. As mentioned earlier, 223 (35%) of the 637 trial court cases with available amounts in dispute are started by pro se plaintiffs. Thus, pro se is not as popular a choice for appellants in Federal Appellate Courts as it is for plaintiffs in trial courts.

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In trial courts, pro se plaintiffs try to settle income tax or procedure and administration issues 98% of the time and pro se plaintiffs have a much lower median amount in dispute than cases with attorney or undisclosed representation plaintiffs. According to Tables 4.42 and 4.43, pro se appellants appeal in Federal Appellate Courts 100% of the time for income tax or procedure and administration issues. The median amount in dispute for pro se appellants is only 9% of the amount for other appellants.

As shows in Table 4.44, the most often disputed Section for pro se appellants is §6213, while other appellants most often disagree upon §§104, 6323, 6653, and 6672. Recall that, except in the U.S. Court of Federal Claims, pro se plaintiffs focus on different IRC Sections compared with other plaintiffs in trial courts.

Even though pro se is not as popular among appellants in Federal Appellate Courts as it is among plaintiffs in trial courts, the characteristics of pro se appellants are consistent with those of pro se plaintiffs. However, pro se appellants do not enjoy the same success in Federal Appellate Courts as pro se plaintiffs in trial courts.

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Table 4.42

Comparison of Federal Appellate Court Cases
(Pro Se vs. Lawyer or Undisclosed Representation)

No. of Cases with Pro Se Plaintiffs	Issues Involved		No. of Cases with Lawyer or Undisclosed Representation Plaintiffs	Issues Involved	
38 in Total. All by Individuals.	Procedure and Administration	21	248 in Total. 142 by Individuals; 62 by Businesses; 44 by the Government.	Income Taxes	97
				Procedure and Administration	122
	Income Taxes	17		Estate and Gift Taxes	16
				Employment Taxes	7
				Miscellaneous Excise Taxes	6

Table 4.43

Amount in Dispute for Federal Appellate Court Cases
(Pro Se vs. Lawyer or Undisclosed Representation)

Cases with Pro Se Plaintiffs			Cases with Lawyer or Undisclosed Representation Plaintiffs		
High	Low	Median	High	Low	Median
4,676,578	1,548	13,357.45	85,000,000	772	148,313.63

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Table 4.44

Most Often Disputed IRC Sections for Federal Appellate Court Cases
(Pro Se vs. Lawyer or Undisclosed Representation)

<table>
<tr><th colspan="2">Cases with Pro Se Plaintiffs</th><th colspan="2">Cases with Lawyer or Undisclosed Representation Plaintiffs</th></tr>
<tr><th>IRC Section</th><th>No. of Times Appearing as Major Issue</th><th>IRC Section</th><th>No. of Times Appearing as Major Issue</th></tr>
<tr><td rowspan="4">§6213</td><td rowspan="4">3</td><td>§6653</td><td>7</td></tr>
<tr><td>§6323</td><td>8</td></tr>
<tr><td>§6672</td><td>14</td></tr>
<tr><td>§104</td><td>16</td></tr>
</table>

Further Analysis of Solo Represented Appellants in Federal Appellate Courts. Solo represented plaintiffs significantly outperform group represented plaintiffs in trial courts. However, the same result is not found for solo represented appellants in Federal Appellate Courts. This research further analyzes solo represented appellants and compares the results with solo represented plaintiffs in trial courts.

Individual appellants use solo representation more often than group representation while business and the federal government appellants use group representation more often than solo representation. Group represented appellants bring many more estate and gift tax cases to court than solo represented appellants. Solo and group represented appellants all focus on §§104 and 6672. Solo represented appellants also focus on §§6015, 6321, and 6653 while group represented appellants focus on §§2036 and 6323. The median amount in dispute for solo represented appellants is only 30% of that amount compared to group represented appellants.

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As mentioned before, in trial courts, individuals plaintiffs tend to choose solo representation while businesses and the federal government tend to choose group representation. Solo and group represented plaintiffs focus on different IRC Sections. Solo represented plaintiffs have a much lower median amount in dispute compared with group represented plaintiffs. In Federal Appellate Courts, individual appellants tend to choose solo representation while businesses and the federal government tend to choose group representation. Solo and group represented appellants generally have different tax issues. The median amount in dispute for solo represented appellants is 70% lower than that of group represented appellants. Thus, the general characteristics of solo represented plaintiffs in trial courts are consistent with the general characteristics of solo represented appellants in Federal Appellate Courts. Consequently, it is the judicial forum, not the different characteristics of solo represented plaintiffs, that makes them significantly outperform group represented plaintiffs in trial courts. The above results are summarized in Tables 4.45, 4.46, and 4.47.

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Table 4.45

Comparison of Federal Appellate Court Cases (Solo vs. Group Representation)

No. of Cases with Pro Se Plaintiffs	Issues Involved		No. of Cases with Lawyer or Undisclosed Representation Plaintiffs	Issues Involved	
113 in Total. 84 by Individuals; 22 by Businesses; 7 by the Government.	Procedure and Administration	67	135 in Total. 58 by Individuals; 40 by Businesses; 37 by the Government.	Income Taxes	56
	Income Taxes	41		Procedure and Administration	55
	Estate and Gift Taxes	2		Estate and Gift Taxes	14
	Miscellaneous Excise Taxes	2		Employment Taxes	6
	Employment Taxes	1		Miscellaneous Excise Taxes	4

Table 4.46

Most Often Disputed IRC Sections for Federal Appellate Court Cases
(Solo vs. Group Representation)

Cases with Pro Se Plaintiffs		Cases with Lawyer or Undisclosed Representation Plaintiffs	
IRC Section	No. of Times Appearing as Major Issue	IRC Section	No. of Times Appearing as Major Issue
§6015	4	§6323	5
§6321	4	§2036	6
§6653	4	§6672	10
§6672	4	§104	11
§104	5		

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Table 4.47

Amount in Dispute for Federal Appellate Court Cases
(Solo vs. Group Representation)

Cases with Pro Se Plaintiffs			Cases with Lawyer or Undisclosed Representation Plaintiffs		
High	Low	Median	High	Low	Median
85,000,000	1,791	88,768.7	80,000,000	772	300,000

Conclusion for Appellate Court Cases-Research Questions Five and Six

Without accounting for representation types, individual appellants significantly outperform the federal government appellants, and individual appellees significantly outperform the federal government appellees. Business and individual appellants' success probabilities do not differ significantly. However, individual appellees significantly outperform business appellees. A comparison of business and the federal government litigants does not show significant results, either as an appellant or as an appellee. After taking into consideration representation types (pro se vs. lawyer), the three parties under investigation do not show significantly different success probabilities as appellant. Individual appellees significantly outperform both business and the federal government appellees. Logistic analysis using cases that involve only solo or group representations shows that the three litigant parties do not differ significantly either as an appellant or as an appellee. However, individuals seem to have a limited advantage over businesses and the federal government in appellate courts; businesses and the federal government have about the same power. The results do not support H_{a5}.

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Representation type does not contribute significantly to case results in appellate courts. Litigants seem to be better off via pro se than lawyer representation, but the effect is not significant. For lawyer represented litigants, group represented appellants outperform solo represented appellants and group represented appellees underperform solo represented appellees, but at an insignificant level. H_{a6} is rejected for appellate court cases.

Test Results for U.S. Supreme Court Cases

Table 4.48 presents appellant success rates for the three categories of litigants in the U.S. Supreme Court. Individual appellants are less successful than businesses, which are less successful than the U.S. government (appellant success rate is 20%, 40%, and 78.9% for individuals, businesses, and the U.S. government, respectively). The combined success rates in Table 4.49 resemble the picture (combined success rate is 18.8%, 30.8%, 75.9% for individuals, businesses, and the U.S. government, respectively). Overall, the federal government is twice as successful as businesses in the U.S. Supreme Court, which are in turn twice as successful as individuals.

