

# Calendar No. 84

108TH CONGRESS  
1ST SESSION

# S. 753

**[Report No. 108–42]**

To amend the Internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1, 2003

Mr. HATCH (for himself, Mr. BREAUX, Mr. BAUCUS, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

MAY 5, 2003

Reported by Mr. GRASSLEY, without amendment

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# A BILL

To amend the Internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Tax Court Modernization Act”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-  
 2 wise expressly provided, whenever in this Act an amend-  
 3 ment or repeal is expressed in terms of an amendment  
 4 to, or repeal of, a section or other provision, the reference  
 5 shall be considered to be made to a section or other provi-  
 6 sion of the Internal Revenue Code of 1986.

7 (c) TABLE OF CONTENTS.—The table of contents for  
 8 this Act is as follows:

Sec. 1. Short title; etc.

#### TITLE I—TAX COURT PROCEDURE

Sec. 101. Jurisdiction of Tax Court over collection due process cases.

Sec. 102. Authority for special trial judges to hear and decide certain employ-  
 ment status cases.

Sec. 103. Confirmation of authority of Tax Court to apply doctrine of equitable  
 recoupment.

Sec. 104. Tax Court filing fee in all cases commenced by filing petition.

Sec. 105. Amendments to appoint employees.

Sec. 106. Expanded use of Tax Court practice fee for pro se taxpayers.

#### TITLE II—TAX COURT PENSION AND COMPENSATION

Sec. 201. Annuities for survivors of Tax Court judges who are assassinated.

Sec. 202. Cost-of-living adjustments for Tax Court judicial survivor annuities.

Sec. 203. Life insurance coverage for Tax Court judges.

Sec. 204. Cost of life insurance coverage for Tax Court judges age 65 or over.

Sec. 205. Modification of timing of lump-sum payment of judges' accrued an-  
 nual leave.

Sec. 206. Participation of Tax Court judges in the Thrift Savings Plan.

Sec. 207. Exemption of teaching compensation of retired judges from limitation  
 on outside earned income.

Sec. 208. General provisions relating to magistrate judges of the Tax Court.

Sec. 209. Annuities to surviving spouses and dependent children of magistrate  
 judges of the Tax Court.

Sec. 210. Retirement and annuity program.

Sec. 211. Incumbent magistrate judges of the Tax Court.

Sec. 212. Provisions for recall.

Sec. 213. Effective date.

# TITLE I—TAX COURT PROCEDURE

## SEC. 101. JURISDICTION OF TAX COURT OVER COLLECTION

### DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

“(1) JUDICIAL REVIEW OF DETERMINATION.—

The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date of the enactment of this Act.

## SEC. 102. AUTHORITY FOR SPECIAL TRIAL JUDGES TO

### HEAR AND DECIDE CERTAIN EMPLOYMENT

### STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking “and” at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

“(5) any proceeding under section 7436(c), and”.

1 (b) CONFORMING AMENDMENT.—Section 7443A(c)  
 2 is amended by striking “or (4)” and inserting “(4), or  
 3 (5)”.

4 (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to any proceeding under section  
 6 7436(c) of the Internal Revenue Code of 1986 with re-  
 7 spect to which a decision has not become final (as deter-  
 8 mined under section 7481 of such Code) before the date  
 9 of the enactment of this Act.

10 **SEC. 103. CONFIRMATION OF AUTHORITY OF TAX COURT**  
 11 **TO APPLY DOCTRINE OF EQUITABLE**  
 12 **RECOUPMENT.**

13 (a) CONFIRMATION OF AUTHORITY OF TAX COURT  
 14 TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—  
 15 Section 6214(b) (relating to jurisdiction over other years  
 16 and quarters) is amended by adding at the end the fol-  
 17 lowing new sentence: “Notwithstanding the preceding sen-  
 18 tence, the Tax Court may apply the doctrine of equitable  
 19 recoupment to the same extent that it is available in civil  
 20 tax cases before the district courts of the United States  
 21 and the United States Court of Federal Claims.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
 23 this section shall apply to any action or proceeding in the  
 24 United States Tax Court with respect to which a decision  
 25 has not become final (as determined under section 7481

1 of the Internal Revenue Code of 1986) as of the date of  
 2 the enactment of this Act.

3 **SEC. 104. TAX COURT FILING FEE IN ALL CASES COM-**  
 4 **MENCED BY FILING PETITION.**

5 (a) IN GENERAL.—Section 7451 (relating to fee for  
 6 filing a Tax Court petition) is amended by striking all that  
 7 follows “petition” and inserting a period.

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 this section shall take effect on the date of the enactment  
 10 of this Act.

11 **SEC. 105. AMENDMENTS TO APPOINT EMPLOYEES.**

12 (a) IN GENERAL.—Subsection (a) of section 7471  
 13 (relating to Tax Court employees) is amended to read as  
 14 follows:

15 “(a) APPOINTMENT AND COMPENSATION.—

16 “(1) CLERK.—The Tax Court may appoint a  
 17 clerk without regard to the provisions of title 5,  
 18 United States Code, governing appointments in the  
 19 competitive service. The clerk shall serve at the  
 20 pleasure of the Tax Court.

21 “(2) LAW CLERKS AND SECRETARIES.—

22 “(A) IN GENERAL.—The judges and spe-  
 23 cial trial judges of the Tax Court may appoint  
 24 law clerks and secretaries, in such numbers as  
 25 the Tax Court may approve, without regard to

the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

“(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee’s credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

“(3) DEPUTIES AND OTHER EMPLOYEES.—The clerk may appoint necessary deputies and employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such deputies and employees shall be subject to removal by the clerk.

“(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the max-

1       imum extent feasible, the Tax Court shall com-  
2       pensate employees at rates consistent with those for  
3       employees holding comparable positions in the judi-  
4       cial branch.

5           “(5) PROGRAMS.—The Tax Court may establish  
6       programs for employee evaluations, incentive awards,  
7       flexible work schedules, premium pay, and resolution  
8       of employee grievances.

9           “(6) DISCRIMINATION PROHIBITED.—The Tax  
10      Court shall—

11           “(A) prohibit discrimination on the basis  
12      of race, color, religion, age, sex, national origin,  
13      political affiliation, marital status, or handi-  
14      capping condition; and

15           “(B) promulgate regulations providing pro-  
16      cedures for resolving complaints of discrimina-  
17      tion by employees and applicants for employ-  
18      ment.

19           “(7) EXPERTS AND CONSULTANTS.—The Tax  
20      Court may procure the services of experts and con-  
21      sultants under section 3109 of title 5, United States  
22      Code.

23           “(8) RIGHTS TO CERTAIN APPEALS RE-  
24      SERVED.—Notwithstanding any other provision of  
25      law, an individual who is an employee of the Tax

1 Court on the day before the effective date of this  
2 subsection and who, as of that day, was entitled  
3 to—

4 “(A) appeal a reduction in grade or re-  
5 moval to the Merit Systems Protection Board  
6 under chapter 43 of title 5, United States Code,

7 “(B) appeal an adverse action to the Merit  
8 Systems Protection Board under chapter 75 of  
9 title 5, United States Code,

10 “(C) appeal a prohibited personnel practice  
11 described under section 2302(b) of title 5,  
12 United States Code, to the Merit Systems Pro-  
13 tection Board under chapter 77 of that title,

14 “(D) make an allegation of a prohibited  
15 personnel practice described under section  
16 2302(b) of title 5, United States Code, with the  
17 Office of Special Counsel under chapter 12 of  
18 that title for action in accordance with that  
19 chapter, or

20 “(E) file an appeal with the Equal Em-  
21 ployment Opportunity Commission under part  
22 1614 of title 29 of the Code of Federal Regula-  
23 tions,



1 shall be entitled to file such appeal or make such an  
 2 allegation so long as the individual remains an em-  
 3 ployee of the Tax Court.

