

PROCEDURES OF THE MARYLAND TAX COURT

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PROCEDURES OF THE MARYLAND TAX COURT

A. NATURE OF THE TAX COURT

The Maryland Tax Court is an independent administrative unit of the State government. It was created in 1959 to perform quasi-judicial functions, such as making factual determinations and adjudicating disputes in areas such as income tax, sales and use tax, and real and personal property assessments.¹ TG3-103.²

The Tax Court hears appeals from the final decision or determination of any unit of the state or local government authorized to make such decisions, about any tax issue. TG3-103.

As an administrative agency of the Executive Branch, the Tax Court may consider the constitutionality of an act of the Legislature in limited situations. The constitutional challenge must be intertwined with consideration of evidence and questions of fact, as opposed to questions of law. It may not coincide with request for equitable remedies. The statute may be challenged on its face or as applied to a situation. These matters thus can initially be resolved within the administrative proceeding. *Insurance Commissioner of State of Maryland v. Equitable Life Assurance Society of United States*, 339 Md. 596, 664 A.2d 862 (1995).

B. COURT PERSONNEL

The Tax Court has five judges who are appointed by the Governor. One must be a resident of Baltimore City, one a resident of the Eastern Shore, and one a resident of the Western Shore. No more than three of these judges may be of the same political party, and all must be qualified voters in Maryland. Among the five judges, the Governor appoints a Chief Judge who serves this position throughout his term. The Chief Judge and at least one other judge must be members of the Maryland Bar. The term of a judge is six years; the terms are staggered. A judge appointed after the term has begun serves

¹*Assessment* means:

- (1) for real property, the adjusted value to which the property tax rate may be applied; and
- (2) for personal property, the value to which the property tax rate may be applied.

² TG refers to the Annotated Code of Maryland Tax-General

for the rest of the term and until a successor is appointed and qualifies. The Governor may remove a judge for incompetence or misconduct. TG3-106, 108.

The judges may sit in panels. A judge who is a member of the Maryland Bar may hear and decide a matter without the participation of any other judge. TG3-107. They conduct pre-trial conferences, try cases, and draft opinions.

The Tax Court appoints a Clerk and may appoint one or more Deputy Clerks, who maintain a public record of all pleadings, exhibits and proceedings. TG3-109, 110. Upon request of a party, the Clerk may issue subpoenas requiring the appearance of witnesses to testify at hearings and depositions or require the production of any pertinent document **AT THAT HEARING OR DEPOSITION**. TG13-520, 521. The subpoena for documents absence of a hearing or deposition is not permitted.

C. WHO MAY APPEAR BEFORE THE COURT

Any taxpayer may appear before the *pro se*. In other words, the taxpayer may represent himself in the legal action without the aid of counsel. A corporation may be represented pro se by one of its corporate officers, a partnership may be represented pro se by one of its partners and an LLC may be represented by one of its members. TG13-515(a) & (b).

Any taxpayer may be represented by an attorney. This attorney must be admitted to the Bar in Maryland. TG13-515(c).

Usually, the taxpayer cannot be represented by an out-of-state attorney. However, a taxpayer may be represented by an out-of-state attorney if they obtain a *Pro Hoc Vice* order from a Circuit Court Judge in Maryland.

D. EXHAUSTION OF ADMINISTRATIVE REMEDIES

The Tax Court provides the highest level of administrative review for Maryland tax controversies. A taxpayer cannot appeal to the Tax Court without first exhausting all available administrative remedies before the appropriate agency. TG13-514. This exhaustion requirement does not apply to counties bringing actions involving the valuation of property. A county³ may appeal directly to the Tax Court without completing all previous levels of administrative review. *Abramson v. Montgomery County*, 328 Md. 721, 736-738, 616 A.2d 894 (1992). TG1-101(p)(2), 13-514.

As used in this manual, *county* includes Baltimore City, but is not a reference to the Supervisor of Assessments.

1. Income, Sales Tax, and Use Tax Assessments:

A taxpayer may receive a notice of assessment from the Comptroller. The taxpayer may either apply for a revision of the assessment or pay the assessment and make a claim for a refund. The application or claim must be made to the Comptroller within 30 days of the date on which the notice was mailed. TG13-508(a). If the taxpayer fails to do so within 30 days, the assessment becomes final and non-appealable. TG13-508(b).

If the taxpayer files an application with the Comptroller and does not receive a response within 6 months, the taxpayer may assume that the claim is denied and may appeal directly to the Maryland Tax Court. TG13-510(b).

The Comptroller's office will schedule an informal hearing. TG13-508(c). Following the hearing, the Comptroller will mail the taxpayer a *Notice of Final Determination*. TG13-508(c)(2). The taxpayer may appeal this decision to the Maryland Tax Court but must do so within 30 days. TG13-510(a).

