

Jeffrey Samuel Arbeit
Nominee to Serve as Judge on the United States Tax Court
Responses to Questions for the Record

Senator Warren

Question 1

The tax code and its implementation have a significant impact on marginalized communities, for better and for worse. While families from marginalized groups may benefit from the Earned Income Tax Credit (EITC) and Child Tax Credit, less than 10% of the benefits of tax expenditure on deductions and preferential rates for capital gains, qualified dividends, and passthroughs are distributed to families of color.¹ Meanwhile the IRS is working to improve racial equity in auditing.²

At the same time, the tax bar is the least diverse or among the least diverse across sexual orientation, gender, ethnicity, and race, according to a 2022 report by the American Bar Association³, making it more difficult to increase equity in the tax code and tax administration.

How have you worked to increase racial equity in the tax bar to date, and how would you do so as a tax court judge, if confirmed?

The membership of the bar should reflect our society. Further, I believe teams do their best work when their members have diverse backgrounds. My work in hiring, both at my former law firm and at the Joint Committee on Taxation, reflects this commitment. If confirmed, I will make sure the law clerks and legal interns who serve in my chambers represent the range of diversity in our country.

Senator Blackburn

Question 1-3

If confirmed, you would serve in the role of Tax Court Judge for 15 years. Such a position requires experience with the courts, be it through serving as a judge in some other capacity or through direct experience with our judicial system. Taxpayers coming before the court certainly deserve judges who are well-versed in procedure, case law, and of course the intricacies of the Internal Revenue Code.

Could you please describe your judicial background, be it previous experience with the U.S. Tax Court or another court?

After law school, I clerked for two years for Judge James S. Halpern of the United States Tax Court.

¹ U.S. Department of the Treasury, “Advancing Equity through Tax Reform: Effects of the Administration’s Fiscal Year 2025 Revenue Proposals on Racial Wealth Inequality”, March 11, 2024, p. 1.

<https://home.treasury.gov/system/files/131/Advancing-Equity-through-Tax-Reform-FY2025.pdf>

² Response from Commissioner Werfel, May 15, 2023, <https://www.irs.gov/pub/newsroom/werfel-letter-on-audit-selection.pdf>.

³ American Bar Association “Goal III Report 2022: The Demographic Diversity of the ABA’s Leadership and Members”, 2022, <https://www.americanbar.org/content/dam/aba/administrative/diversity-inclusion-center/aba-goal-3-report-2022.pdf>.

Could you also describe your experience with litigation? Have you ever had a case go to trial?

In addition to my time clerking at the Tax Court, I spent four years at Sullivan & Cromwell LLP. While my primary responsibility was for transactional tax work, I also worked on some controversy matters, both for large companies and *pro bono* clients. Although I saw several trials during my time at the Tax Court, my cases at the firm did not go to trial.

Many of the taxpayers that come before the tax court are not well-versed in tax law and are self-represented. Could you explain how you intend to work with them to ensure they understand the process and their rights?

Communication at all stages is essential to ensuring that all taxpayers know their rights and understand the legal process. If confirmed, I will make sure taxpayers are never surprised by the proceedings before the Tax Court. I will use letters, conference calls, and hearings to give taxpayers the procedural information necessary to allow them the opportunity to prepare the strongest cases they can.

Question 4

Taxpayers expect and deserve an expeditious resolution to their tax disputes. Between 2017 and 2019, the Tax Court held an average of roughly 180 weeks of trial per year. In 2020, there were only 99 weeks of trial. Between 2021 and 2023, the average weeks of trial per year was 124. While there are fewer Tax Court Judges now, which your nominations presumably aim to resolve, the Tax Court experienced a significant uptick in new filings after the pandemic and there is still a case backlog.

If confirmed, how do you intend to reduce the case backlog and ensure that taxpayers have their cases heard swiftly?

Communication is central to keeping cases moving and helping taxpayers reach a speedy resolution. For example, clear communication can help taxpayers and the government narrow the facts and law at issue, which can save time for both the parties and the court.

Senator Grassley

Question 1

In 2006, I authored important updates to the IRS whistleblower program, which included allowing whistleblowers to appeal award determinations to the Tax Court. More recently, I've introduced legislation with Chairman Wyden and Senators Wicker and Cardin to, among other provisions, beef-up anonymity protections for whistleblowers appearing before the Tax Court. Whistleblowers often take on great professional and personal risks in coming forward.

I am not asking you to comment specifically on my legislation, but in general, do you agree that protecting the anonymity of whistleblowers before the Tax Court is vital to maintaining a well-functioning IRS whistleblower program?

Whistleblowers deserve the full protection of the law. That is essential for the fair administration of our system.

Question 2

If you are confirmed to the Tax Court, you will hear cases involving many different types of taxpayers ranging from large corporations to small businesses and individuals.

Regardless of who might appear before you and what the issue may be, do you pledge to apply the tax code as written by Congress and to not attempt to legislate in your capacity as a Judge of the Tax Court?

Yes.

Question 3

The Tax Court is important since it allows petitioners to challenge an assessed deficiency before having to pay that amount to the IRS. Many petitioners to the Tax Court have little experience working through a dispute with the IRS and may even represent themselves.

Without giving them an unfair advantage, how will you ensure that all petitioners get their day in court?

If confirmed, I will make sure taxpayers feel that my court is a place in which they are heard and in which they are treated fairly and respectfully. I will make sure they have the procedural information necessary to give them the best chance to make their strongest case.

Senator Young

While the questions below are numerically separated by theme for clarity and convenience, some may include sub-part questions denoted alphabetically. **Please note that individual responses to each sub-question are expected** and that a single response to multiple sub-questions will be treated as unresponsive.

For the purposes of questions that clearly end in “yes or no,” answers other than “yes” or “no” will similarly be deemed unresponsive to such questions.

Question 1

The Tax Court plays a critical role in interpreting tax law and resolving disputes between the IRS and taxpayers. As a nominee for this Article I judgeship, you will be responsible for hearing a wide range of cases.

Can you elaborate on your approach to applying the law impartially and ensuring consistent application of tax code to all taxpayers, regardless of their background?

Fairness is the cornerstone of our legal system. All taxpayers deserve equal treatment under the law. Following the words of the statute is paramount, as is following precedent. By focusing on the relevant facts of the cases and the applicable law, all taxpayers in the

same situations should receive the same treatment. That is the goal: fairness requires that similarly situated taxpayers have the same result.

Question 2

- a) *Given the tremendous backlog of cases currently facing the U.S. Tax Court, what specific strategies would you implement to expedite case resolution?*

Communication is central to keeping cases moving and helping taxpayers reach a speedy resolution. For example, clear communication can help taxpayers and the government narrow the facts and law at issue, which can save time for both the parties and the court.

- b) *Would you consider increasing the number of hours that the U.S. Tax Court is open to hear cases?*

Yes. If confirmed, I will consider, in consultation with my fellow judges, ways in which the Tax Court may operate more effectively and efficiently.

- c) *How do you envision these strategies mitigating the harmful effects that prolonged case backlogs have on taxpayers awaiting decisions?*

The more information taxpayers have about the process the more likely they and the government are to make decisions that expedite the resolution of their cases. That may involve settling, narrowing the issues before the court, or making arguments more likely to prevail at a preliminary stage.