4 “(9) COMPETITIVE STATUS.—Notwithstanding  
 5 any other provision of law, any employee of the Tax  
 6 Court who has completed at least 1 year of contin-  
 7 uous service under a non temporary appointment  
 8 with the Tax Court acquires a competitive status for  
 9 appointment to any position in the competitive serv-  
 10 ice for which the employee possesses the required  
 11 qualifications.

12 “(10) MERIT SYSTEM PRINCIPLES; PROHIBITED  
 13 PERSONNEL PRACTICES; AND PREFERENCE ELIGI-  
 14 BLES.—Any personnel management system of the  
 15 Tax Court shall—

16 “(A) include the principles set forth in sec-  
 17 tion 2301(b) of title 5, United States Code;

18 “(B) prohibit personnel practices prohib-  
 19 ited under section 2302(b) of title 5, United  
 20 States Code; and

21 “(C) in the case of any individual who  
 22 would be a preference eligible in the executive  
 23 branch, the Tax Court will provide preference  
 24 for that individual in a manner and to an ex-

1           tent consistent with preference accorded to  
2           preference eligibles in the executive branch.”.

3           (b) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect on the date the United States  
5 Tax Court adopts a personnel management system after  
6 the date of the enactment of this Act.

7   **SEC. 106. EXPANDED USE OF TAX COURT PRACTICE FEE**  
8                           **FOR PRO SE TAXPAYERS.**

9           (a) IN GENERAL.—Section 7475(b) (relating to use  
10 of fees) is amended by inserting before the period at the  
11 end “and to provide services to pro se taxpayers”.

12          (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall take effect on the date of the enactment  
14 of this Act.

15   **TITLE II—TAX COURT PENSION**  
16                           **AND COMPENSATION**

17   **SEC. 201. ANNUITIES FOR SURVIVORS OF TAX COURT**  
18                           **JUDGES WHO ARE ASSASSINATED.**

19          (a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-  
20 TION.—Subsection (h) of section 7448 (relating to annu-  
21 ities to surviving spouses and dependent children of  
22 judges) is amended to read as follows:

23           “(h) ENTITLEMENT TO ANNUITY.—

24                   “(1) IN GENERAL.—

1           “(A) ANNUITY TO SURVIVING SPOUSE.—If  
2           a judge described in paragraph (2) is survived  
3           by a surviving spouse but not by a dependent  
4           child, there shall be paid to such surviving  
5           spouse an annuity beginning with the day of the  
6           death of the judge or following the surviving  
7           spouse’s attainment of the age of 50 years,  
8           whichever is the later, in an amount computed  
9           as provided in subsection (m).

10           “(B) ANNUITY TO CHILD.—If such a judge  
11           is survived by a surviving spouse and a depend-  
12           ent child or children, there shall be paid to such  
13           surviving spouse an immediate annuity in an  
14           amount computed as provided in subsection  
15           (m), and there shall also be paid to or on behalf  
16           of each such child an immediate annuity equal  
17           to the lesser of—

18                   “(i) 10 percent of the average annual  
19                   salary of such judge (determined in accord-  
20                   ance with subsection (m)), or

21                   “(ii) 20 percent of such average an-  
22                   nual salary, divided by the number of such  
23                   children.

24           “(C) ANNUITY TO SURVIVING DEPENDENT  
25           CHILDREN.—If such a judge leaves no surviving

1 spouse but leaves a surviving dependent child or  
 2 children, there shall be paid to or on behalf of  
 3 each such child an immediate annuity equal to  
 4 the lesser of—

5 “(i) 20 percent of the average annual  
 6 salary of such judge (determined in accord-  
 7 ance with subsection (m)), or

8 “(ii) 40 percent of such average an-  
 9 nual salary, divided by the number of such  
 10 children.

11 “(2) COVERED JUDGES.—Paragraph (1) applies  
 12 to any judge electing under subsection (b)—

13 “(A) who dies while a judge after having  
 14 rendered at least 5 years of civilian service com-  
 15 puted as prescribed in subsection (n), for the  
 16 last 5 years of which the salary deductions pro-  
 17 vided for by subsection (c)(1) or the deposits  
 18 required by subsection (d) have actually been  
 19 made or the salary deductions required by the  
 20 civil service retirement laws have actually been  
 21 made, or

22 “(B) who dies by assassination after hav-  
 23 ing rendered less than 5 years of civilian service  
 24 computed as prescribed in subsection (n) if, for  
 25 the period of such service, the salary deductions

1 provided for by subsection (c)(1) or the deposits  
2 required by subsection (d) have actually been  
3 made.

4 “(3) TERMINATION OF ANNUITY.—

5 “(A) IN THE CASE OF A SURVIVING  
6 SPOUSE.—The annuity payable to a surviving  
7 spouse under this subsection shall be terminable  
8 upon such surviving spouse’s death or such sur-  
9 viving spouse’s remarriage before attaining age  
10 55.

11 “(B) IN THE CASE OF A CHILD.—The an-  
12 nuity payable to a child under this subsection  
13 shall be terminable upon (i) the child attaining  
14 the age of 18 years, (ii) the child’s marriage, or  
15 (iii) the child’s death, whichever first occurs, ex-  
16 cept that if such child is incapable of self-sup-  
17 port by reason of mental or physical disability  
18 the child’s annuity shall be terminable only  
19 upon death, marriage, or recovery from such  
20 disability.

21 “(C) IN THE CASE OF A DEPENDENT  
22 CHILD AFTER DEATH OF SURVIVING SPOUSE.—  
23 In case of the death of a surviving spouse of a  
24 judge leaving a dependent child or children of  
25 the judge surviving such spouse, the annuity of

1           such child or children shall be recomputed and  
2           paid as provided in paragraph (1)(C).

3           “(D) RECOMPUTATION.—In any case in  
4           which the annuity of a dependent child is termi-  
5           nated under this subsection, the annuities of  
6           any remaining dependent child or children,  
7           based upon the service of the same judge, shall  
8           be recomputed and paid as though the child  
9           whose annuity was so terminated had not sur-  
10          vived such judge.

11          “(4) SPECIAL RULE FOR ASSASSINATED  
12          JUDGES.—In the case of a survivor or survivors of  
13          a judge described in paragraph (2)(B), there shall be  
14          deducted from the annuities otherwise payable under  
15          this section an amount equal to—

16               “(A) the amount of salary deductions pro-  
17               vided for by subsection (c)(1) that would have  
18               been made if such deductions had been made  
19               for 5 years of civilian service computed as pre-  
20               scribed in subsection (n) before the judge’s  
21               death, reduced by

22               “(B) the amount of such salary deductions  
23               that were actually made before the date of the  
24               judge’s death.

1 (b) DEFINITION OF ASSASSINATION.—Section  
 2 7448(a) (relating to definitions) is amended by adding at  
 3 the end the following new paragraph:

4 “(8) The terms ‘assassinated’ and ‘assassina-  
 5 tion’ mean the killing of a judge that is motivated  
 6 by the performance by that judge of his or her offi-  
 7 cial duties.”.

8 (c) DETERMINATION OF ASSASSINATION.—Sub-  
 9 section (i) of section 7448 is amended—

10 (1) by striking the subsection heading and in-  
 11 serting the following:

12 “(i) DETERMINATIONS BY CHIEF JUDGE.—

13 “(1) DEPENDENCY AND DISABILITY.—”,

14 (2) by moving the text 2 ems to the right, and

15 (3) by adding at the end the following new  
 16 paragraph:

17 “(2) ASSASSINATION.—The chief judge shall  
 18 determine whether the killing of a judge was an as-  
 19 sassination, subject to review only by the Tax Court.  
 20 The head of any Federal agency that investigates  
 21 the killing of a judge shall provide information to  
 22 the chief judge that would assist the chief judge in  
 23 making such a determination.”.

24 (d) COMPUTATION OF ANNUITIES.—Subsection (m)  
 25 of section 7448 is amended—

1           (1) by striking the subsection heading and in-  
2       serting the following:

3       “(m) COMPUTATION OF ANNUITIES.—

4           “(1) IN GENERAL.—”,

5           (2) by moving the text 2 ems to the right, and

6           (3) by adding at the end the following new  
7       paragraph:

8           “(2) ASSASSINATED JUDGES.—In the case of a  
9       judge who is assassinated and who has served less  
10      than 3 years, the annuity of the surviving spouse of  
11      such judge shall be based upon the average annual  
12      salary received by such judge for judicial service.”.