2. Sales and Use Tax Refund Claims:

If a notice of assessment has not been issued, a taxpayer may submit to the Comptroller a claim for refund of sales or use tax at any time within four years from the date the tax was paid. TG13-1104(g). Once the claim is filed, the procedures outlined above apply. The taxpayer may appeal to the Maryland Tax Court if he does not receive a response within 6 months or within 30 days after receiving a Notice of Final Determination.

3. Income Tax Refund Claims:

If a notice of assessment has not been issued, a claim for refund must be filed within the periods of limitations for filing set forth in §6511 of the Internal Revenue Code. TG13-1104(c).

4. Other Refund Claims:

If a notice of assessment has not been issued, most claims for refund (other than for income, sales or use taxes) must be filed within three years. TG13-1104.

5. Real Property Taxes:

Any person receiving a notice of assessment from the Supervisor of Assessments of any county may submit an appeal as to a value or classification within 45 days of the date of the notice. TP14-502(a)(1).⁴ A hearing with the Supervisor or Supervisor's designee⁵ will be held. TP14-502(b). Thereafter, the Supervisor will mail a *final notice* to the property owner. Within 30 days of the final notice, the property owner may then appeal to the Property Tax Assessment Appeals Board (PTAAB) for the county in which the property is located. The PTAAB will schedule a hearing. TP14-509. If dissatisfied with the final determination of the PTAAB, the taxpayer or Supervisor may appeal within 30 days of the PTAAB decision to the Maryland Tax Court. TP14-512(f).

6. Personal Property Taxes:

A taxpayer may submit a petition for review at any time within three years from the date of the final notice of assessment by a Supervisor or the Department.⁶ This review would be held by the Supervisor or Department. TP14-503, 505.

Within 30 days of the date of a final notice by a Supervisor, the property owner may then file an appeal within 30 days to the Maryland Tax Court. TP14-512(f).

Within 30 days of a final notice by the Department, the taxpayer may file an appeal directly to the Maryland Tax Court. TP14-512(a).

⁴ TP refers to the Annotated Code of Maryland, Tax-Property.

⁵Supervisor means the supervisor of assessments for a county.

⁶ *Department* means the State Department of Assessments and Taxation.

7. *Other Taxes:*

Procedures for appealing other types of taxes may be found in TG13-508 through TG13-511.

	Assessment received from:	Administrative Remedy	Legal Remedy	Special Exception
Income, Sales, and Use Tax Assessments	Comptroller	apply for revision (or) pay and make claim for refund w/in 30 days	appeal final determination to Maryland Tax Court w/in 30 days	if the Comptroller does not respond w/in 6 months, appeal directly to Maryland Tax Court
Sales and Use Tax Refund Claims	no assessment issued	claim for refund w/in 4 years from date tax was paid	<i>same as above</i>	<i>same as above</i>
Income Tax Refund	no assessment issued	claim for refund w/in period set by IRC	<i>same as above</i>	<i>same as above</i>
Other Refund Claims	no assessment issues	claim for refund w/in 3 years from date tax was paid	<i>same as above</i>	<i>same as above</i>
Real Property Taxes	Supervisor of Assessments	appeal w/in 30 days to Supervisor; then appeal w/in 30 days to PTAAB	<i>same as above</i>	<i>same as above</i>
Personal Property Taxes	Supervisor of Assessments	appeal w/in 30 days to the Maryland Tax Court	<i>same as above</i>	<i>same as above</i>

E. FILING AN APPEAL WITH THE MARYLAND TAX COURT.

To appeal to the Tax Court, one must file a written petition that states succinctly the nature of the case, the facts on which the appeal is based, and each question presented for review. TG13-516. Forms for filing an appeal are available from the Tax Court directly or from their website – www.taxcourt.maryland.gov. The petition must be filed within 30 days from the date the previous final decision, determination, order, or assessment was mailed. TG13-510(a). The postmark date that the correspondence is mailed is the official filing date for the initial correspondence to the Tax Court.

The Tax Court will also accept a letter or other written communication, even if it does not conform with the formal requirements, if it is received within the statutory time for filing an appeal. If this informal letter is received by the Tax Court, the appropriate petition form will be sent to the taxpayer. The taxpayer must return this original and one copy within the time specified in the accompanying letter. MTC01E.

If the taxpayer has made a claim for a refund and has had no response from the tax collector within 6 months, the taxpayer may consider the claim to have been disallowed and may appeal to the Tax Court. TG13-510(b).

There is no fee for filing a petition. MT01B.⁷ Correspondence regarding any appeal shall be delivered directly to the Clerk of the Tax Court. MTC04.