Table 4.48

Winning and Losing by Nature of Party (the U.S. Supreme Court)

	Respondent							
	Individual		Business		U.S. Gov.		Total	
Appellant	%	N	%	N	%	N	%	N
Individual	NA	NA	NA	NA	20	5	20	5
Business	NA	NA	NA	NA	40	5	40	5
U.S. Gov.	81.8	11	75	8	NA	NA	78.9	19
Total	81.8	11	75	8	30	10	62.1	29

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Table 4.49 shows the net advantage for each category of litigant. The net advantage measure might be a better indicator of litigation success than the raw rates because it is unaffected by the relative frequency with which various classes of litigants appear as an appellant rather than an appellee. If there is a propensity to affirm (or reverse) in the U.S. Supreme Court, this propensity does not affect the net advantage index. The net advantage confirms that the presumed stronger party, most notably the federal government, has greater success compared to individual or business litigants. Only the federal government has a positive net advantage (48.9%), followed by businesses (-35%), whereas the score for individuals is -61.8%.

Table 4.49

Success Rates by Nature of Party (the U.S. Supreme Court)

Type of Party	Success Rate as Appellant	When Respondent, Opponents' Success Rate	=	Net Advantage	Combined Success Rate as Appellant and Respondent
Individual	20.0	81.8	=	-61.8	18.8
Business	40.0	75.0	=	-35.0	30.8
U.S. Gov.	78.9	30.0	=	48.9	75.9

Cases in which different categories of litigants directly face one another are then chosen. Table 4.50 shows the net advantages of various pairings of litigants. In every matchup, the presumed stronger party enjoys a net advantage. The federal government enjoys a net advantage of 62.8% over individuals and 35% over businesses. Individuals versus businesses net advantage is not calculated due to lack of data.

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Table 4.50

Net Advantage for Different Combination of Parties (the U.S. Supreme Court)

Combination of Parties	Net Advantage
Individual vs. Business	NA
Individual vs. U.S. Gov.	U.S. Gov. by 61.8%
Business vs. U.S. Gov.	U.S. Gov. by 35%

Although the analysis of bivariate relationships presented above produced results that are consistent with the thesis that litigant status and strength are significantly related to rates of appellants successes, nevertheless, this thesis can only be provisionally supported until the effects of potential influential variables are examined. Table 4.51 reports the logistic regression results after accounting for tax issues. The full model is only marginally significant ($p>0.0555$). Although insignificant, appellant and appellee strength variables have signs that are different than those expected. That is, the presumed stronger litigant parties have lower chances of winning a case than the presumed weaker litigant parties, but the effect is below the conventional significance level. The federal tax issues involved do not significantly influence case results. Due to data limitations, further analysis using party dummy variables instead of party strength variables is not attempted for Supreme Court cases.

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Table 4.51

Logistic Regression Estimates for the Likelihood of Success in the U.S. Supreme Court

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	2.9483	5.5819	0.5974	
Appellant Strength	-1.4981	1.3102	0.2529	0.224
Appellee Strength	0.4766	1.0830	0.6599	1.611
Income Tax Issue	-1.5909	1.3846	0.2506	0.204
Procedure and Administration Issue	-0.4088	1.3746	0.7662	0.664

Note: Dependent Variable = Verdict. Model p>0.0555, Max-rescaled R-Square=0.3711.

Table 4.52 displays logistic regression results by adding representation type (solo vs. group) into the model. The full model is not significant. Party strength variables still have unexpected signs and are not significant at a conventional level. Issues involved are not significantly correlated with case results either. Group represented litigants seem to underperform solo represented litigants, either as an appellant or as an appellee, although at an insignificant level.

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Table 4.52

Logistic Regression Estimates for Influence of Representation Type on Party Success (the U.S. Supreme Court: Solo vs. Group)

Independent Variable	Estimate	SE	Pr > ChiSq	Odds Ratio
Intercept	3.4792	5.6257	0.5363	
Appellant Strength	-1.5525	1.3098	0.2359	0.212
Appellee Strength	0.3075	1.1063	0.7810	1.360
Income Tax Issue	-2.0608	1.4833	0.1647	0.127
Procedure and Administration Issue	-0.4820	1.4043	0.7314	0.618
Appellant (Group Representation)	-0.6089	2.0243	0.7636	0.544
Appellee (Group Representation)	0.8619	2.0124	0.6684	2.368

Note: Dependant Variable=Verdict. Model p> 0.1762, Max-rescaled R-Square=0.3958.

Although the Sixth Amendment offers litigants the right to self-represent, the Supreme Court cases collected for this study do not involve pro se representation. This study observes a decreased rate of pro se representation when the judicial level ascends from the trial court. As mentioned earlier, for trial court cases, around 34.5% of cases involve pro se litigants. The number decreases to 16.4% for the appellate court cases, and to 0% for the Supreme Court cases.

Conclusion for Supreme Court Cases-Research Questions Five and Six

Notwithstanding that the appellant success rate, combined success rate, and net advantage all show that the federal government is the most successful party in the U.S. Supreme Court, followed by businesses, and individuals are the weakest in litigation, which are in support of Party Capability Theory, logistic regression shows opposite results. Without considering representation types, the presumed stronger litigant parties have a lower chance of winning a case than the presumed weaker litigant parties, but the

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effect is below the conventional significance level. The same results are found after taking into consideration representation types (solo vs. group). H_{a5} is not supported for Supreme Court cases.

Representation type does not contribute significantly to case results in the U.S. Supreme Court. Litigants seem to be better off solo than having group representation, either as an appellant or as an appellee, but the effect is not significant. H_{a6} is rejected for Supreme Court cases.

Comparison with Prior Studies

Prior to the current study, the work that analyzes research questions one through four is Wanner (1974). As discussed in Chapter Two, Wanner (1974) uses trial court records of 1965-1970. Wanner concludes that, for trial court cases in general, organizations make up almost half of the plaintiffs, individuals approximately 42%, and government only constitutes about 9% of the plaintiffs; individuals make up the majority of defendants (67%), organizations follow (26%), and the government is only the defendant less than 6% of the time. In contrast, the current study concludes that for federal tax cases in trial courts, individuals are the majority plaintiff (75.29%), businesses and the federal government only constitute 17.42%, and 7.29% of the plaintiffs, respectively; the federal government is the only defendant in the U.S. Tax Court and the U.S. Court of Federal Claims and it is the defendant in about 75% of the U.S. District Court cases under study. Thus, the most frequent plaintiffs for trial court cases in general are organizations and in trial court federal tax disputes are individuals. The majority defendants for trial court cases in general are individuals and for trial court federal tax disagreement is the federal government. Wanner (1974) finds individuals bring different

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kinds of disputes to the judicial system than do organizations and governments. This is consistent with the current study's result that there is a significant relationship between the type of plaintiff and the type of tax issue being brought to trial courts. Wanner (1974) finds that all categories of defendants most often appear in three types of suits while the current study concludes a significant relationship between the type of defendant and the issue involved.

For the three types of success rate analysis (appellate success rate, combined success rate, and net advantage), the current study reaches more dramatic conclusions than previous researches. According to Table 4.53, the government has the highest appellate success rate, combined success rate and net advantage in the current study. Its net advantage in previous studies ranges from 11.8% to 32.3%, while it is 42.9% in the current study. Businesses and individuals are far less successful in the current study than in previous studies. Businesses' (Individuals') net advantage ranges from -2.8% to 3.1% (-12.6% to -1.5%) in prior studies and it is -19.2% (-50.6%) in the current study. The results seem to indicate that the federal government enjoys a bigger advantage in federal tax cases than cases in general in appellate courts.