13      (e) OTHER BENEFITS.—Section 7448 is amended by  
14      adding at the end the following:

15      “(u) OTHER BENEFITS.—In the case of a judge who  
16      is assassinated, an annuity shall be paid under this section  
17      notwithstanding a survivor’s eligibility for or receipt of  
18      benefits under chapter 81 of title 5, United States Code,  
19      except that the annuity for which a surviving spouse is  
20      eligible under this section shall be reduced to the extent  
21      that the total benefits paid under this section and chapter  
22      81 of that title for any year would exceed the current sal-  
23      ary for that year of the office of the judge.”.



1 **SEC. 202. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
2 **JUDICIAL SURVIVOR ANNUITIES.**

3 (a) IN GENERAL.—Subsection (s) of section 7448  
4 (relating to annuities to surviving spouses and dependent  
5 children of judges) is amended to read as follows:

6 “(s) INCREASES IN SURVIVOR ANNUITIES.—Each  
7 time that an increase is made under section 8340(b) of  
8 title 5, United States Code, in annuities payable under  
9 subchapter III of chapter 83 of that title, each annuity  
10 payable from the survivors annuity fund under this section  
11 shall be increased at the same time by the same percent-  
12 age by which annuities are increased under such section  
13 8340(b).”.

14 (b) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply with respect to increases made  
16 under section 8340(b) of title 5, United States Code, in  
17 annuities payable under subchapter III of chapter 83 of  
18 that title, taking effect after the date of the enactment  
19 of this Act.

20 **SEC. 203. LIFE INSURANCE COVERAGE FOR TAX COURT**  
21 **JUDGES.**

22 (a) IN GENERAL.—Section 7447 (relating to retire-  
23 ment of judges) is amended by adding at the end the fol-  
24 lowing new subsection:

25 “(j) LIFE INSURANCE COVERAGE.—For purposes of  
26 chapter 87 of title 5, United States Code (relating to life

1 insurance), any individual who is serving as a judge of  
 2 the Tax Court or who is retired under this section is  
 3 deemed to be an employee who is continuing in active em-  
 4 ployment.”.

5 (b) EFFECTIVE DATE.—The amendment made by  
 6 this section shall apply to any individual serving as a judge  
 7 of the United States Tax Court or to any retired judge  
 8 of the United States Tax Court on the date of the enact-  
 9 ment of this Act.

10 **SEC. 204. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
 11 **COURT JUDGES AGE 65 OR OVER.**

12 Section 7472 (relating to expenditures) is amended  
 13 by inserting after the first sentence the following new sen-  
 14 tence: “Notwithstanding any other provision of law, the  
 15 Tax Court is authorized to pay on behalf of its judges,  
 16 age 65 or over, any increase in the cost of Federal Em-  
 17 ployees’ Group Life Insurance imposed after April 24,  
 18 1999, including any expenses generated by such payments,  
 19 as authorized by the chief judge in a manner consistent  
 20 with such payments authorized by the Judicial Conference  
 21 of the United States pursuant to section 604(a)(5) of title  
 22 28, United States Code.”.

1 **SEC. 205. MODIFICATION OF TIMING OF LUMP-SUM PAY-**  
2 **MENT OF JUDGES' ACCRUED ANNUAL LEAVE.**

3 (a) IN GENERAL.—Section 7443 (relating to mem-  
4 bership of the Tax Court) is amended by adding at the  
5 end the following new subsection:

6 “(h) LUMP-SUM PAYMENT OF JUDGES’ ACCRUED  
7 ANNUAL LEAVE.—Notwithstanding the provisions of sec-  
8 tions 5551 and 6301 of title 5, United States Code, when  
9 an individual subject to the leave system provided in chap-  
10 ter 63 of that title is appointed by the President to be  
11 a judge of the Tax Court, the individual shall be entitled  
12 to receive, upon appointment to the Tax Court, a lump-  
13 sum payment from the Tax Court of the accumulated and  
14 accrued current annual leave standing to the individual’s  
15 credit as certified by the agency from which the individual  
16 resigned.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to any judge of the United States  
19 Tax Court who has an outstanding leave balance on the  
20 date of the enactment of this Act and to any individual  
21 appointed by the President to serve as a judge of the  
22 United States Tax Court after such date.

1 **SEC. 206. PARTICIPATION OF TAX COURT JUDGES IN THE**  
 2 **THRIFT SAVINGS PLAN.**

3 (a) IN GENERAL.—Section 7447 (relating to retire-  
 4 ment of judges), as amended by this Act, is amended by  
 5 adding at the end the following new subsection:

6 “(k) THRIFT SAVINGS PLAN.—

7 “(1) ELECTION TO CONTRIBUTE.—

8 “(A) IN GENERAL.—A judge of the Tax  
 9 Court may elect to contribute to the Thrift Sav-  
 10 ings Fund established by section 8437 of title  
 11 5, United States Code.

12 “(B) PERIOD OF ELECTION.—An election  
 13 may be made under this paragraph only during  
 14 a period provided under section 8432(b) of title  
 15 5, United States Code, for individuals subject to  
 16 chapter 84 of such title.

17 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—  
 18 Except as otherwise provided in this subsection, the  
 19 provisions of subchapters III and VII of chapter 84  
 20 of title 5, United States Code, shall apply with re-  
 21 spect to a judge who makes an election under para-  
 22 graph (1).

23 “(3) SPECIAL RULES.—

24 “(A) AMOUNT CONTRIBUTED.—The  
 25 amount contributed by a judge to the Thrift  
 26 Savings Fund in any pay period shall not ex-

ceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

“(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

“(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

“(i) retires under subsection (b), or

“(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

“(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code,

1           shall apply with respect to a judge who makes  
2           an election under paragraph (1).

3           “(E) EXCEPTION.—Notwithstanding sub-  
4           paragraph (C), if any judge retires under this  
5           section, or resigns without having met the age  
6           and service requirements set forth under sub-  
7           section (b)(2), and such judge’s nonforfeitable  
8           account balance is less than an amount that the  
9           Executive Director of the Office of Personnel  
10          Management prescribes by regulation, the Exec-  
11          utive Director shall pay the nonforfeitable ac-  
12          count balance to the participant in a single pay-  
13          ment.”.

14          (b) EFFECTIVE DATE.—The amendment made by  
15          this section shall take effect on the date of the enactment  
16          of this Act, except that United States Tax Court judges  
17          may only begin to participate in the Thrift Savings Plan  
18          at the next open season beginning after such date.

19   **SEC. 207. EXEMPTION OF TEACHING COMPENSATION OF**  
20                   **RETIRED JUDGES FROM LIMITATION ON**  
21                   **OUTSIDE EARNED INCOME.**

22          (a) IN GENERAL.—Section 7447 (relating to retire-  
23          ment of judges), as amended by this Act, is amended by  
24          adding at the end the following new subsection:

1       “(1) TEACHING COMPENSATION OF RETIRED  
 2 JUDGES.—For purposes of the limitation under section  
 3 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.  
 4 App.), any compensation for teaching approved under sub-  
 5 section (a)(5) of that section shall not be treated as out-  
 6 side earned income when received by a judge of the Tax  
 7 Court who has retired under subsection (b) for teaching  
 8 performed during any calendar year for which such a  
 9 judge has met the requirements of subsection (c), as cer-  
 10 tified by the chief judge of the Tax Court.”.

11       (b) EFFECTIVE DATE.—The amendment made by  
 12 this section shall apply to any individual serving as a re-  
 13 tired judge of the United States Tax Court on or after  
 14 the date of the enactment of this Act.

