


# BOXERMAN PRESENTS ON TAX APPEALS FOR APPELLATE PROGRAM

*Posted on April 17, 2017 by Sanford J. Boxerman*



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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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