

TITLE 26 - INTERNAL REVENUE CODE
Subtitle F - Procedure and Administration
CHAPTER 76 - JUDICIAL PROCEEDINGS
Subchapter C - The Tax Court
PART I - ORGANIZATION AND JURISDICTION

§ 7447. Retirement

(a) Definitions

For purposes of this section—

- (1) The term “Tax Court” means the United States Tax Court.
- (2) The term “judge” means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).
- (3) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge, as judge of the Tax Court of the United States, or as a member of the Board of Tax Appeals.

(b) Retirement

- (1) Any judge shall retire upon attaining the age of 70.
- (2) Any judge who meets the age and service requirements set forth in the following table may retire:

And the years	
of service as	
The judge has	a judge are
attained age:	at least:
65	15
66	14
67	13
68	12
69	11
70	10.

- (3) Any judge who is not reappointed following the expiration of the term of his office may retire upon the completion of such term, if
 - (A) he has served as a judge of the Tax Court for 15 years or more and
 - (B) not earlier than 9 months preceding the date of the expiration of the term of his office and not later than 6 months preceding such date, he advised the President in writing that he was willing to accept reappointment to the Tax Court.
- (4) Any judge who becomes permanently disabled from performing his duties shall retire.

Section 8335 (a) of title 5 of the United States Code (relating to automatic separation from the service) shall not apply in respect of judges. Any judge who retires shall be designated “senior judge”.

(c) Recalling of retired judges

At or after his retirement, any individual who has elected to receive retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or periods specified by the chief judge; except that in the case of any such individual—

- (1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and
- (2) he shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscodeprint.html>).

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for purposes of section 7443 (a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(d) Retired pay

Any individual who—

- (1) retires under paragraph (1), (2), or (3) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period as the number of years he has served as judge bears to 10; except that the rate of such retired pay shall not be more than the rate of such salary for such period; or
- (2) retires under paragraph (4) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate—
 - (A) equal to the rate of the salary payable to a judge during such period if before he retired he had served as a judge not less than 10 years; or
 - (B) one-half of the rate of the salary payable to a judge during such period if before he retired he had served as a judge less than 10 years.

Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge.

(e) Election to receive retired pay

Any judge may elect to receive retired pay under subsection (d). Such an election—

- (1) may be made only while an individual is a judge (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, it may be made at any time before the day after the day on which his successor takes office);
- (2) once made, shall be irrevocable;
- (3) in the case of any judge other than the chief judge, shall be made by filing notice thereof in writing with the chief judge; and
- (4) in the case of the chief judge, shall be made by filing notice thereof in writing with the Office of Personnel Management.

The chief judge shall transmit to the Office of Personnel Management a copy of each notice filed with him under this subsection.

(f) Retired pay affected in certain cases

In the case of an individual for whom an election to receive retired pay under subsection (d) is in effect—

(1) 1-year forfeiture for failure to perform judicial duties

If such individual during any calendar year fails to perform judicial duties required of him by subsection (c), such individual shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the 1st day on which he so fails to perform such duties.

(2) Permanent forfeiture of retired pay where certain non-Government services performed

If such individual performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for his client, his employer, or any of his employer's clients, such individual shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the 1st day on which he engages in any such activity. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

(3) Suspension of retired pay during period of compensated Government service

If such individual accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)), such individual shall forfeit all rights to retired pay under subsection (d) for the period for which such compensation is received.

(4) Forfeitures of retired pay under paragraphs (1) and (2) not to apply where individual elects to freeze amount of retired pay

(A) In general

If any individual makes an election under this paragraph—

- (i) paragraphs (1) and (2) (and subsection (c)) shall not apply to such individual beginning on the date such election takes effect, and
- (ii) the retired pay under subsection (d) payable to such individual for periods beginning on or after the date such election takes effect shall be equal to the retired pay to which such individual would be entitled without regard to this clause at the time of such election.