15 **SEC. 208. GENERAL PROVISIONS RELATING TO MAG-**  
 16 **ISTRATE JUDGES OF THE TAX COURT.**

17       (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO  
 18 MAGISTRATE JUDGE OF THE TAX COURT.—The heading  
 19 of section 7443A is amended to read as follows:

20 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”.**

21       (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-  
 22 section (a) of section 7443A is amended to read as follows:

23       “(a) APPOINTMENT, TENURE, AND REMOVAL.—

24               “(1) APPOINTMENT.—The chief judge may,  
 25 from time to time, appoint and reappoint magistrate

1 judges of the Tax Court for a term of 8 years. The  
2 magistrate judges of the Tax Court shall proceed  
3 under such rules as may be promulgated by the Tax  
4 Court.

5 “(2) REMOVAL.—Removal of a magistrate  
6 judge of the Tax Court during the term for which  
7 he or she is appointed shall be only for incom-  
8 petency, misconduct, neglect of duty, or physical or  
9 mental disability, but the office of a magistrate  
10 judge of the Tax Court shall be terminated if the  
11 judges of the Tax Court determine that the services  
12 performed by the magistrate judge of the Tax Court  
13 are no longer needed. Removal shall not occur unless  
14 a majority of all the judges of the Tax Court concur  
15 in the order of removal. Before any order of removal  
16 shall be entered, a full specification of the charges  
17 shall be furnished to the magistrate judge of the Tax  
18 Court, and he or she shall be accorded by the judges  
19 of the Tax Court an opportunity to be heard on the  
20 charges.”.

21 (c) SALARY.—Section 7443A(d) (relating to salary)  
22 is amended by striking “90” and inserting “92”.

23 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-  
24 SIONS.—Section 7443A is amended by adding at the end  
25 the following new subsection:



1       “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-  
2       SIONS.—

3               “(1) IN GENERAL.—A magistrate judge of the  
4       Tax Court appointed under this section shall be ex-  
5       empt from the provisions of subchapter I of chapter  
6       63 of title 5, United States Code.

7               “(2) TREATMENT OF UNUSED LEAVE.—

8               “(A) AFTER SERVICE AS MAGISTRATE  
9       JUDGE.—If an individual who is exempted  
10      under paragraph (1) from the subchapter re-  
11      ferred to in such paragraph was previously sub-  
12      ject to such subchapter and, without a break in  
13      service, again becomes subject to such sub-  
14      chapter on completion of the individual’s service  
15      as a magistrate judge, the unused annual leave  
16      and sick leave standing to the individual’s cred-  
17      it when such individual was exempted from this  
18      subchapter is deemed to have remained to the  
19      individual’s credit.

20              “(B) COMPUTATION OF ANNUITY.—In  
21      computing an annuity under section 8339 of  
22      title 5, United States Code, the total service of  
23      an individual specified in subparagraph (A) who  
24      retires on an immediate annuity or dies leaving  
25      a survivor or survivors entitled to an annuity

1 includes, without regard to the limitations im-  
 2 posed by subsection (f) of such section 8339,  
 3 the days of unused sick leave standing to the  
 4 individual's credit when such individual was ex-  
 5 empted from subchapter I of chapter 63 of title  
 6 5, United States Code, except that these days  
 7 will not be counted in determining average pay  
 8 or annuity eligibility.

9 “(C) LUMP SUM PAYMENT.—Any accumu-  
 10 lated and current accrued annual leave or vaca-  
 11 tion balances credited to a magistrate judge as  
 12 of the date of the enactment of this subsection  
 13 shall be paid in a lump sum at the time of sepa-  
 14 ration from service pursuant to the provisions  
 15 and restrictions set forth in section 5551 of  
 16 title 5, United States Code, and related provi-  
 17 sions referred to in such section.”.

18 (e) CONFORMING AMENDMENTS.—

19 (1) The heading of subsection (b) of section  
 20 7443A is amended by striking “SPECIAL TRIAL  
 21 JUDGES” and inserting “MAGISTRATE JUDGES OF  
 22 THE TAX COURT”.

23 (2) Section 7443A(b) is amended by striking  
 24 “special trial judges of the court” and inserting  
 25 “magistrate judges of the Tax Court”.

1           (3) Subsections (c) and (d) of section 7443A  
 2           are amended by striking “special trial judge” and  
 3           inserting “magistrate judge of the Tax Court” each  
 4           place it appears.

5           (4) Section 7443A(e) is amended by striking  
 6           “special trial judges” and inserting “magistrate  
 7           judges of the Tax Court”.

8           (5) Section 7456(a) is amended by striking  
 9           “special trial judge” each place it appears and in-  
 10          serting “magistrate judge”.

11          (6) Subsection (c) of section 7471 is amend-  
 12          ed—

13                (A) by striking the subsection heading and  
 14                inserting “MAGISTRATE JUDGES OF THE TAX  
 15                COURT.—”, and

16                (B) by striking “special trial judges” and  
 17                inserting “magistrate judges”.

18 **SEC. 209. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
 19 **PENDENT CHILDREN OF MAGISTRATE**  
 20 **JUDGES OF THE TAX COURT.**

21          (a) DEFINITIONS.—Section 7448(a) (relating to defi-  
 22          nitions), as amended by this Act, is amended by redesign-  
 23          ating paragraphs (5), (6), (7), and (8) as paragraphs (7),  
 24          (8), (9), and (10), respectively, and by inserting after  
 25          paragraph (4) the following new paragraphs:

1           “(5) The term ‘magistrate judge’ means a judi-  
 2           cial officer appointed pursuant to section 7443A, in-  
 3           cluding any individual receiving an annuity under  
 4           section 7443B, or chapters 83 or 84, as the case  
 5           may be, of title 5, United States Code, whether or  
 6           not performing judicial duties under section 7443C.

7           “(6) The term ‘magistrate judge’s salary’  
 8           means the salary of a magistrate judge received  
 9           under section 7443A(d), any amount received as an  
 10          annuity under section 7443B, or chapters 83 or 84,  
 11          as the case may be, of title 5, United States Code,  
 12          and compensation received under section 7443C.”.

13          (b) ELECTION.—Subsection (b) of section 7448 (re-  
 14          lating to annuities to surviving spouses and dependent  
 15          children of judges) is amended—

16               (1) by striking the subsection heading and in-  
 17               serting the following:

18               “(b) ELECTION.—

19                       “(1) JUDGES.—”,

20                       (2) by moving the text 2 ems to the right, and

21                       (3) by adding at the end the following new  
 22          paragraph:

23               “(2) MAGISTRATE JUDGES.—Any magistrate  
 24          judge may by written election filed with the chief  
 25          judge bring himself or herself within the purview of

1       this section. Such election shall be filed not later  
2       than the later of 6 months after—

3               “(A) 6 months after the date of the enact-  
4               ment of this paragraph,

5               “(B) the date the judge takes office, or

6               “(C) the date the judge marries.”.

7       (c) CONFORMING AMENDMENTS.—

8               (1) The heading of section 7448 is amended by  
9       inserting **“AND MAGISTRATE JUDGES”** after  
10      **“JUDGES”**.

11              (2) The item relating to section 7448 in the  
12      table of sections for part I of subchapter C of chap-  
13      ter 76 is amended by inserting “and magistrate  
14      judges” after “judges”.

15              (3) Subsections (c)(1), (d), (f), (g), (h), (j),  
16      (m), (n), and (u) of section 7448, as amended by  
17      this Act, are each amended—

18               (A) by inserting “or magistrate judge”  
19               after “judge” each place it appears other than  
20               in the phrase “chief judge”, and

21               (B) by inserting “or magistrate judge’s”  
22               after “judge’s” each place it appears.

23              (4) Section 7448(c) is amended—

1 (A) in paragraph (1), by striking “Tax  
 2 Court judges” and inserting “Tax Court judi-  
 3 cial officers”,

4 (B) in paragraph (2)—

5 (i) in subparagraph (A), by inserting  
 6 “and section 7443A(d)” after “(a)(4)”,  
 7 and

8 (ii) in subparagraph (B), by striking  
 9 “subsection (a)(4)” and inserting “sub-  
 10 sections (a)(4) and (a)(6)”.