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Table 4.53

Comparison of Various Studies: Success Rates

	Wheeler et al. (1987), State Supreme Court Cases			Songer et al. (1999), U.S. Courts of Appeals Cases		
	City & State Gov.	Businesses	Individuals	U.S. Gov.	Businesses	Individuals
Success Rate as Appellant	48.2%	41.6%	38.5%	51.3%	30.8%	26.1%
Combined Success Rate	60.2%	50.2%	48.1%	70%	48.2%	35.1%
Net Advantage	11.8%	3.1%	-1.5%	25.6%	-2.8%	-12.6%
	Farole (1999), State Supreme Court Cases			Current Study, U.S. Courts of Appeals Cases		
Success Rate as Appellant	68.7%	45.2%	41.1%	60.4	23.4	16.1
Combined Success Rate	65.2%	49.1%	43.1%	79.7	32.4	17.9
Net Advantage	32.3%	-2.4%	-12.5%	42.9	-19.2	-50.6

Comparison of logistic regression results with prior studies shows opposite conclusions. As displayed in Table 4.54, prior studies find positive evidence in support of Party Capability Theory. The current study finds evidence that is contrary to Party Capability Theory.

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Table 4.54

Comparison of Various Studies: Logistic Regression

Independent Variable	Songer et al. (1999), Cases of U.S. Courts of Appeals	Farole (1999), State Supreme Court Cases	Current Study (Before Control of Representation Effects), Cases of U.S. Courts of Appeals
	Estimate	Estimate	Estimate
Appellant	0.33**	0.248***	-0.4346*
Respondent	-0.10**	-0.033	0.8241***

* Significant at 0.05 ** Significant at 0.01 ***Significant at 0.001

Although the success rate analysis does not contradict Party Capability Theory and is consistent with previous studies, logistic analysis in the current study finds opposite results compared to prior studies. That is, Party Capability Theory does not appear to apply to federal tax cases. The presumed stronger party does win more often than the presumed weaker party, but it is for reasons other than party strength. One possible explanation might be: The presumed stronger party can absorb moderate losses and is less likely to file a frivolous law suit. On the other hand, the presumed weaker party has too much at stake on one case to play odds. Consequently, the presumed weaker party files many more frivolous suits than the presumed stronger party. This makes the success rate of the weaker party much lower than the stronger party. But once the weaker party does file a reasonable case, it actually outperforms the presumed stronger parties in federal tax disputes.

Only Wheeler et al. (1987) considers representation effects on case results. Due to the scarcity of pro se cases, that study was unable to investigate the pro se representation influence on the success rate at litigation of the party at issue. The study does conclude

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that, with few exceptions, the weaker appellant, when represented by a law firm against the stronger respondent's solo practitioner, does far better than when the reverse occurs. The current study does find that appellants are better off using group representation instead of solo representation, although at an insignificant level. However, the current study also concludes that appellees with solo representation outperform appellees with group representation, and it reaches a marginal significance level.

Summary

The purpose of this chapter is to present the results of the data analysis and tests of hypotheses. For trial courts and Federal Appellate Courts, individuals initiate the majority of the cases under study. The federal government is the major defendant/appellee. For the U.S. Supreme Court, the U.S. government initiates most of the cases under study. No significantly different frequencies are found for the three groups under study appearing as appellee before the U.S. Supreme Court. Procedure and administration disputes and income tax issues are the two major reasons litigants go to trial and appellate courts. On the other hand, appellants bring to the U.S. Supreme Court a very broad range of issues.

Even though success rate analysis shows that the presumed stronger party does win more often in court, logistic regression results do not support Party Capability Theory. After controlling for representation types, plaintiff/appellant category is not significantly correlated with case results. However, individual appellees significantly outperform both business and the federal government appellees in Federal Appellate Courts. In trial courts, pro se plaintiffs perform significantly better than attorney represented plaintiffs; solo represented plaintiffs significantly outperform group represented plaintiffs. Group

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represented appellees underperform solo represented appellees in Federal Appellate Courts at a marginally significant level.

Chapter Five includes a summary and discussion of the results of this research effort. Implications and limitations of the study are disclosed and recommendations for further research are presented.

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CHAPTER 5

SUMMARY AND CONCLUSIONS

The purpose of this chapter is to summarize the findings of this research inquiry on Party Capability Theory. The primary research objective is to investigate different litigants' strength in court on federal tax issues. Each step toward meeting this objective is outlined in the chapter summaries that follow. Next, conclusions relative to the tests of hypotheses are discussed. Implications and limitations of the study are disclosed and recommendations for further research are presented.

Summary of Previous Chapters

As discussed in Chapter One, understanding who wins in court is an essential component of a full appreciation of the authoritative allocation of values in society. Party Capability Theory hypothesizes that "repeat players" fare better in courts and are better able to influence legal change than "one shotters." It also points out that legal services accentuate the RP advantage. The theory becomes most visible and is widely cited in the law and society field. However, it has not been utilized in accounting academic research, and understanding judicial reallocation in federal taxation area has considerable importance. Most prior Party Capability Theory studies have ignored legal representation, especially pro se representation and its influence. The growing importance of pro se representation in federal tax cases mandates evidence to address this research gap.

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Chapter Two includes a review of relevant prior studies. While the approaches in Party Capability Theory studies vary significantly, classification of litigants into groups and making general assumptions of the strength of each group has been widely used. Since Wheeler et al. (1987), net advantage analysis has become an essential component of Party Capability Theory study. Logistic regression is commonly used to control for other influential factors in litigation. Prior empirical analysis of Party Capability Theory provides evidence that: (1) The presumed stronger parties do enjoy certain advantages in U.S. trial courts, U.S. Court of Appeals, and state supreme courts in the United States; and (2) Party Capability Theory does not apply to the U.S. Supreme Court. Party Capability Theory has not been generalized to federal tax cases. Prior research on pro se representation has been merely analytical. The general conclusion is that the pro se party's unfamiliarity with rules often leads to his/her failure in court. However, no empirical research on pro se representation has been attempted, and further consideration of the topic is warranted.

The methodology used in this study is developed and outlined in Chapter Three. This study is the first empirical analysis of Party Capability Theory for federal tax cases, and is the first to consider pro se representation influence on case results. The research sample for the study consists of 1,010 trial court cases, 744 appellate court cases, and 29 U.S. Supreme Court cases rendered from 1992 through 2006. Appellate success rate, combined success rate, and net advantage analysis are used. To further control for other influential variables, logistic regression is selected as the most appropriate statistical tool.

Chapter Four presents the analysis of research results. Success rate analysis indicates that the presumed stronger party does win more often in court. However,

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logistic regression yields different results. The following section presents conclusions for each of the study's six research questions.

Summary of Conclusions

The following six research questions are presented in this study for investigation:

1. Who litigates?
2. What do litigants seek satisfaction in the courts?
3. Who is being sued/appealed?
4. Why is the defendant/appellee being sued/appealed?
5. What are the success rates of individuals, businesses, and the United States government in litigation on federal tax issues?
6. Do different types of representation before the court (pro se, solo, and group representation) have an effect on the judicial success rates of individuals, businesses, and the federal government?

Chi-square tests of goodness of fit indicate the three groups of litigants have significantly different frequencies of being plaintiff/appellant or defendant/appellee. Individuals initiate the majority of trial court and Federal Appellate Court cases under study. The U.S. government initiates most of the U.S. Supreme court cases under study. The federal government is the major defendant/appellee for the trial court and Federal Appellate Court cases. No significantly different frequencies are found for the three groups under study appearing as appellee in the U.S. Supreme Court.

Procedure and administration disputes and income tax issues are the two major reasons that litigants go to trial and the appellate process. Appellants bring to the U.S. Supreme Court a very broad range of issues. Test results for trial court and Federal

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Appellate Court cases show a significant relationship between the type of defendant/appellee and the issue involved.