(B) Election

An election under this paragraph—

- (i) may be made by an individual only if such individual meets the age and service requirements for retirement under paragraph (2) of subsection (b),
- (ii) may be made only during the period during which the individual may make an election to receive retired pay or while the individual is receiving retired pay, and
- (iii) shall be made in the same manner as the election to receive retired pay.

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

(C) When election takes effect

Any election under this paragraph shall take effect on the 1st day of the 1st month following the month in which the election is made.

(g) Coordination with civil service retirement

(1) General rule

Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such civil service retirement laws apply) as if this section had not been enacted.

(2) Effect of electing retired pay

In the case of any individual who has filed an election to receive retired pay under subsection (d)—

- (A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise);
- (B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to him under subsection (d) or from any other salary, pay, or compensation payable to him, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331 (8) of title 5 of the United States Code upon making application therefor with the Office of Personnel Management.

(h) Retirement for disability

(1) Any judge who becomes permanently disabled from performing his duties shall certify to the President his disability in writing. If the chief judge retires for disability, his retirement shall not take effect until concurred in by the President. If any other judge retires for disability, he shall furnish to the President a certificate of disability signed by the chief judge.

(2) Whenever any judge who becomes permanently disabled from performing his duties does not retire and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President shall declare such judge to be retired.

(i) Revocation of election to receive retired pay

(1) In general

Notwithstanding subsection (e)(2), an individual who has filed an election to receive retired pay under subsection (d) may revoke such election at any time before the first day on which retired pay (or compensation under subsection (c) in lieu of retired pay) would (but for such revocation) begin to accrue with respect to such individual.

(2) Manner of revoking

Any revocation under this subsection shall be made by filing a notice thereof in writing with the Civil Service Commission. The Civil Service Commission shall transmit to the chief judge a copy of each notice filed under this subsection.

(3) Effect of revocation

In the case of any revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (d),

(B) for purposes of section 7448—

(i) the individual shall be treated as not having filed an election under section 7448 (b), and

(ii) section 7448 (g) shall not apply, and the amount credited to such individual's account (together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

(C) no credit shall be allowed for any service as a judge of the Tax Court unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

(D) the Tax Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (e), and

(E) if subparagraph (D) is complied with, service on the Tax Court shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(j) Thrift Savings Plan

(1) Election to contribute

(A) In general

A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 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.

(2) Applicability of title 5 provisions

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

(3) Special rules

(A) Amount contributed

The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed 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, shall apply with respect to a judge who makes an election under paragraph (1).

(E) Exception

Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Federal Retirement Thrift Investment Board prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 880; Pub. L. 89–354, § 1, Feb. 2, 1966, 80 Stat. 5; Pub. L. 91–172, title IX, §§ 954, 960 (c), (d), Dec. 30, 1969, 83 Stat. 730, 734; Pub. L. 92–41, § 4(a), July 1, 1971, 85 Stat. 99; Pub. L. 95–472, § 1, Oct. 17, 1978, 92 Stat. 1332; Pub. L. 97–362, title I, § 106(d), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 99–514, title XV, § 1557(a), (b), (d), Oct. 22, 1986, 100 Stat. 2756, 2757; Pub. L. 100–647, title I, § 1015(k)(1), Nov. 10, 1988, 102 Stat. 3571; Pub. L. 109–280, title VIII, § 853(a), Aug. 17, 2006, 120 Stat. 1016.)

Amendments

2006—Subsec. (j). Pub. L. 109–280 added subsec. (j).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

1988—Subsec. (d). Pub. L. 100–647 inserted at end “In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge.”

1986—Subsec. (a)(2), (3), (5). Pub. L. 99–514, § 1557(d)(1), redesignated pars. (3) and (5) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “The term ‘Civil Service Commission’ means the United States Civil Service Commission.”

Subsec. (b)(2). Pub. L. 99–514, § 1557(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Any judge who has attained the age of 65 may retire any time after serving as judge for 15 years or more.”