11 (5) Section 7448(g) is amended by inserting  
 12 “or section 7443B” after “section 7447” each place  
 13 it appears, and by inserting “or an annuity” after  
 14 “retired pay”.

15 (6) Section 7448(j)(1) is amended—

16 (A) in subparagraph (A), by striking  
 17 “service or retired” and inserting “service, re-  
 18 tired”, and by inserting “, or receiving any an-  
 19 nuity under section 7443B or chapters 83 or 84  
 20 of title 5, United States Code,” after “section  
 21 7447”, and

22 (B) in the last sentence, by striking “sub-  
 23 sections (a)(6) and (7)” and inserting “para-  
 24 graphs (8) and (9) of subsection (a)”.

1           (7) Section 7448(m)(1), as amended by this  
2    Act, is amended—

3           (A) by inserting “or any annuity under  
4           section 7443B or chapters 83 or 84 of title 5,  
5           United States Code” after “7447(d)”, and

6           (B) by inserting “or 7443B(m)(1)(B) after  
7           “7447(f)(4)”.

8           (8) Section 7448(n) is amended by inserting  
9           “his years of service pursuant to any appointment  
10          under section 7443A,” after “of the Tax Court,”.

11          (9) Section 3121(b)(5)(E) is amended by in-  
12          serting “or magistrate judge” before “of the United  
13          States Tax Court”.

14          (10) Section 210(a)(5)(E) of the Social Secu-  
15          rity Act is amended by inserting “or magistrate  
16          judge” before “of the United States Tax Court”.

17   **SEC. 210. RETIREMENT AND ANNUITY PROGRAM.**

18          (a) RETIREMENT AND ANNUITY PROGRAM.—Part I  
19   of subchapter C of chapter 76 is amended by inserting  
20   after section 7443A the following new section:

21   **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
22                           **THE TAX COURT.**

23          “(a) RETIREMENT BASED ON YEARS OF SERVICE.—  
24   A magistrate judge of the Tax Court to whom this section  
25   applies and who retires from office after attaining the age

1 of 65 years and serving at least 14 years, whether continu-  
 2 ously or otherwise, as such magistrate judge shall, subject  
 3 to subsection (f), be entitled to receive, during the remain-  
 4 der of the magistrate judge's lifetime, an annuity equal  
 5 to the salary being received at the time the magistrate  
 6 judge leaves office.

7       “(b) RETIREMENT UPON FAILURE OF REAPPOINT-  
 8 MENT.—A magistrate judge of the Tax Court to whom  
 9 this section applies who is not reappointed following the  
 10 expiration of the term of office of such magistrate judge,  
 11 and who retires upon the completion of the term shall,  
 12 subject to subsection (f), be entitled to receive, upon at-  
 13 taining the age of 65 years and during the remainder of  
 14 such magistrate judge's lifetime, an annuity equal to that  
 15 portion of the salary being received at the time the mag-  
 16 istrate judge leaves office which the aggregate number of  
 17 years of service, not to exceed 14, bears to 14, if—

18               “(1) such magistrate judge has served at least  
 19       1 full term as a magistrate judge, and

20               “(2) not earlier than 9 months before the date  
 21       on which the term of office of such magistrate judge  
 22       expires, and not later than 6 months before such  
 23       date, such magistrate judge notified the chief judge  
 24       of the Tax Court in writing that such magistrate



1 judge was willing to accept reappointment to the po-  
2 sition in which such magistrate judge was serving.

3 “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate  
4 judge of the Tax Court to whom this section applies and  
5 who retires after serving at least 8 years, whether continu-  
6 ously or otherwise, as such a magistrate judge shall, sub-  
7 ject to subsection (f), be entitled to receive, upon attaining  
8 the age of 65 years and during the remainder of the mag-  
9 istrate judge’s lifetime, an annuity equal to that portion  
10 of the salary being received at the time the magistrate  
11 judge leaves office which the aggregate number of years  
12 of service, not to exceed 14, bears to 14. Such annuity  
13 shall be reduced by  $\frac{1}{6}$  of 1 percent for each full month  
14 such magistrate judge was under the age of 65 at the time  
15 the magistrate judge left office, except that such reduction  
16 shall not exceed 20 percent.

17 “(d) RETIREMENT FOR DISABILITY.—A magistrate  
18 judge of the Tax Court to whom this section applies, who  
19 has served at least 5 years, whether continuously or other-  
20 wise, as such a magistrate judge, and who retires or is  
21 removed from office upon the sole ground of mental or  
22 physical disability shall, subject to subsection (f), be enti-  
23 tled to receive, during the remainder of the magistrate  
24 judge’s lifetime, an annuity equal to 40 percent of the sal-  
25 ary being received at the time of retirement or removal

1 or, in the case of a magistrate judge who has served for  
 2 at least 10 years, an amount equal to that proportion of  
 3 the salary being received at the time of retirement or re-  
 4 moval which the aggregate number of years of service, not  
 5 to exceed 14, bears to 14.

6 “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate  
 7 judge of the Tax Court who is entitled to an annuity under  
 8 this section is also entitled to a cost-of-living adjustment  
 9 in such annuity, calculated and payable in the same man-  
 10 ner as adjustments under section 8340(b) of title 5,  
 11 United States Code, except that any such annuity, as in-  
 12 creased under this subsection, may not exceed the salary  
 13 then payable for the position from which the magistrate  
 14 judge retired or was removed.

15 “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-  
 16 ITIES.—

17 “(1) IN GENERAL.—A magistrate judge of the  
 18 Tax Court shall be entitled to an annuity under this  
 19 section if the magistrate judge elects an annuity  
 20 under this section by notifying the chief judge of the  
 21 Tax Court not later than the later of—

22 “(A) 5 years after the magistrate judge of  
 23 the Tax Court begins judicial service, or

24 “(B) 5 years after the date of the enact-  
 25 ment of this subsection.

1 Such notice shall be given in accordance with proce-  
 2 dures prescribed by the Tax Court.

3 “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—

4 A magistrate judge who elects to receive an annuity  
 5 under this section shall not be entitled to receive—

6 “(A) any annuity to which such magistrate  
 7 judge would otherwise have been entitled under  
 8 subchapter III of chapter 83, or under chapter  
 9 84 (except for subchapters III and VII), of title  
 10 5, United States Code, for service performed as  
 11 a magistrate or otherwise,

12 “(B) an annuity or salary in senior status  
 13 or retirement under section 371 or 372 of title  
 14 28, United States Code,

15 “(C) retired pay under section 7447, or

16 “(D) retired pay under section 7296 of  
 17 title 38, United States Code.

18 “(3) COORDINATION WITH TITLE 5.—A mag-  
 19 istrate judge of the Tax Court who elects to receive  
 20 an annuity under this section—

21 “(A) shall not be subject to deductions and  
 22 contributions otherwise required by section  
 23 8334(a) of title 5, United States Code,

1           “(B) shall be excluded from the operation  
 2           of chapter 84 (other than subchapters III and  
 3           VII) of such title 5, and

4           “(C) is entitled to a lump-sum credit under  
 5           section 8342(a) or 8424 of such title 5, as the  
 6           case may be.

7           “(g) CALCULATION OF SERVICE.—For purposes of  
 8           calculating an annuity under this section—

9           “(1) service as a magistrate judge of the Tax  
 10          Court to whom this section applies may be credited,  
 11          and

12          “(2) each month of service shall be credited as  
 13           $\frac{1}{12}$  of a year, and the fractional part of any month  
 14          shall not be credited.

15          “(h) COVERED POSITIONS AND SERVICE.—This sec-  
 16          tion applies to any magistrate judge of the Tax Court or  
 17          special trial judge of the Tax Court appointed under this  
 18          subchapter, but only with respect to service as such a mag-  
 19          istrate judge or special trial judge after a date not earlier  
 20          than 9½ years before the date of the enactment of this  
 21          subsection.