While success rate analysis shows that the presumed stronger party does win more often in court, logistic regression results do not support Party Capability Theory. For trial court cases, after control for representation types, litigant category is not significantly correlated with case results; contrary to expectation, pro se plaintiffs perform significantly better than lawyer represented plaintiffs; solo represented plaintiffs significantly outperform group represented plaintiffs; defendant representation type does not significantly contribute to judicial results.

For appellate court cases, after accounting for representation types, the three parties under investigation do not show significantly different success probabilities as plaintiff; however, individual appellees significantly outperform both business and federal government appellees; litigants seem to be better off as pro se than with attorney representation, but the effect is not significant; group represented appellants outperform solo represented appellants to an insignificant level; on the other hand, group represented appellees underperform solo represented appellees at a marginally significant level.

For U.S. Supreme Court cases, after accounting for representation effect, the presumed stronger litigant parties have a lower chance of winning a case than the presumed weaker litigant parties, but the effect is below the conventional significance level; litigants seem to do better solo than with group representation, either as appellant or as appellee, but the effect is not significant.

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Chapter Five includes a summary and discussion of the results of this research effort. Implications and limitations of the study are disclosed and recommendations for further research are presented.

Although success rate analysis in this study produces consistent results with prior studies, logistic regression results of the current study are in contrast to prior inquires. Therefore, Party Capability Theory cannot be generalized to federal tax cases.

Implications

Notwithstanding that a number of studies have shown advantages for stronger parties in litigation, there is some question as to whether it applies specifically to federal tax cases. Based on an examination of litigant success in recent years at different levels of tax jurisprudence, this study does not find support for Party Capability Theory in federal tax cases. In fact, the judicial system seems to tilt to the weaker parties. Stability is assured when society at large agrees on the rules. When a large proportion of the population is discontent with the federal tax system, security is threatened. To limit opposition, the judicial system has to sufficiently ensure the acceptance of the social order. By favoring the "have nots" in decisions, courts can in fact boost the public belief in the federal tax system.

The findings of this study have practical implications for those who are considering going to court or are in the middle of federal tax litigation disputes. The results provide a useful foundation for addressing the issue of when a litigant should represent himself/herself or hire a lawyer or group of lawyers. Since hiring professionals can be costly, a rational litigant would do a cost benefit analysis and make the decision to hire a lawyer or lawyers only if the expected savings from professional representation would be

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greater than the cost of representation. This paper provides empirical evidence that professional representation does not result in a higher success possibility in federal tax cases. For plaintiffs using trial courts, pro se performs significantly better than lawyer representation; solo representation significantly outperforms group representation. For appellees in Federal Appellate Courts, solo representation performs marginally significantly better than group representation.

Limitations

This research is based on court decisions between 1992 and 2006. Logistic regression functions are developed to test the strength of various litigants. The potential effect of factors not included in the sample on the model is unknown. Specifically, three categories of factors are not reflected in the model: (1) How soundly justified is a particular law suit? Litigants filing frivolous lawsuits do not have a chance to win whether they are lawyer represented or pro se. Coding cases into strong or weak should improve the results. However, subjectivity of the coder will negatively influence the results. This inquiry chooses not to code case strength. (2) Judges ideologies are interwoven with case results. Previous studies note that judges appointed by Democratic presidents are more likely to support liberal decisions than judges appointed by Republicans (Goldman 1975; Gottschall 1986). Unfortunately, the current study does not have the necessary information to gauge judges ideologies. (3) Only the major federal tax issue involved in a case is coded. How issues other than the major issue influence a case result is not shown. However, including minor issues into the logistic model will distort the effect of the major issues on case results. This study chooses not to include minor issues into the model.

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This study is also limited to the extent that representation type is not fully disclosed in court records. Ideal classification of representation types would be: pro se, solo, and firm representation. Sole practitioners should be classified as solo representation and law firm should be classified as firm representation. The limited information from the case heading does not allow clear classification of representation type into solo or firm representation. This study thus adopts an alternative coding strategy. Instead of classifying as solo or firm representation, this study classifies as solo or group representation. This coding strategy eliminates subjective factors in coding representation types, but it also potentially decreases the explanatory power of representation types.

Application of the logistic regression model may be limited due to the subjective nature of the dependent variable. This study codes a case result as plaintiff/appellant wins if the plaintiff/appellant only partially wins the verdict, as long as the winning amount exceeds 50 percent of the amount under dispute. How this coding strategy influences the results is unknown.

The results of this investigation are based on data from the United States. Other countries have different tax systems, further study is needed to generalize the results to an international level.

Suggestions for Future Research

The limitations noted above suggest possible extensions for other studies. An easy to use, and relatively objective case strength coding system can be developed. The introduction of case strength variable into the model will decrease noise caused by frivolous law suits, and a judge's ideology factor could be controlled by utilizing a

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stratified sample selection. By sorting out cases decided by different judges, then randomly selecting a certain amount of cases decided by each judge, direct testing of judge effects is possible. The limitation of this method is that the sample is not representative of the population because the cases included in the sample have to be decided by only one judge.

The dependent variable coding becomes subjective in a partial verdict. Future research could consider only cases won completely by one litigating party should solve this problem. Comparison of party distribution and issues involved in the biased sample with the population could provide interesting insight as to who completely wins more often in court and on what type of issue.

The tax system varies significantly across countries. The maturity level, complexity, and economic background of a tax system can all contribute to a tax case results. The United States has a very mature and complex tax system. This system is based on a highly developed economy. Data from a developing country with a young, simple tax system, like China, might produce totally different results.

Summary

This study provides evidence that Party Capability Theory does not apply to federal tax cases. The presumed weaker party seems to have a higher success probability in court. The general belief that pro se litigants often are in a disadvantaged position in court does not apply to federal tax cases. On the contrary, in trial courts, plaintiffs are significantly better in representing themselves rather than seeking professional representation.

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The study is limited in that it is only based on domestic data. Further, the dependent variable in the model is subject to a degree of subjectivity. Nevertheless, findings of this study should be of value to those who are litigants in federal tax controversies.

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APPENDIX A

MASTER CASE LIST

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APPENDIX A

MASTER CASE LIST

TAX COURT CASES (375 Cases)

70 Acre Recognition Equipment Partnership v. Commissioner, T.C. Memo 1996-547 (1996)
Abloso, Emmanuel v. Commissioner, T.C. Summary Opinion 2006-60 (2006)
Adams, Carol A. Black v. Commissioner, T.C. Memo 2002-307 (2002)
Addis, Charles H. v. Commissioner, 118 T.C. 528 (2002)
Agri-Cal Venture Associates v. Commissioner, T.C. Memo 2000-271 (2000)
Ahmad, Salaheddin Ahmad v. Commissioner, T.C. Memo 1997-85 (1997)
Allemeier, Daniel R., Jr. v. Commissioner, T.C. Memo 2005-207 (2005)
Alpaugh, Steven D. v. Commissioner, T.C. Memo 1994-587 (1994)
Andros, Theodore A. v. Commissioner, T.C. Memo 1996-133 (1996)
Asa Investerings Partnership v. Commissioner, T.C. Memo 1998-305 (1998)
Baker, Wilson, Jr. v. Commissioner, T.C. Memo 1996-387 (1996)
Baptiste, Gabriel J., Jr. v. Commissioner, 100 T.C. 252 (1993)
Barbiero, Salvatore v. Commissioner, T.C. Memo 1992-381 (1992)
Barr, Sheldon P. v. Commissioner, T.C. Memo 1992-552 (1992)
Barrett, James Curtis v. Commissioner, T.C. Summary Opinion 2006-42 (2006)
Bartsch, Stephan v. Commissioner, T.C. Summary Opinion 2004-3 (2004)
Beale, Randolph John v. Commissioner, T.C. Memo 2000-158 (2000)
Belden, Wendell D. v. Commissioner, T.C. Memo 1995-360 (1995)
Beneventi, Mark F. v. Commissioner, T.C. Summary Opinion 2003-13 (2003)
Bennett, Terence M. v. Commissioner, T.C. Memo 1997-145 (1997)
Bernal, Kathryn v. Commissioner, 120 T.C. 102 (2003)
Bland, Ouan v. Commissioner, T.C. Summary Opinion 2003-172 (2003)
Bobry, Stuart v. Commissioner, T.C. Memo 1997-27 (1997)
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APPENDIX B

I.R.C. SECTIONS USED IN THE ANALYSIS

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APPENDIX B

I.R.C. SECTIONS USED IN THE ANALYSIS

Sec. 61. Gross income defined.