If the taxpayer appeals, he is designated the Petitioner.⁸ The opposing party is designated the Respondent.⁹ This may be either the Supervisor of Assessments, Comptroller, State Department of Assessments and Taxation, or other assessing or taxing authority. MTC01A.

On receipt of a petition, the Clerk issues a subpoena and a copy of the petition to the appropriate tax determining agency (usually, the Respondent). TG13-520(a), MTC06. The respondent then has 30 days to file an answer, notice of intention to defend (used in lieu of an answer for real estate assessments only), motion to dismiss, or other pleading. MTC02A. If an answer, it must be in the form specified by MTC02B. When an answer or notice of intent to defend is received, the appeal is ready for scheduling. TG13-519. The Clerk should be advised immediately of any scheduling difficulties.

⁷ MTC refers to the Rules of Procedure of the Tax Court. They are codified in the Code of Maryland Regulations (COMAR) Title 14, Subtitle 12.

⁸ A *petitioner* is one who presents a petition to a court or other body either in order to institute a proceeding or take an appeal from a judgment of a lower court or body.

⁹ A *respondent* is one who answers the petition or against whom the appeal is brought.

The Tax Court may allow or require an amendment to any pleading or motion. TG13-517.

All petitions and pleadings must be signed by the party, or by an attorney representing the party. The attorney must be admitted to the bar in Maryland. MTC03(a). All pleadings, except for the petition, shall be served on, mailed to or hand-delivered on the other parties involved by the filing party.

F. PRELIMINARY MOTIONS

There are several types of preliminary motions.¹⁰ These may be submitted by either party. All motions shall be considered without a hearing. A hearing may be requested within the motion, or answer thereto and it is the Court's discretion as to whether a hearing shall be scheduled. MTC02F.

A *motion to dismiss*, generally offered by the Respondent, may be filed in lieu of an answer. Unless otherwise agreed upon by the Court and the parties, responses to Motion shall be filed within 15 days. The Tax Court may set a hearing date, if one is requested, and/or grant or deny the motion without a hearing. If the motion is granted, the case is dismissed without further consideration. If the motion is not granted, the case proceeds and, if an answer or notice of intention to defend has not been filed, it must then be filed.

A *motion to strike* may be filed when the moving party feels that something inappropriate or objectionable has been put into the record.

When pending actions involve common questions of law or fact, the court or either party may make a *motion for consolidation*. The Tax Court may then order a joint hearing of matters in dispute or order any or all the cases consolidated for trial. MTC10A.

Note: A single petition may be filed as to two or more real properties in the same ownership if there exist common questions of law and/or fact. MTC05.

A *request for continuance* (postponement of hearing date) may be granted by written only upon written request. The request must state in detail the reasons for the continuance, and the Tax Court may require documentary proof. MTC08. Communication with opposing party is required to determine their position as to a continuance. Prior to filing the request, a copy of it will be sent to the opposing party. MTC08. The court may waive the requirement that the request be written. The Tax Court may, in its discretion, hold a hearing on the request.

¹⁰ A *motion* is an application to the court requesting an order or rule in favor of the applicant.

G. DISCOVERY & SUBPOENAS

A party may take a deposition¹¹ in or out of the State in the manner done in a civil case. On request of a party, the Tax Court will issue a subpoena requiring the appearance of a witness to testify. The Tax Court may also require the production of any pertinent document to be brought to that deposition. TG13-521. Parties may not serve written interrogatories¹² on an adverse party.

The Tax Court may also issue subpoenas for trial. TG13-520. Requests for subpoenas must be delivered to the Court at least five days prior to the date the case is scheduled for trial. MTC09B.

If a person fails to obey a subpoena or refuses to testify, at the request of a party, the Tax Court will ask a Circuit Court to issue an order directing the person to show cause.¹³ If the Circuit Court determines after a hearing that there is no reasonable cause for the failure to comply, it will order compliance with the directive of the Tax Court. A person who fails to comply with the order of a Circuit Court may be held in contempt of court, with appropriate sanctions. TG13-522, MTC09B.

In cases involving assessments of real property, a party who intends to offer evidence on sales of comparable property, must at least ten days prior to the hearing, provide to the other parties, an itemized list of these properties. MTC07A. The specific information that must be provided is listed under Rule MTC07. Parties must also exchange any written appraisals placing value on the property at least 10 days prior to the scheduled hearing date. TP14-512(f)(6). Failure to comply with these requirements by any party may result in refusal of the documents into evidence. The opposing party must object to them as being entered into the record.

¹¹ A *deposition* is a method of pre-trial discovery which consists of a statement of a witness under oath, taken in question and answer form.