22          “(i) PAYMENTS PURSUANT TO COURT ORDER.—

23          “(1) IN GENERAL.—Payments under this sec-  
 24          tion which would otherwise be made to a magistrate  
 25          judge of the Tax Court based upon his or her service

1 shall be paid (in whole or in part) by the chief judge  
 2 of the Tax Court to another person if and to the ex-  
 3 tent expressly provided for in the terms of any court  
 4 decree of divorce, annulment, or legal separation, or  
 5 the terms of any court order or court-approved prop-  
 6 erty settlement agreement incident to any court de-  
 7 cree of divorce, annulment, or legal separation. Any  
 8 payment under this paragraph to a person bars re-  
 9 covery by any other person.

10 “(2) REQUIREMENTS FOR PAYMENT.—Para-  
 11 graph (1) shall apply only to payments made by the  
 12 chief judge of the Tax Court after the date of re-  
 13 ceipt by the chief judge of written notice of such de-  
 14 cree, order, or agreement, and such additional infor-  
 15 mation as the chief judge may prescribe.

16 “(3) COURT DEFINED.—For purposes of this  
 17 subsection, the term ‘court’ means any court of any  
 18 State, the District of Columbia, the Commonwealth  
 19 of Puerto Rico, Guam, the Northern Mariana Is-  
 20 lands, or the Virgin Islands, and any Indian tribal  
 21 court or courts of Indian offense.

22 “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-  
 23 ITS.—

24 “(1) DEDUCTIONS.—Beginning with the next  
 25 pay period after the chief judge of the Tax Court re-

1 ceives a notice under subsection (f) that a mag-  
2 istrate judge of the Tax Court has elected an annu-  
3 ity under this section, the chief judge shall deduct  
4 and withhold 1 percent of the salary of such mag-  
5 istrate judge. Amounts shall be so deducted and  
6 withheld in a manner determined by the chief judge.  
7 Amounts deducted and withheld under this sub-  
8 section shall be deposited in the Treasury of the  
9 United States to the credit of the Tax Court Judi-  
10 cial Officers' Retirement Fund. Deductions under  
11 this subsection from the salary of a magistrate judge  
12 shall terminate upon the retirement of the mag-  
13 istrate judge or upon completion of 14 years of serv-  
14 ice for which contributions under this section have  
15 been made, whether continuously or otherwise, as  
16 calculated under subsection (g), whichever occurs  
17 first.

18 “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF  
19 CLAIMS.—Each magistrate judge of the Tax Court  
20 who makes an election under subsection (f) shall be  
21 deemed to consent and agree to the deductions from  
22 salary which are made under paragraph (1). Pay-  
23 ment of such salary less such deductions (and any  
24 deductions made under section 7448) is a full and  
25 complete discharge and acquittance of all claims and

1 demands for all services rendered by such magistrate  
 2 judge during the period covered by such payment,  
 3 except the right to those benefits to which the mag-  
 4 istrate judge is entitled under this section (and sec-  
 5 tion 7448).

6 “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-  
 7 istrate judge of the Tax Court who makes an election  
 8 under subsection (f) may deposit, for service performed  
 9 before such election for which contributions may be made  
 10 under this section, an amount equal to 1 percent of the  
 11 salary received for that service. Credit for any period cov-  
 12 ered by that service may not be allowed for purposes of  
 13 an annuity under this section until a deposit under this  
 14 subsection has been made for that period.

15 “(l) INDIVIDUAL RETIREMENT RECORDS.—The  
 16 amounts deducted and withheld under subsection (j), and  
 17 the amounts deposited under subsection (k), shall be cred-  
 18 ited to individual accounts in the name of each magistrate  
 19 judge of the Tax Court from whom such amounts are re-  
 20 ceived, for credit to the Tax Court Judicial Officers’ Re-  
 21 tirement Fund.

22 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—  
 23 “(1) 1-YEAR FORFEITURE FOR FAILURE TO  
 24 PERFORM JUDICIAL DUTIES.—Subject to paragraph  
 25 (3), any magistrate judge of the Tax Court who re-

1       tires under this section and who fails to perform ju-  
 2       dicial duties required of such individual by section  
 3       7443C shall forfeit all rights to an annuity under  
 4       this section for a 1-year period which begins on the  
 5       1st day on which such individual fails to perform  
 6       such duties.

7           “(2) PERMANENT FORFEITURE OF RETIRED  
 8       PAY WHERE CERTAIN NON-GOVERNMENT SERVICES  
 9       PERFORMED.—Subject to paragraph (3), any mag-  
 10      istrate judge of the Tax Court who retires under this  
 11      section and who thereafter performs (or supervises  
 12      or directs the performance of) legal or accounting  
 13      services in the field of Federal taxation for the indi-  
 14      vidual’s client, the individual’s employer, or any of  
 15      such employer’s clients, shall forfeit all rights to an  
 16      annuity under this section for all periods beginning  
 17      on or after the first day on which the individual per-  
 18      forms (or supervises or directs the performance of)  
 19      such services. The preceding sentence shall not apply  
 20      to any civil office or employment under the Govern-  
 21      ment of the United States.

22           “(3) FORFEITURES NOT TO APPLY WHERE IN-  
 23      DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-  
 24      ITY.—



1           “(A) IN GENERAL.—If a magistrate judge  
2 of the Tax Court makes an election under this  
3 paragraph—

4           “(i) paragraphs (1) and (2) (and sec-  
5 tion 7443C) shall not apply to such mag-  
6 istrate judge beginning on the date such  
7 election takes effect, and

8           “(ii) the annuity payable under this  
9 section to such magistrate judge, for peri-  
10 ods beginning on or after the date such  
11 election takes effect, shall be equal to the  
12 annuity to which such magistrate judge is  
13 entitled on the day before such effective  
14 date.

15           “(B) ELECTION REQUIREMENTS.—An elec-  
16 tion under subparagraph (A)—

17           “(i) may be made by a magistrate  
18 judge of the Tax Court eligible for retire-  
19 ment under this section, and

20           “(ii) shall be filed with the chief judge  
21 of the Tax Court.

22           Such an election, once it takes effect, shall be  
23 irrevocable.

24           “(C) EFFECTIVE DATE OF ELECTION.—  
25           Any election under subparagraph (A) shall take

1 effect on the first day of the first month fol-  
 2 lowing the month in which the election is made.

3 “(4) ACCEPTING OTHER EMPLOYMENT.—Any  
 4 magistrate judge of the Tax Court who retires under  
 5 this section and thereafter accepts compensation for  
 6 civil office or employment under the United States  
 7 Government (other than for the performance of  
 8 functions as a magistrate judge of the Tax Court  
 9 under section 7443C) shall forfeit all rights to an  
 10 annuity under this section for the period for which  
 11 such compensation is received. For purposes of this  
 12 paragraph, the term ‘compensation’ includes retired  
 13 pay or salary received in retired status.

14 “(n) LUMP-SUM PAYMENTS.—

15 “(1) ELIGIBILITY.—

16 “(A) IN GENERAL.—Subject to paragraph  
 17 (2), an individual who serves as a magistrate  
 18 judge of the Tax Court and—

19 “(i) who leaves office and is not re-  
 20 appointed as a magistrate judge of the Tax  
 21 Court for at least 31 consecutive days,

22 “(ii) who files an application with the  
 23 chief judge of the Tax Court for payment  
 24 of a lump-sum credit,

1                   “(iii) is not serving as a magistrate  
2                   judge of the Tax Court at the time of fil-  
3                   ing of the application, and

4                   “(iv) will not become eligible to re-  
5                   ceive an annuity under this section within  
6                   31 days after filing the application,  
7                   is entitled to be paid the lump-sum credit. Pay-  
8                   ment of the lump-sum credit voids all rights to  
9                   an annuity under this section based on the serv-  
10                  ice on which the lump-sum credit is based, until  
11                  that individual resumes office as a magistrate  
12                  judge of the Tax Court.