(a) General definition. Except as otherwise provided in this subtitle [26 USCS §§ 1 et seq.], gross income means all income from whatever source derived, including (but not limited to) the following items:
(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

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Sec. 72. Annuities; certain proceeds of endowment and life insurance contracts.

(a) General rule for annuities. Except as otherwise provided in this chapter [26 USCS §§ 1 et seq.], gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

(b) Exclusion ratio.
(1) In general. Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date).
(2) Exclusion limited to investment. The portion of any amount received as an annuity which is excluded from gross income under paragraph (1) shall not exceed the unrecovered investment in the contract immediately before the receipt of such amount.

* * *

(c) Definitions.
(1) Investment in the contract. For purposes of subsection (b), the investment in the contract as of the annuity starting date is--
(A) the aggregate amount of premiums or other consideration paid for the contract, minus
(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle [26 USCS §§ 1 et seq.] or prior income tax laws.

* * *

(d) Special rules for qualified employer retirement plans.
(1) Simplified method of taxing annuity payments.
(A) In general. In the case of any amount received as an annuity under a qualified employer retirement plan--
(i) subsection (b) shall not apply, and
(ii) the investment in the contract shall be recovered as provided in this paragraph.

* * *

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Sec. 104. Compensation for injuries or sickness.

(a) In general. Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 [26 USCS § 213] (relating to medical, etc., expenses) for any prior taxable year, gross income does not include--

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;

(3) amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980 [22 USCS § 4048]; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2) [26 USCS § 692(c)(2)]).

* * *

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Sec. 151. Allowance of deductions for personal exemptions [Caution: See prospective amendment note below.].

(a) Allowance of deductions. In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and spouse. An exemption of the exemption amount for the taxpayer; and an additional exemption of the exemption amount for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional exemption for dependents. An exemption of the exemption amount for each individual who is a dependent (as defined in section 152 [26 USCS § 152]) of the taxpayer for the taxable year.

(d) Exemption amount * * *
(1) In general. Except as otherwise provided in this subsection, the term 'exemption amount' means $ 2,000.
(2) Exemption amount disallowed in case of certain dependents. In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.
(3) Phaseout.
(A) In general. In the case of any taxpayer whose adjusted gross income for the taxable year exceeds the threshold amount, the exemption amount shall be reduced by the applicable percentage.
(B) Applicable percentage. For purposes of subparagraph (A), the term 'applicable percentage' means 2 percentage points for each $ 2,500 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting '$ 1,250' for '$ 2,500'. In no event shall the applicable percentage exceed 100 percent.

* * *

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Sec. 152. Dependent defined.
(a) In general. For purposes of this subtitle [26 USCS §§ 1 et seq.], the term "dependent" means--
(1) a qualifying child, or
(2) a qualifying relative.

(b) Exceptions. For purposes of this section--
(1) Dependents ineligible. If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.
(2) Married dependents. An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 [26 USCS § 6013] for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.
(3) Citizens or nationals of other countries.
(A) In general. The term "dependent" does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

* * *

(c) Qualifying child. For purposes of this section--
(1) In general. The term "qualifying child" means, with respect to any taxpayer for any taxable year, an individual--
(A) who bears a relationship to the taxpayer described in paragraph (2),
(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,
(C) who meets the age requirements of paragraph (3), and
(D) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins.
(2) Relationship. For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is--
(A) a child of the taxpayer or a descendant of such a child, or
(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.
(3) Age requirements.
(A) In general. For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual--
(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or
(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

* * *

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Sec. 162. Trade or business expenses.

(a) In general. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including--

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $ 3,000. For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.

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Sec. 163. Interest [Caution: See prospective amendment note below.].

(a) General rule. There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) Installment purchases where interest charge is not separately stated.
(1) General rule. If personal property or educational services are purchased under a contract--
(A) which provides that payment of part or all of the purchase price is to be made in installments, and
(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,
then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term "educational services" means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) [26 USCS § 170(b)(1)(A)(ii)] and which is provided for a student of such organization.
(2) Limitation. In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) Redeemable ground rents. For purposes of this subtitle [26 USCS §§ 1 et seq.], any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) Limitation on investment interest.
(1) In general. In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter [26 USCS §§ 1 et seq.] for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.
(2) Carryforward of disallowed interest. The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.
(3) Investment interest. For purposes of this subsection--
(A) In general. The term "investment interest" means any interest allowable as a deduction under this chapter [26 USCS §§ 1 et seq.] (determined without regard to paragraph (1)) which is paid or accrued on indebtedness properly allocable to property held for investment.

* * *

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Sec. 165. Losses.

(a) General rule. There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) Amount of deduction. For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in section 1011 [26 USCS § 1011] for determining the loss from the sale or other disposition of property.

(c) Limitation on losses of individuals. In the case of an individual, the deduction under subsection (a) shall be limited to
(1) losses incurred in a trade or business;
(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and
(3) except as provided in subsection (h), losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) Wagering losses. Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(e) Theft losses. For purposes of subsection (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) Capital losses. Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in sections 1211 and 1212 [26 USCS §§ 1211 and 1212].

(g) Worthless securities.
(1) General rule. If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this subtitle [26 USCS §§ 1 et seq.], be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

* * *

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Sec. 166. Bad debts.

(a) General rule.
(1) Wholly worthless debts. There shall be allowed as a deduction any debt which becomes worthless within the taxable year.
(2) Partially worthless debts. When satisfied that a debt is recoverable only in part, the Secretary may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(b) Amount of deduction. For purposes of subsection (a), the basis for determining the amount of the deduction for any bad debt shall be the adjusted basis provided in section 1011 [26 USCS § 1011] for determining the loss from the sale or other disposition of property.

(c) Repealed.

(d) Nonbusiness debts.
(1) General rule. In the case of a taxpayer other than a corporation--
(A) subsection (a) shall not apply to any nonbusiness debt; and
(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 1 year.
(2) Nonbusiness debt defined. For purposes of paragraph (1), the term "nonbusiness debt" means a debt other than--
(A) a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or
(B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(e) Worthless securities. This section shall not apply to a debt which is evidenced by a security as defined in **section 165**(g)(2)(C) [26 USCS **§ 165**(g)(2)(c)].

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Sec. 170. Charitable, etc., contributions and gifts [Caution: See prospective amendment notes below.].

(a) Allowance of deduction.
(1) General rule. There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

* * *

(c) Charitable contribution defined. For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of--
(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.
(2) A corporation, trust, or community chest, fund, or foundation--
(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;
(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;
(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
(D) which is not disqualified for tax exemption under section 501(c)(3) [26 USCS § 501(c)(3)] by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) [26 USCS § 501(j)] shall apply for purposes of this paragraph.

* * *

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Sec. 183. Activities not engaged in for profit.

(a) General rule. In the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter [26 USCS §§ 1 et seq.] except as provided in this section.

(b) Deductions allowable. In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed--

(1) the deductions which would be allowable under this chapter [26 USCS §§ 1 et seq.] for the taxable year without regard to whether or not such activity is engaged in for profit, and

(2) a deduction equal to the amount of the deductions which would be allowable under this chapter [26 USCS §§ 1 et seq.] for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).