Subsec. (e). Pub. L. 99–514, § 1557(d)(2), substituted “Office of Personnel Management” for “Civil Service Commission” in par. (4) and in last sentence.

Subsec. (f). Pub. L. 99–514, § 1557(b), amended subsec. (f) generally. Prior to amendment, subsec. (f), individuals receiving retired pay to be available for recall, read as follows: “Any individual who has elected to receive retired pay under subsection (d) who thereafter—

“(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

“(2) performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation or in the field of the renegotiation of Federal contracts for his client, his employer, or any of his employer’s clients,

shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the first day on which he accepts such office or employment or engages in any activity described in paragraph (2). Any individual who has elected to receive retired pay under subsection (d) who thereafter during any calendar year fails to perform judicial duties required of him by subsection (c) shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the first day on which he so fails to perform such duties.”

Subsec. (g)(2)(C). Pub. L. 99–514, § 1557(d)(3), substituted “Office of Personnel Management” for “Civil Service Commission”.

1982—Subsec. (b). Pub. L. 97–362 inserted provision that any judge who retires shall be designated “senior judge”.

1978—Subsec. (i). Pub. L. 95–472 added subsec. (i).

1971—Subsec. (c). Pub. L. 92–41 substituted “At or after his retirement, any individual who has elected to receive” for “Any individual who is receiving”.

1969—Subsec. (a)(4). Pub. L. 91–172, § 954(e)(1), struck out par. (4) which defined the term “Civil Service Retirement Act”.

Subsec. (a)(1). Pub. L. 91–172, § 960(c), substituted “United States Tax Court” for “Tax Court of the United States”.

Subsec. (a)(5). Pub. L. 91–172, § 960(d), inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (b). Pub. L. 91–172, § 954(a), substituted provisions authorizing retirement at age 70, or age 65 after serving 15 years, or when any judge has become permanently disabled, authorizing any judge not reappointed who has served 15 years or more to retire under enumerated condition, and rendering section 8335 (a) of title 5 not applicable to judges, for provisions authorizing retirement after a judge has served 18 years, requiring anyone who served as a judge for 10 years or more and attained the age of 70 years to retire no later than the close of the third month beginning after the month in which he attained 70 years or the month completing the tenth year of service or August 1953, and rendering section 2(a) of the Civil Service Retirement Act not applicable to judges.

Subsec. (d). Pub. L. 91–172, § 954(b), substituted provisions specifying methods of computation of retirement pay under subsec. (b) of this section so as to conform such provisions to subsec. (b) (relating to conditions for retiring), for provisions specifying methods of computation for retirement pay under former subsec. (b) of this section (relating to conditions for retiring).

Subsec. (g)(1). Pub. L. 91–172, § 954(e)(2), substituted “civil service retirement laws” and “such civil service retirement laws apply” for “Civil Service Retirement Act” and “such Act applies”, respectively.

Subsec. (g)(2). Pub. L. 91–172, § 954(c), substituted provisions that any individual electing to receive retirement pay under subsec. (d) of this section is not to receive any payment under the civil service retirement laws, and no deduction is to be made for the Civil Service Retirement and Disability Fund, and a lump-sum credit computed under section 8331 (8) of Title 5 is to be paid, for provisions which enumerated the effects and conditions of electing retirement pay under former subsec. (d) of this section.

Subsec. (g)(3). Pub. L. 91–172, § 954(c), struck out par. (3) which enumerated the conditions and effects of waiving civil service benefits in lieu of retirement pay under former subsec. (d) of this section.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscp.html>).

Subsec. (g)(4). Pub. L. 91–172, § 954(c), struck out par. (4) which provided that the fourth and sixth paragraphs of section 6 of the Civil Service Retirement Act would be applicable to retirement pay accruing under subsec. (d) of this section.

Subsec. (h). Pub. L. 91–172, § 954(d), added subsec. (h).

1966—Subsec. (d). Pub. L. 89–354 substituted “during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period” for “at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge” and “the rate of such salary for such period” for “the rate of such salary” wherever appearing.