13                  “(B) PAYMENT TO SURVIVORS.—Lump-  
14                  sum benefits authorized by subparagraphs (C),  
15                  (D), and (E) of this paragraph shall be paid to  
16                  the person or persons surviving the magistrate  
17                  judge of the Tax Court and alive on the date  
18                  title to the payment arises, in the order of prec-  
19                  edence set forth in subsection (o) of section 376  
20                  of title 28, United States Code, and in accord-  
21                  ance with the last 2 sentences of paragraph (1)  
22                  of that subsection. For purposes of the pre-  
23                  ceding sentence, the term ‘judicial official’ as  
24                  used in subsection (o) of such section 376 shall  
25                  be deemed to mean ‘magistrate judge of the

1 Tax Court’ and the terms ‘Administrative Of-  
 2 fice of the United States Courts’ and ‘Director  
 3 of the Administrative Office of the United  
 4 States Courts’ shall be deemed to mean ‘chief  
 5 judge of the Tax Court’.

6 “(C) PAYMENT UPON DEATH OF JUDGE  
 7 BEFORE RECEIPT OF ANNUITY.—If a mag-  
 8 istrate judge of the Tax Court dies before re-  
 9 ceiving an annuity under this section, the lump-  
 10 sum credit shall be paid.

11 “(D) PAYMENT OF ANNUITY REMAIN-  
 12 DER.—If all annuity rights under this section  
 13 based on the service of a deceased magistrate  
 14 judge of the Tax Court terminate before the  
 15 total annuity paid equals the lump-sum credit,  
 16 the difference shall be paid.

17 “(E) PAYMENT UPON DEATH OF JUDGE  
 18 DURING RECEIPT OF ANNUITY.—If a magistrate  
 19 judge of the Tax Court who is receiving an an-  
 20 nuity under this section dies, any accrued annu-  
 21 ity benefits remaining unpaid shall be paid.

22 “(F) PAYMENT UPON TERMINATION.—Any  
 23 accrued annuity benefits remaining unpaid on  
 24 the termination, except by death, of the annuity

of a magistrate judge of the Tax Court shall be paid to that individual.

“(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

“(2) SPOUSES AND FORMER SPOUSES.—

“(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

“(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge’s application, and

“(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court ap-

proved property settlement agreement incident to such decree, if—

“(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

“(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge’s spouse or former spouse to any portion of an annuity under subsection (i).

“(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

“(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe proce-

1           dures under which this paragraph shall be ap-  
 2           plied in any case in which the chief judge re-  
 3           ceives 2 or more orders or decrees described in  
 4           subparagraph (A).

5           “(3) DEFINITION.—For purposes of this sub-  
 6           section, the term ‘lump-sum credit’ means the  
 7           unrefunded amount consisting of—

8                   “(A) retirement deductions made under  
 9                   this section from the salary of a magistrate  
 10                  judge of the Tax Court,

11                   “(B) amounts deposited under subsection  
 12                   (k) by a magistrate judge of the Tax Court cov-  
 13                   ering earlier service, and

14                   “(C) interest on the deductions and depos-  
 15                   its which, for any calendar year, shall be equal  
 16                   to the overall average yield to the Tax Court  
 17                   Judicial Officers’ Retirement Fund during the  
 18                   preceding fiscal year from all obligations pur-  
 19                   chased by the Secretary during such fiscal year  
 20                   under subsection (o); but does not include inter-  
 21                   est—

22                           “(i) if the service covered thereby ag-  
 23                           gregates 1 year or less, or

24                           “(ii) for the fractional part of a  
 25                           month in the total service.

1       “(o) TAX COURT JUDICIAL OFFICERS’ RETIREMENT  
2 FUND.—

3               “(1) ESTABLISHMENT.—There is established in  
4 the Treasury a fund which shall be known as the  
5 ‘Tax Court Judicial Officers’ Retirement Fund’.  
6 Amounts in the Fund are authorized to be appro-  
7 priated for the payment of annuities, refunds, and  
8 other payments under this section.

9               “(2) INVESTMENT OF FUND.—The Secretary  
10 shall invest, in interest bearing securities of the  
11 United States, such currently available portions of  
12 the Tax Court Judicial Officers’ Retirement Fund as  
13 are not immediately required for payments from the  
14 Fund. The income derived from these investments  
15 constitutes a part of the Fund.

16               “(3) UNFUNDED LIABILITY.—

17                       “(A) IN GENERAL.—There are authorized  
18 to be appropriated to the Tax Court Judicial  
19 Officers’ Retirement Fund amounts required to  
20 reduce to zero the unfunded liability of the  
21 Fund.

22                       “(B) UNFUNDED LIABILITY.—For pur-  
23 poses of subparagraph (A), the term ‘unfunded  
24 liability’ means the estimated excess, deter-  
25 mined on an annual basis in accordance with



the provisions of section 9503 of title 31,  
United States Code, of the present value of all  
benefits payable from the Tax Court Judicial  
Officers' Retirement Fund over the sum of—

“(i) the present value of deductions to  
be withheld under this section from the fu-  
ture basic pay of magistrate judges of the  
Tax Court, plus

“(ii) the balance in the Fund as of the  
date the unfunded liability is determined.

“(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

“(1) ELECTION TO CONTRIBUTE.—

“(A) IN GENERAL.—A magistrate judge of  
the Tax Court who elects to receive an annuity  
under this section or under section 211 of the  
Tax Court Modernization Act may elect to con-  
tribute an amount of such individual's basic pay  
to the Thrift Savings Fund established by sec-  
tion 8437 of title 5, United States Code.

“(B) PERIOD OF ELECTION.—An election  
may be made under this paragraph only during  
a period provided under section 8432(b) of title  
5, United States Code, for individuals subject to  
chapter 84 of such title.

1           “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

2       Except as otherwise provided in this subsection, the  
3       provisions of subchapters III and VII of chapter 84  
4       of title 5, United States Code, shall apply with re-  
5       spect to a magistrate judge who makes an election  
6       under paragraph (1).

7           “(3) SPECIAL RULES.—

8               “(A)       AMOUNT       CONTRIBUTED.—The  
9       amount contributed by a magistrate judge to  
10      the Thrift Savings Fund in any pay period shall  
11      not exceed the maximum percentage of such  
12      judge’s basic pay for such pay period as allow-  
13      able under section 8440f of title 5, United  
14      States Code.

15           “(B) CONTRIBUTIONS FOR BENEFIT OF  
16      JUDGE.—No contributions may be made for the  
17      benefit of a magistrate judge under section  
18      8432(c) of title 5, United States Code.

19           “(C) APPLICABILITY OF SECTION 8433(b)  
20      OF TITLE 5.—Section 8433(b) of title 5, United  
21      States Code, applies with respect to a mag-  
22      istrate judge who makes an election under para-  
23      graph (1) and—

24                   “(i) who retires entitled to an imme-  
25                   diate annuity under this section (including

1 a disability annuity under subsection (d) of  
 2 this section) or section 211 of the Tax  
 3 Court Modernization Act,

4 “(ii) who retires before attaining age  
 5 65 but is entitled, upon attaining age 65,  
 6 to an annuity under this section or section  
 7 211 of the Tax Court Modernization Act,  
 8 or

9 “(iii) who retires before becoming en-  
 10 titled to an immediate annuity, or an an-  
 11 nuity upon attaining age 65, under this  
 12 section or section 211 of the Tax Court  
 13 Modernization Act.

14 “(D) SEPARATION FROM SERVICE.—With  
 15 respect to a magistrate judge to whom this sub-  
 16 section applies, retirement under this section or  
 17 section 211 of the Tax Court Modernization Act  
 18 is a separation from service for purposes of sub-  
 19 chapters III and VII of chapter 84 of title 5,  
 20 United States Code.

21 “(4) DEFINITIONS.—For purposes of this sub-  
 22 section, the terms ‘retirement’ and ‘retire’ include  
 23 removal from office under section 7443A(a)(2) on  
 24 the sole ground of mental or physical disability.