(c) Activity not engaged in for profit defined. For purposes of this section, the term "activity not engaged in for profit" means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 [26 USCS § 162] or under paragraph (1) or (2) of section 212 [26 USCS § 212].

(d) Presumption. If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter [26 USCS §§ 1 et seq.] for such taxable year to be an activity engaged in for profit. In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting "2" for "3" and "7" for "5".

* * *

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Sec. 274. Disallowance of certain entertainment, etc., expenses.

(a) Entertainment, amusement, or recreation.
(1) In general. No deduction otherwise allowable under this chapter [26 USCS §§ 1 et seq.] shall be allowed for any item--
(A) Activity. With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, unless the taxpayer establishes that the item was directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that such item was associated with, the active conduct of the taxpayer's trade or business, or
(B) Facility. With respect to a facility used in connection with an activity referred to in subparagraph (A).
In the case of an item described in subparagraph (A), the deduction shall in no event exceed the portion of such item which meets the requirements of subparagraph (A).
(2) Special rules. For purposes of applying paragraph (1)--
(A) Dues or fees to any social, athletic, or sporting club or organization shall be treated as items with respect to facilities.
(B) An activity described in section 212 [26 USCS § 212] shall be treated as a trade or business.
(C) In the case of a club, paragraph (1)(B) shall apply unless the taxpayer establishes that the facility was used primarily for the furtherance of the taxpayer's trade or business and that the item was directly related to the active conduct of such trade or business.
(3) Denial of deduction for club dues. Notwithstanding the preceding provisions of this subsection, no deduction shall be allowed under this chapter [26 USCS §§ 1 et seq.] for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

(b) Gifts.
(1) Limitation. No deduction shall be allowed under section 162 or section 212 [26 USCS § 162 or 212] for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the same taxable year, exceeds $ 25. For purposes of this section, the term "gift" means any item excludable from gross income of the recipient under section 102 [26 USCS § 102] which is not excludable from his gross income under any other provision of this chapter [26 USCS §§ 1 et seq.], but such term does not include--
(A) an item having a cost to the taxpayer not in excess of $ 4.00 on which the name of the taxpayer is clearly and permanently imprinted and which is one of a number of identical items distributed generally by the taxpayer, or
(B) a sign, display rack, or other promotional material to be used on the business premises of the recipient.

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Sec. 446. General rule for methods of accounting.

(a) General rule. Taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books.

(b) Exceptions. If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, the computation of taxable income shall be made under such method as, in the opinion of the Secretary, does clearly reflect income.

(c) Permissible methods. Subject to the provisions of subsections (a) and (b), a taxpayer may compute taxable income under any of the following methods of accounting--
(1) the cash receipts and disbursements method;
(2) an accrual method;
(3) any other method permitted by this chapter [26 USCS §§ 1 et seq.]; or
(4) any combination of the foregoing methods permitted under regulations prescribed by the Secretary.

(d) Taxpayer engaged in more than one business. A taxpayer engaged in more than one trade or business may, in computing taxable income, use a different method of accounting for each trade or business.

(e) Requirement respecting change of accounting method. Except as otherwise expressly provided in this chapter [26 USCS §§ 1 et seq.], a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income under the new method, secure the consent of the Secretary.

(f) Failure to request change of method of accounting. If the taxpayer does not file with the Secretary a request to change the method of accounting, the absence of the consent of the Secretary to a change in the method of accounting shall not be taken into account--
(1) to prevent the imposition of any penalty, or the addition of any amount to tax, under this title, or
(2) to diminish the amount of such penalty or addition to tax.

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Sec. 2036. Transfers with retained life estate.

(a) General rule. The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death--

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

(b) Voting rights.

(1) In general. For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

(2) Controlled corporation. For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318 [26 USCS § 318]), or had the right (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

(3) Coordination with section 2035. For purposes of applying section 2035 [26 USCS § 2035] with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent.

(c) Limitation on application of general rule. This section shall not apply to a transfer made before March 4, 1931; nor to a transfer made after March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

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Sec. 2056. Bequests, etc., to surviving spouse.

(a) Allowance of marital deduction. For purposes of the tax imposed by section 2001 [26 USCS § 2001], the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(b) Limitation in the case of life estate or other terminable interest.
(1) General rule. Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest--
(A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and
(B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;
and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))--
(C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.
For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.
(2) Interest in unidentified assets. Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.
(3) Interest of spouse conditional on survival for limited period. For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if--
(A) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and
(B) such termination or failure does not in fact occur.

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Sec. 3121. Definitions.
(a) Wages. For purposes of this chapter [26 USCS §§ 3101 et seq.], the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) in the case of the taxes imposed by sections 3101(a) and 3111(a) [26 USCS §§ 3101(a) and 3111(a)] that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act [42 USCS § 430]) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit base (as determined under section 230 of the Social Security Act [42 USCS § 430]) such contribution and benefit base to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

* * *

(b) Employment. For purposes of this chapter [26 USCS §§ 3101 et seq.], the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act [42 USCS § 433]; except that such term shall not include--

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Sec. 3401. Definitions.

(a) Wages. For purposes of this chapter [26 USCS §§ 3401 et seq.], the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid--

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 [26 USCS § 112] (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section; or

(2) for agricultural labor (as defined in section 3121(g) [26 USCS § 3121(g)]) unless the remuneration paid for such labor is wages (as defined in section 3121(a) [26 USCS § 3121(a)]); or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $ 50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if--

* * *

(b) Payroll period. For purposes of this chapter [26 USCS §§ 3401 et seq.], the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(c) Employee. For purposes of this chapter [26 USCS §§ 3401 et seq.], the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(d) Employer. For purposes of this chapter [26 USCS §§ 3401 et seq.], the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that--

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Sec. 6015. Relief from joint and several liability on joint return.
(a) In general. Notwithstanding section 6013(d)(3) [26 USCS § 6013(d)(3)]--
(1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b); and
(2) if such individual is eligible to elect the application of subsection (c), such individual may, in addition to any election under paragraph (1), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).

Any determination under this section shall be made without regard to community property laws.

(b) Procedures for relief from liability applicable to all joint filers.
(1) In general. Under procedures prescribed by the Secretary, if--
(A) a joint return has been made for a taxable year;
(B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;
(C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;
(D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; and
(E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election,
then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.
(2) Apportionment of relief. If an individual who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, then such individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

* * *

(f) Equitable relief. Under procedures prescribed by the Secretary, if--
(1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and
(2) relief is not available to such individual under subsection (b) or (c),
the Secretary may relieve such individual of such liability.

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Sec. 6103. Confidentiality and disclosure of returns and return information.

(a) General rule. Returns and return information shall be confidential, and except as authorized by this title--

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c) [26 USCS § 6104(c)], and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), paragraph (6), (12), (16), (19), or (20) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(b) Definitions. For purposes of this section--

(1) Return. The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information. The term "return information" means--

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,

* * *

(3) Taxpayer return information. The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

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Sec. 6213. Restrictions applicable to deficiencies; petition to Tax Court [Caution: See prospective amendment note below.].

(a) Time for filing petition and restriction on assessment. Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 [26 USCS § 6212] is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 [26 USCS § 6851, 6852, or 6861] no assessment of a deficiency in respect of any tax imposed by subtitle A or B [26 USCS §§ 1 et seq. or 2001 et seq.], chapter 41, 42, 43, or 44 [26 USCS §§ 4911 et seq., 4940 et seq., 4971 et seq., or 4981 et seq.] and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a) [26 USCS § 7421(a)], the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) Exceptions to restrictions on assessment.
(1) Assessments arising out of mathematical or clerical errors.