Effective Date of 2006 Amendment

Pub. L. 109–280, title VIII, § 853(b), Aug. 17, 2006, 120 Stat. 1017, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006], except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date.”

Effective Date of 1988 Amendment

Section 1015(k)(2) of Pub. L. 100–647 provided that: “The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining the amount of retired pay for months beginning after the date of the enactment of this Act [Nov. 10, 1988] regardless of when the services under section 7447(c) of the 1986 Code were performed.”

Effective Date of 1986 Amendment

Section 1557(e) of Pub. L. 99–514 provided that:

“(1) In general.—The amendments made by this section [amending this section and section 7448 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].

“(2) Forfeiture of retired pay.—The amendments made by this section shall not apply to any individual who, before the date of the enactment of this Act [Oct. 22, 1986], forfeited his rights to retired pay under section 7447(d) of the Internal Revenue Code of 1954 [now 1986] by reason of the 1st sentence of section 7447(f) of such Code (as in effect on the day before such date).”

Effective Date of 1978 Amendment

Section 2(a) of Pub. L. 95–472 provided that: “The amendment made by the first section of this Act [amending this section] shall apply with respect to revocations made after the date of the enactment of this Act [Oct. 17, 1978].”

Effective Date of 1971 Amendment

Section 4(c)(1) of Pub. L. 92–41, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall be effective as if included in the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the date of its enactment [July 1, 1971]. Provisions having the same effect as such amendment shall be treated as having been included in the Internal Revenue Code of 1939 [section 1106 (c)] effective on and after August 7, 1953.”

Effective Date of 1969 Amendment

Amendment by sections 954(c), (e) and 960(c), (d) of Pub. L. 91–172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

Section 962(d) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by subsections (a), (b), and (d) of section 954 [amending this section] shall apply to—

“(1) all judges of the Tax Court retiring on or after the date of enactment of this Act [Dec. 30, 1969], and

“(2) all individuals performing judicial duties pursuant to section 7447 (c) or receiving retired pay pursuant to section 7447 (d) on the day preceding the date of enactment of this Act [Dec. 30, 1969].

Any individual who has served as a judge of the Tax Court for 18 years or more by the end of one year after the date of the enactment of this Act [Dec. 30, 1969] may retire in accordance with the provisions of section 7447 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as in effect on the day preceding the date of the enactment of this Act. Any individual who is a judge of the Tax Court on the date of the enactment of this Act may retire under the provisions of section 7447 of such Code upon the completion of the term of his office, if he is not reappointed as a judge of the Tax Court and gives notice to the President within the time prescribed by section 7447(b) of such Code (or if his term expires within 6 months after the date of enactment of this Act, gives notice to the President before the expiration of

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

3 months after the date of enactment of this Act), and shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to a judge as the number of years he has served as a judge of the Tax Court bears to 15; except that the rate of such retired pay shall not exceed the rate of the salary of a judge of the Tax Court. For purposes of the preceding sentence the years of service as a judge of the Tax Court shall be determined in the manner set forth in section 7447(d) of such Code.”

Effective Date of 1966 Amendment

Section 2 of Pub. L. 89–354, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by the first section of this Act [amending this section and section 1106 of I.R.C. 1939] shall apply with respect to retired pay accruing under section 1106 of the Internal Revenue Code of 1939 or section 7447 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on or after the first day of the first calendar month which begins after the date of enactment of this Act [Feb. 2, 1966].”

Transfer of Functions

Functions vested by statute in United States Civil Service Commission or Chairman thereof transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Redepositing Funds in Civil Service Retirement and Disability Fund; Creditable Service

Section 2(b) of Pub. L. 95–472, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Any individual who elects to revoke under section 7447(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] within one year after the date of enactment of this Act [Oct. 17, 1978] shall be treated as having the requisite current service for purposes of redepositing funds in the Civil Service Retirement and Disability Fund and for purposes of reviving creditable service under subchapter III of chapter 83 of title 5 of the United States Code.”