¹² An *interrogatory* is a pre-trial discovery tool in which written questions are made by one party and given to the opposing party, who must answer by written replies under oath.

¹³ To give a reason, motive, matter of excuse or justification.

H. PRE-TRIAL CONFERENCES & BRIEFS

The Tax Court has discretion in any case to conduct a pretrial conference to consider such matters as may aid in the disposition of the case. MTC13. At this pretrial conference, agreements between the parties are sought with respect to providing affidavits, exhibits, lists of witnesses, schedules for depositions, and cutoff dates for discovery. The parties may agree to dates for preparing a stipulation of facts¹⁴ or pre-hearing memoranda. The merits of the case¹⁵ are generally not discussed at these conferences.

A written brief or memorandum may be submitted to the Tax Court prior to and/or after the hearing. TG13-518, MTC11A. A copy will be served by mail or otherwise on the opposing party. The Tax Court may require that such a brief be submitted.

The Judges(s) reviewing the case will review any briefs received before or after the hearing. In certain instances, the Court will make its decision from the bench, in which case, post-trial briefs are not accepted.

I. TRIAL PROCEDURES

Appeals to the Tax Court are heard *de novo*, which means a new record is established. The hearing is not based on anything that occurred at the earlier proceeding. Hearings are conducted in a manner similar to a trial court sitting without a jury. TG13-523. In a *de novo* hearing, each party has the right to introduce testimony, offer exhibits, and cross-examine adverse or hostile witnesses. The Tax Court is not bound by the technical rules of evidence. TG13-524. The testimony of witnesses must be responsive to questions asked and must be relevant to the issues of the case. MTC11A. Hearsay evidence will be admitted if it is credible and of high probative value. Evidence is generally not admissible if it would result in unfair surprise or prejudice. If either party is appearing *pro se* that party is first administered an oath. After any preliminary issues are considered, each side may offer an opening statement. Witnesses are sworn before giving testimony, and the opposing side has the right to cross-examine. Documents may be offered into evidence, but the opposing side has the right to object. After each side has presented its case, closing arguments are permitted. MTC11A.

Upon request, the Tax Court may rule on a question of law, modify a question, or decline to issue a ruling. TG13-525. It may make findings of fact, and may reassess or reclassify, abate, modify, or change any valuation, assessment, classification, tax, or final order appealed to the Court. TG13-528(a).

¹⁴ Where the parties arrange or settle certain parts of the case in which there is no disagreement, such as background facts.

¹⁵ The legal rights of the parties which are in dispute.

The Court may take a brief recess and then announce its decision from the bench, or it may “take the case under advisement” and issue a written decision at a later date. In all cases, a written order is issued, filed with the Clerk, and mailed to each party. TG13-529.

The Petitioner carries the burden of proof. Thus, he/she must offer affirmative, convincing evidence in support of his or her case or demonstrate an error apparent on the face of the proceeding that is being appealed. If such evidence is lacking, the determination appealed from will be affirmed. TG13-528(b).

The Court does not provide for the services of a court reporter, but does record its proceedings. For a fee, either party may request either a copy of the audio recording or a transcript of the proceedings. TG13-527(a).

For good cause, the Court may rehear or reconsider a case upon the motion of any party, before an appeal to a Circuit Court has been taken. Once the decision has been appealed, the Tax Court no longer has jurisdiction.

J. APPEALS FROM A TAX COURT DECISION

Within 30 days of a final written order of the Tax Court, any party may appeal the decision. Most appeals are made to the Circuit Court for the county where any party resides or has a principal place of business. TG13-532(a). However, if the order concerns a property assessment, appeals are made to the Circuit Court for the county in which the property is located. TP14-513.

The procedures for appeal to the Circuit Courts are governed by Section 10-222 of the State Government Article and Title 7, Chapter 200 of the Maryland Rules. It is necessary to follow these rules strictly to avoid dismissal of an appeal. Since such an appeal is only on the record as established in the Tax Court, the party who files the appeal must order and pay for a transcript of the hearing upon which the order was based. MTC14A. The Tax Court will then forward its file to the Circuit Court for review, including its findings of fact and conclusions of law. MTC14B. The court proceedings conducted on appeal are also conducted without a jury. No new evidence on the merits may be presented, although the Circuit Court may order the Tax Court to take additional evidence. The Circuit Court may remand the case to the Tax Court for further proceedings, affirm the Tax Court’s decision, or reverse or modify its decision. Additional appeals may then be taken to the appellate courts as provided in Section 10-223 of the State Government Article.

When an order of the Tax Court is subject to judicial review (an appeal has been filed), the order is enforceable unless the reviewing court grants a stay. TG13-532(b)

CONTACT INFORMATION

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