* * *

(2) Abatement of assessment of mathematical or clerical errors.
(A) Request for abatement. Notwithstanding section 6404(b) [26 USCS § 6404(b)], a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter [26 USCS §§ 6211 et seq.].
(B) Stay of collection. In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.
(3) Assessments arising out of tentative carryback or refund adjustments.

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Sec. 6229. Period of limitations for making assessments.

(a) General rule. Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A [26 USCS §§ 1 et seq.] with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of--

(1) the date on which the partnership return for such taxable year was filed, or

(2) the last day for filing such return for such year (determined without regard to extensions).

(b) Extension by agreement.

(1) In general. The period described in subsection (a) (including an extension period under this subsection) may be extended--

(A) with respect to any partner, by an agreement entered into by the Secretary and such partner, and

(B) with respect to all partners, by an agreement entered into by the Secretary and the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement), before the expiration of such period.

(2) Special rule with respect to debtors in title 11 cases. Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary.

(3) Coordination with section 6501(c)(4). Any agreement under section 6501(c)(4) [26 USCS § 6501(c)(4)] shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items.

(c) Special rule in case of fraud, etc.

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Sec. 6320. Notice and opportunity for hearing upon filing of notice of lien.

(a) Requirement of notice.
(1) In general. The Secretary shall notify in writing the person described in section 6321 [26 USCS § 6321] of the filing of a notice of lien under section 6323 [26 USCS § 6323].
(2) Time and method for notice. The notice required under paragraph (1) shall be--
(A) given in person;
(B) left at the dwelling or usual place of business of such person; or
(C) sent by certified or registered mail to such person's last known address,
not more than 5 business days after the day of the filing of the notice of lien.
(3) Information included with notice. The notice required under paragraph (1) shall include in simple and nontechnical terms--
(A) the amount of unpaid tax;
(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);
(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals; and
(D) the provisions of this title and procedures relating to the release of liens on property.

(b) Right to fair hearing.
(1) In general. If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.
(2) One hearing per period. A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.
(3) Impartial officer. The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330 [26 USCS § 6330]. A taxpayer may waive the requirement of this paragraph.
(4) Coordination with section 6330. To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330 [26 USCS § 6330].

(c) Conduct of hearing; review; suspensions. For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), (e), and (g) of section 6330 [26 USCS § 6330] shall apply.

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Sec. 6321. Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

Sec. 6322. Period of lien.

Unless another date is specifically fixed by law, the lien imposed by **section 6321** [26 USCS § **6321**] shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

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Sec. 6323. Validity and priority against certain persons.

(a) Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors. The lien imposed by **section 6321** [26 USCS § **6321**] shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.

(b) Protection for certain interests even though notice filed. Even though notice of a lien imposed by **section 6321** [26 USCS § **6321**] has been filed, such lien shall not be valid--
(1) Securities. With respect to a security (as defined in subsection (h)(4))--
(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and
(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.
(2) Motor vehicles. With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if--
(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and
(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.
(3) Personal property purchased at retail. With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

* * *

(c) Protection for certain commercial transactions financing agreements, etc.
(1) In general. To the extent provided in this subsection, even though notice of a lien imposed by **section 6321** [26 USCS § **6321**] has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which--
(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting--
(i) a commercial transactions financing agreement,
(ii) a real property construction or improvement financing agreement, or
(iii) an obligatory disbursement agreement, and
(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

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Sec. 6330. Notice and opportunity for hearing before levy

(a) Requirement of notice before levy.
(1) In general. No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.
(2) Time and method for notice. The notice required under paragraph (1) shall be--
(A) given in person;
(B) left at the dwelling or usual place of business of such person; or
(C) sent by certified or registered mail, return receipt requested, to such person's last known address;
not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.
(3) Information included with notice. The notice required under paragraph (1) shall include in simple and nontechnical terms--
(A) the amount of unpaid tax;
(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and
(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth--
(i) the provisions of this title relating to levy and sale of property;
(ii) the procedures applicable to the levy and sale of property under this title;
(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;
(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159) [26 USCS § 6159]; and
(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) Right to fair hearing.
(1) In general. If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.
(2) One hearing per period. A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.
(3) Impartial officer. The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320 [26 USCS § 6320]. A taxpayer may waive the requirement of this paragraph.

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Sec. 6331. Levy and distraint.

(a) Authority of Secretary. If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334 [26 USCS § 6334]) belonging to such person or on which there is a lien provided in this chapter [26 USCS §§ 6301 et seq.] for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d) [26 USCS § 3401(d)]) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property. The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive seizures. Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) Requirement of notice before levy.
(1) In general. Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.
(2) 30-day requirement. The notice required under paragraph (1) shall be--
(A) given in person,
(B) left at the dwelling or usual place of business of such person, or
(C) sent by certified or registered mail to such person's last known address,
no less than 30 days before the day of the levy.
(3) Jeopardy. Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

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Sec. 6402. Authority to make credits or refunds [Caution: See prospective amendment note below.]

(a) General rule. In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), and (e), refund any balance to such person.

(b) Credits against estimated tax. The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

(c) Offset of past-due support against overpayments. The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act [42 USCS § 664]) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of the Social Security Act [42 USCS § 664]. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act [42 USCS § 602(a)(26) or 671(a)(17)], and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

(d) Collection of debts owed to Federal agencies.
(1) In general. Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than past-due support subject to the provisions of subsection (c)) to such agency, the Secretary shall--
(A) reduce the amount of any overpayment payable to such person by the amount of such debt;
(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and
(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

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Sec. 6501. Limitations on assessment and collection.
(a) General rule. Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter [26 USCS §§ 6501 et seq.], the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) Time return deemed filed.
(1) Early return. For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24 [26 USCS §§ 1441 et seq., 3101 et seq., or 3401 et seq.], filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.
(2) Return of certain employment taxes and tax imposed by chapter 3. For purposes of this section, if a return of tax imposed by chapter 3, 21, or 24 [26 USCS §§ 1441 et seq., 3101 et seq., or 3401 et seq.] for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.
(3) Return executed by Secretary. Notwithstanding the provisions of paragraph (2) of section 6020(b) [26 USCS § 6020(b)], the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.
(4) Return of excise taxes. For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D [26 USCS §§ 4001 et seq.] (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) Exceptions.
(1) False return. In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.
* * *
(4) Extension by agreement.
(A) In general. Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11 [26 USCS §§ 2001 et seq.], both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
* * *

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Sec. 6511. Limitations on credit or refund [Caution: See prospective amendment note below.].

(a) Period of limitation on filing claim. Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) Limitation on allowance of credits and refunds.
(1) Filing of claim within prescribed period. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.
(2) Limit on amount of credit or refund.
(A) Limit where claim filed within 3-year period. If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.
(B) Limit where claim not filed within 3-year period. If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.
(C) Limit if no claim filed. If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

(c) Special rules applicable in case of extension of time by agreement. If an agreement under the provisions of **section 6501**(c)(4) [26 USCS **§ 6501**(c)(4)] extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund--
(1) Time for filing claim. The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b)(1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under **section 6501**(c)(4) [26 USCS **§ 6501**(c)(4)].

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Sec. 6532. Periods of limitation on suits.

(a) Suits by taxpayers for refund.

(1) General rule. No suit or proceeding under section 7422(a) [26 USCS § 7422(a)] for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) Extension of time. The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary.

(3) Waiver of notice of disallowance. If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed.

(4) Reconsideration after mailing of notice. Any consideration, reconsideration, or action by the Secretary with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

(5) Cross reference. For substitution of 120-day period for the 6-month period contained in paragraph (1) in a title 11 case, see section 505(a)(2) of title 11 of the United States Code.

(b) Suits by United States for recovery of erroneous refunds. Recovery of an erroneous refund by suit under section 7405 [26 USCS § 7405] shall be allowed only if such suit is begun within 2 years after the making of such refund, except that such suit may be brought at any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(c) Suits by persons other than taxpayers.

