

# BOXERMAN PRESENTS ON TAX APPEALS FOR APPELLATE PROGRAM

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**TAX APPEALS: 7 TIPS**

APPEALS TO THE COURT OF APPEALS FROM A UNITED STATES DISTRICT COURT

1. Pretty much like any other appeal in a civil case
2. **But watch out: One key issue may likely be the District Court's Jurisdiction**
  - **TIP 1** – Full payment of a tax assessment is a prerequisite to suit in a federal district court. Without full payment the District Court lacks subject matter jurisdiction. *Kaffenberger v. United States*, 314 F.3d 944 (8th Cir. 2003); *Flora v. United States*, 362 U.S. 145 (1960).
  - **TIP 2** – The District Court has no jurisdiction over a refund suit if the taxpayer has not first filed a claim for refund with the IRS. *Greene-Thapedi v. United States*, 549 F.3d 530 (7th Cir. 2008) (vacating District Court judgment and remanding case with instructions to dismiss the action).

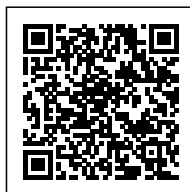
APPEALS TO THE COURT OF APPEALS FROM THE UNITED STATES TAX COURT

3. **Do Fed.R.App.P. apply? Yes, unless they don't.**
  - **TIP 3** – Be sure to look at Rules 13 and 14 of the Federal Rules of Appellate Procedure.
4. **Filing the Notice of Appeal: Where, When and From What?**
  - With the Tax Court Clerk. Fed.R.App.P. 13(a)(1)(A); Tax Court Rule 190(a).
  - Within 90 days after the entry of the Tax Court's decision. Fed.R.App.P. 13(a)(1)(A); Tax Court Rule 190(a).
  - **TIP 4** – In a deficiency case, the Court's opinion is usually different from, and comes before, the Court's decision.
5. **To Which Circuit is the Appeal Taken?**
  - **TIP 5** – It doesn't go by where the trial was held! See 26 U.S.C. § 7482(b).
6. **The Record on Appeal:** See Fed.R.App.P. 13(a)(4); Tax Court Rule 191. **TIP 6** – In a deficiency case, the Record on Appeal will likely already include a copy of the trial transcript.
7. **What is the Standard of Review?**
  - **TIP 7** – Despite what you may have heard, it is the same as in any other civil case tried without a jury. The Court of Appeals reviews the tax court's legal conclusions de novo and its factual conclusions for clear error. *Zavadil v. Comm'r*, 793 F.3d 866, 869 (8th Cir. 2014); *DKD Enters. v. Comm'r*, 685 F.3d 730, 734 (8th Cir. 2012); *Cole v. Comm'r*, 637 F.3d 767, 773 (7th Cir. 2011).
  - Every now and then an appellate decision might use language suggesting that the Tax Court is entitled to special deference because it is a specialized court. See, e.g., *Minnesota Lawyers Mut. Ins. Co. v. Comm'r*, 285 F.3d 1086 (8th Cir. 2002).
  - According to some commentators, be careful not to make too much of such language. See *Leandra Lederman, (Un)Appealing Deference to the Tax Court*, 63 *Duke L.J.* 1835 (2014)

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On April 6<sup>th</sup>, Sanford J. Boxerman, a member of the Capes Sokol Civil and Criminal Tax Controversy and Litigation practice group, spoke on "Tax Appeals – 7 Tips" at a CLE program entitled "Appellate

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

Sandy was one of seven panelists who provided insights in a lively format covering seven types of appeals: Criminal, Civil, Social Security, Bankruptcy, Immigration, Tax, and Habeas Corpus. The event was sponsored by the Eighth Circuit Bar Association and the Federal Bar Association-St. Louis Chapter and took place in the Eighth Circuit's En Banc Courtroom in the Thomas F. Eagleton Courthouse in downtown St. Louis.



Interested in Sandy's 7 Tax Appeals Tips? Click [here](#) to download a copy of his "Tax Appeals: 7 Tips" sheet.

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