

**Benjamin A. Guider III**  
**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.<sup>1</sup> Meanwhile the IRS is working to improve racial equity in auditing.<sup>2</sup>

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 Association<sup>3</sup>, 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?*

**I have worked to increase racial equity in the tax bar by practicing at a law firm that is very committed to diversity, equity and inclusion, as evidenced by the diverse makeup of our firm, and advocating for those policies at the firm. I am committed to advancing professionals from all communities and backgrounds and am proud to be a member of a law firm that stands by those ideals. If confirmed as a Judge to the United States Tax Court, I would continue that commitment by engaging in outreach to law schools and young lawyer groups about opportunities in tax law, and particularly with respect to consideration of potential law clerks and interns, as a means of encouraging law students and attorneys of underrepresented communities to consider a future in tax law.**

**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.

---

<sup>1</sup> 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>

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

<sup>3</sup> 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 please describe your judicial background, be it previous experience with the U.S. Tax Court or another court?*

**While I have not worked as a court employee, during my career I have participated in the legal process before courts by drafting memoranda, motions for summary judgment, and other pleadings, as well as arguing motions in court and interviewing witnesses.**

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

**In addition to the litigation matters described in the previous question, I have worked on disputes before quasi-judicial boards and tribunals, such as the Orleans Parish Board of Property Tax Appeals and the Louisiana Tax Commission. These adversarial matters are generally governed by rules of evidence, procedure, and practice. The majority of my practice has been transactional, and I have never had a matter 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?*

**I will ensure clear and robust communication with such taxpayers by informing them of helpful materials available through the Court's website, information regarding their rights, resources that may be available to them, and the Court's rules of practice and procedure. If and when appropriate, I may host informational calls in advance of courtroom appearances to discuss the process and answer questions. Additionally, in any hearing or trial I will explain the process and the taxpayer's rights to the extent needed.**

#### **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?*

**I will discuss with Court administrators and the other Judges to determine how I can best provide support and ensure the expeditious resolution of cases. I will hire driven personnel with the strong desire and ability to move cases through the docket efficiently while maintaining fairness and correctness. Additionally, I will work diligently to process cases as quickly and efficiently as possible.**

## **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?*

**The anonymity of whistleblowers before the Tax Court is indeed a very important issue. If confirmed, I would apply any governing law and binding precedent regarding whistleblowers to the facts of any case before me.**

### **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?*

**I will ensure that each petitioner has access to information about Court rules and procedures as well as up to date information about the matter in controversy. I will make sure that my docket moves along efficiently so that matters may be heard and processed in a timely fashion. I will always be prepared as to the facts of and law applicable to each case so that each petitioner has an opportunity for a fair hearing that is respectful of that petitioner's time.**

## **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?*

**If confirmed, I will apply the law impartially and ensure the consistent application of the Tax Code by focusing methodically on the text and plain meaning of the law with respect to the facts and circumstances of the case at issue. Public trust in the Tax Court requires that all taxpayers are treated fairly and equally no matter their background.**

### **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?*

**If confirmed, I will work with the Chief Judge, Court administrators, and other Judges to determine how I can best help alleviate delays in case resolution. I will bring on motivated personnel with the strong desire and ability to move cases through the docket efficiently while maintaining fairness and correctness throughout the process. I will work diligently to process cases as quickly and efficiently as possible. Additionally, I will use virtual options to the extent agreeable to the parties in order to speed up the resolution of cases before the Court, and I will encourage settlement where possible.**

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

**Yes. I would work with the Chief Judge, Court administrators, and other judges to see if there are ways to make the Tax Court’s operations more efficient.**

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

**Effective mitigation strategies will offer faster resolution and certainty to taxpayers and ensure that new cases may be processed and heard more quickly, which is beneficial for all taxpayers.**