(1) General rule. Except as provided by paragraph (2), no suit or proceeding under section 7426 [26 USCS § 7426] shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

(2) Period when claim is filed. If a request is made for the return of property described in section 6343(b) [26 USCS § 6343(b)], the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

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Sec. 6651. Failure to file tax return or to pay tax.

(a) Addition to the tax. In case of failure--

(1) to file any return required under authority of subchapter A of chapter 61 [26 USCS §§ 6001 et seq.] (other than part III thereof [26 USCS §§ 6031 et seq.]), subchapter A of chapter 51 [26 USCS §§ 5001 et seq.] (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 [26 USCS §§ 5701 et seq.] (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 [26 USCS §§ 5801 et seq.] (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b) [26 USCS § 6213(b)]) within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $ 100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

In the case of a failure to file a return of tax imposed by chapter 1 [26 USCS §§ 1 et seq.] within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under paragraph (1) shall not be less than the lesser of $ 100 or 100 percent of the amount required to be shown as tax on such return.

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Sec. 6653. Failure to pay stamp tax.

Any person (as defined in section 6671(b) [26 USCS § 6671(b)]) who--
(1) willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under the authority of this title, or
(2) willfully attempts in any manner to evade or defeat any such tax or the payment thereof,

shall, in addition to other penalties provided by law, be liable for a penalty of 50 percent of the total amount of the underpayment of the tax.

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Sec. 6672. Failure to collect and pay over tax, or attempt to evade or defeat tax.

(a) General rule. Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 [26 USCS § 6653] or part II of subchapter A of chapter 68 [26 USCS §§ 6662 et seq.] for any offense to which this section is applicable.

(b) Preliminary notice requirement.
 (1) In general. No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) [26 USCS § 6212(b)] or in person that the taxpayer shall be subject to an assessment of such penalty.
 (2) Timing of notice. The mailing of the notice described in paragraph (1) (or, in the case of such a notice delivered in person, such delivery) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.
 (3) Statute of limitations. If a notice described in paragraph (1) with respect to any penalty is mailed or delivered in person before the expiration of the period provided by section 6501 [26 USCS § 6501] for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of--
  (A) the date 90 days after the date on which such notice was mailed or delivered in person, or
  (B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.
 (4) Exception for jeopardy. This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy.

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Sec. 7201. Attempt to evade or defeat tax.
Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $ 100,000 ($ 500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Sec. 7206. Fraud and false statements.

Any person who--
(1) Declaration under penalties of perjury. Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or
(2) Aid or assistance. Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or
(3) Fraudulent bonds, permits, and entries. Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or
(4) Removal or concealment with intent to defraud. Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331 [26 USCS § 6331], with intent to evade or defeat the assessment or collection of any tax imposed by this title; or
(5) Compromises and closing agreements. In connection with any compromise under section 7122 [26 USCS § 7122], or offer of such compromise, or in connection with any closing agreement under section 7121 [26 USCS § 7121], or offer to enter into any such agreement, willfully--
(A) Concealment of property. Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or
(B) Withholding, falsifying, and destroying records. Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;
shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $ 100,000 ($ 500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

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Sec. 7212. Attempts to interfere with administration of Internal Revenue laws.

(a) Corrupt or forcible interference. Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $ 5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $ 3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

(b) Forcible rescue of seized property. Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than $ 500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years.

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Sec. 7402. Jurisdiction of district courts.

(a) To issue orders, processes, and judgments. The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica,* orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) To enforce summons. If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) For damages to United States officers or employees. Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

(d) Repealed.

(e) To quiet title. The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

(f) General jurisdiction. For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

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Sec. 7421. Prohibition of suits to restrain assessment or collection.

(a) Tax. Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436 [26 USCS §§ 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436], no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) Liability of transferee or fiduciary. No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71 [26 USCS §§ 6901 et seq.]) of--
(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or
(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code in respect of any such tax.

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Sec. 7422. Civil actions for refund.

(a) No suit prior to filing claim for refund. No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(b) Protest or duress. Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) Suits against collection officer a bar. A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court.

(d) Credit treated as payment. The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.
* * *
(f) Limitation on right of action for refund.
(1) General rule. A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the United States Code (relating to aliens' privilege to sue) and notwithstanding the provisions of section 1502 of such title 28 (relating to certain treaty cases).
(2) Misjoinder and change of venue. If a suit or proceeding brought in a United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the United States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the United States.

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Sec. 7430. Awarding of costs and certain fees.

(a) In general. In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for--

(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and

(2) reasonable litigation costs incurred in connection with such court proceeding.

(b) Limitations.

(1) Requirement that administrative remedies be exhausted. A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service. Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.

(2) Only costs allocable to the United States. An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

(3) Costs denied where party prevailing protracts proceedings. No award for reasonable litigation and administrative costs may be made under subsection (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

(4) Period for applying to IRS for administrative costs. An award may be made under subsection (a) by the Internal Revenue Service for reasonable administrative costs only if the prevailing party files an application with the Internal Revenue Service for such costs before the 91st day after the date on which the final decision of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party.

(c) Definitions. For purposes of this section--

(1) Reasonable litigation costs. The term "reasonable litigation costs" includes--

(A) reasonable court costs, and

(B) based upon prevailing market rates for the kind or quality of services furnished--

(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

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Sec. 7433. Civil damages for certain unauthorized collection actions.

(a) In general. If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432 [26 USCS § 7432], such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages. In any action brought under subsection (a) or petition filed under subsection (e), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $ 1,000,000 ($ 100,000, in the case of negligence) or the sum of--

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent actions of the officer or employee, and

(2) the costs of the action.

(c) Payment authority. Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(d) Limitations.

(1) Requirement that administrative remedies be exhausted. A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

(2) Mitigation of damages. The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) Period for bringing action. Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

(e) Actions for violations of certain bankruptcy procedures.

(1) In general. If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11, United States Code (or any successor provision), or any regulation promulgated under such provision, such taxpayer may petition the bankruptcy court to recover damages against the United States.

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Sec. 7491. Burden of proof.

(a) Burden shifts where taxpayer produces credible evidence.
(1) General rule. If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B [26 USCS §§ 1 et seq. or 2001 et seq.], the Secretary shall have the burden of proof with respect to such issue.
(2) Limitations. Paragraph (1) shall apply with respect to an issue only if--
(A) the taxpayer has complied with the requirements under this title to substantiate any item;
(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and
(C) in the case of a partnership, corporation, or trust, the taxpayer is described in **section 7430**(c)(4)(A)(ii) [26 USCS **§ 7430**(c)(4)(A)(ii)].
Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section 645(b)(1) [26 USCS § 645(b)(1)]) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section 645(b)(2) [26 USCS § 645(b)(2)]).
(3) Coordination. Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

(b) Use of statistical information on unrelated taxpayers. In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

(c) Penalties. Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

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Sec. 7602. Examination of books and witnesses.

(a) Authority to summon, etc. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized--

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense. The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties.

(1) General notice. An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) Notice of specific contacts. The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions. This subsection shall not apply--

(A) to any contact which the taxpayer has authorized;

(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

(C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral.

(1) Limitation of authority. No summons may be issued under this title, and the Secretary may not begin any action under section 7604 [26 USCS § 7604] to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

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Sec. 7609. Special procedures for third-party summonses.

(a) Notice.
(1) In general. If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2) [26 USCS § 7612(d)(2)]) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

* * *

(b) Right to intervene; right to proceeding to quash.
(1) Intervention. Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604 [26 USCS § 7604].
(2) Proceeding to quash.
(A) In general. Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.
(B) Requirement of notice to person summoned and to Secretary. If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).
(C) Intervention; etc. Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

(c) Summons to which section applies.
(1) In general. Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) [26 USCS § 7602(a)] or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612 [26 USCS § 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612].

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