1           “(5) OFFSET.—In the case of a magistrate  
 2       judge who receives a distribution from the Thrift  
 3       Savings Fund and who later receives an annuity  
 4       under this section, that annuity shall be offset by an  
 5       amount equal to the amount which represents the  
 6       Government’s contribution to that person’s Thrift  
 7       Savings Account, without regard to earnings attrib-  
 8       utable to that amount. Where such an offset would  
 9       exceed 50 percent of the annuity to be received in  
 10      the first year, the offset may be divided equally over  
 11      the first 2 years in which that person receives the  
 12      annuity.

13           “(6) EXCEPTION.—Notwithstanding clauses (i)  
 14      and (ii) of paragraph (3)(C), if any magistrate judge  
 15      retires under circumstances making such magistrate  
 16      judge eligible to make an election under subsection  
 17      (b) of section 8433 of title 5, United States Code,  
 18      and such magistrate judge’s nonforfeitable account  
 19      balance is less than an amount that the Executive  
 20      Director of the Office of Personnel Management pre-  
 21      scribes by regulation, the Executive Director shall  
 22      pay the nonforfeitable account balance to the partici-  
 23      pant in a single payment.”.

24           (b) CONFORMING AMENDMENT.—The table of sec-  
 25      tion for part I of subchapter C of chapter 76 is amended

1 by inserting after the item relating to section 7443A the  
 2 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax  
 Court.”.

3 **SEC. 211. INCUMBENT MAGISTRATE JUDGES OF THE TAX**  
 4 **COURT.**

5 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND  
 6 SECTION 7443B OF THE INTERNAL REVENUE CODE OF  
 7 1986.—A magistrate judge of the United States Tax  
 8 Court in active service on the date of the enactment of  
 9 this Act shall, subject to subsection (b), be entitled, in lieu  
 10 of the annuity otherwise provided under the amendments  
 11 made by this title, to—

12 (1) an annuity under subchapter III of chapter  
 13 83, or under chapter 84 (except for subchapters III  
 14 and VII), of title 5, United States Code, as the case  
 15 may be, for creditable service before the date on  
 16 which service would begin to be credited for pur-  
 17 poses of paragraph (2), and

18 (2) an annuity calculated under subsection (b)  
 19 or (c) and subsection (g) of section 7443B of the In-  
 20 ternal Revenue Code of 1986, as added by this Act,  
 21 for any service as a magistrate judge of the United  
 22 States Tax Court or special trial judge of the United  
 23 States Tax Court but only with respect to service as  
 24 such a magistrate judge or special trial judge after

1 a date not earlier than 9½ years prior to the date  
 2 of the enactment of this Act (as specified in the elec-  
 3 tion pursuant to subsection (b)) for which deduc-  
 4 tions and deposits are made under subsections (j)  
 5 and (k) of such section 7443B, as applicable, with-  
 6 out regard to the minimum number of years of serv-  
 7 ice as such a magistrate judge of the United States  
 8 Tax Court, except that—

9 (A) in the case of a magistrate judge who  
 10 retired with less than 8 years of service, the an-  
 11 nuity under subsection (c) of such section  
 12 7443B shall be equal to that proportion of the  
 13 salary being received at the time the magistrate  
 14 judge leaves office which the years of service  
 15 bears to 14, subject to a reduction in accord-  
 16 ance with subsection (c) of such section 7443B  
 17 if the magistrate judge is under age 65 at the  
 18 time he or she leaves office, and

19 (B) the aggregate amount of the annuity  
 20 initially payable on retirement under this sub-  
 21 section may not exceed the rate of pay for the  
 22 magistrate judge which is in effect on the day  
 23 before the retirement becomes effective.

24 (b) FILING OF NOTICE OF ELECTION.—A magistrate  
 25 judge of the United States Tax Court shall be entitled to

1 an annuity under this section only if the magistrate judge  
2 files a notice of that election with the chief judge of the  
3 United States Tax Court specifying the date on which  
4 service would begin to be credited under section 7443B  
5 of the Internal Revenue Code of 1986, as added by this  
6 Act, in lieu of chapter 83 or chapter 84 of title 5, United  
7 States Code. Such notice shall be filed in accordance with  
8 such procedures as the chief judge of the United States  
9 Tax Court shall prescribe.

10 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-  
11 istrate judge of the United States Tax Court who makes  
12 an election under subsection (b) shall be entitled to a  
13 lump-sum credit under section 8342 or 8424 of title 5,  
14 United States Code, as the case may be, for any service  
15 which is covered under section 7443B of the Internal Rev-  
16 enue Code of 1986, as added by this Act, pursuant to that  
17 election, and with respect to which any contributions were  
18 made by the magistrate judge under the applicable provi-  
19 sions of title 5, United States Code.

20 (d) RECALL.—With respect to any magistrate judge  
21 of the United States Tax Court receiving an annuity under  
22 this section who is recalled to serve under section 7443C  
23 of the Internal Revenue Code of 1986, as added by this  
24 Act—

1           (1) the amount of compensation which such re-  
 2           called magistrate judge receives under such section  
 3           7443C shall be calculated on the basis of the annu-  
 4           ity received under this section, and

5           (2) such recalled magistrate judge of the United  
 6           States Tax Court may serve as a reemployed annu-  
 7           itant to the extent otherwise permitted under title 5,  
 8           United States Code.

9 Section 7443B(m)(4) of the Internal Revenue Code of  
 10 1986, as added by this Act, shall not apply with respect  
 11 to service as a reemployed annuitant described in para-  
 12 graph (2).

13 **SEC. 212. PROVISIONS FOR RECALL.**

14           (a) IN GENERAL.—Part I of subchapter C of chapter  
 15 76, as amended by this Act, is amended by inserting after  
 16 section 7443B the following new section:

17 **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**  
 18 **COURT.**

19           “(a) RECALLING OF RETIRED MAGISTRATE  
 20 JUDGES.—Any individual who has retired pursuant to sec-  
 21 tion 7443B or the applicable provisions of title 5, United  
 22 States Code, upon reaching the age and service require-  
 23 ments established therein, may at or after retirement be  
 24 called upon by the chief judge of the Tax Court to perform  
 25 such judicial duties with the Tax Court as may be re-



1 requested of such individual for any period or periods speci-  
2 fied by the chief judge; except that in the case of any such  
3 individual—

4 “(1) the aggregate of such periods in any 1 cal-  
5 endar year shall not (without such individual’s con-  
6 sent) exceed 90 calendar days, and

7 “(2) such individual shall be relieved of per-  
8 forming such duties during any period in which ill-  
9 ness or disability precludes the performance of such  
10 duties.

11 Any act, or failure to act, by an individual performing ju-  
12 dicial duties pursuant to this subsection shall have the  
13 same force and effect as if it were the act (or failure to  
14 act) of a magistrate judge of the Tax Court.

15 “(b) COMPENSATION.—For the year in which a pe-  
16 riod of recall occurs, the magistrate judge shall receive,  
17 in addition to the annuity provided under the provisions  
18 of section 7443B or under the applicable provisions of title  
19 5, United States Code, an amount equal to the difference  
20 between that annuity and the current salary of the office  
21 to which the magistrate judge is recalled. The annuity of  
22 the magistrate judge who completes that period of service,  
23 who is not recalled in a subsequent year, and who retired  
24 under section 7443B, shall be equal to the salary in effect

1 at the end of the year in which the period of recall oc-  
 2 curred for the office from which such individual retired.

3 “(c) RULEMAKING AUTHORITY.—The provisions of  
 4 this section may be implemented under such rules as may  
 5 be promulgated by the Tax Court.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-  
 7 tions for part I of subchapter C of chapter 76, as amended  
 8 by this Act, is amended by inserting after the item relating  
 9 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

10 **SEC. 213. EFFECTIVE DATE.**

11 Except as otherwise provided, the amendments made  
 12 by this title shall take effect on the date of the enactment  
 13 of this Act.



**Calendar No. 84**

108TH CONGRESS  
1ST SESSION

**S. 753**

**[Report No. 108-42]**

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**A BILL**

To amend the Internal Revenue Code of 1986 to  
provide for the modernization of the United  
States Tax Court, and for other purposes.

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MAY 5, 2003

Reported without amendment