

Rose E. Jenkins
Nominee to Serve as Judge on the United States Tax Court
Responses to Questions for the Record

Senator Cortez Masto

Question 1

If confirmed as a Judge to the United States Tax Court, you will be responsible for interpreting how our tax laws apply to a wide variety of plaintiffs – everything from multinational corporations with large legal teams to small businesses and individuals who appear before court without counsel.

What role would you give to legislative intent, conference report language, or statements from Members of Congress as you interpret and apply regulations affecting tax law?

If confirmed, in addition to applying any binding precedent, I would apply established methods of interpretation to determine the meaning of a statute or regulation, including by starting with a careful reading of the plain text of the provision and consideration of a rule’s place in the broader context of the Internal Revenue Code and Treasury Regulations. In addition to considering whether certain canons of construction would be helpful, I would also consider whether it would be appropriate to take into account legislative history in interpreting the rule. I believe that, to the extent legislative history provides insight into legislative intent, such intent can reasonably inform a decision between multiple textually plausible interpretations, though it cannot override clear statutory text.

Senator Crapo

Question 1

In Fiscal Year 2023, there were around 22,000 cases filed and 31,500 closed at the Tax Court. That was the second-least amount of cases filed in the last seven years and the second-most cases closed in the same time span.

If confirmed, how will you prioritize providing fair and impartial decisions while also managing your caseload efficiently?

The Tax Court function of providing a national forum for the expeditious resolution of disputes and careful consideration of the merits of each case serves an important role of fostering trust in our system of voluntary tax compliance. If confirmed, I would commit to consider all issues and arguments presented by petitioners with an open mind, in order to provide them the fair and impartial hearing that they deserve. I would also seek to provide them the expediency they deserve by encouraging cooperation between the parties and considering opportunities to decide cases or issues without the need for a trial.

Question 2

The IRS Office of Chief Counsel is responsible for representing the government in matters before the Tax Court, and is thereby involved in every dispute before the court. Some stakeholders have expressed concern that this close relationship may lead to unjust outcomes.

If confirmed, what will you do to ensure you remain fair and impartial to all parties, and ensure you will not provide special preferences?

I believe providing a fair and impartial hearing to petitioners before the Tax Court is critical to providing all taxpayers certainty and confidence in the tax system. Over my career, I've analyzed tax law on behalf of a variety of types of stakeholders with different interests in the tax system. I think this gives me a particularly well-rounded view of the tax system that would enhance my ability to remain neutral as a Tax Court judge, if confirmed. My diversity of experience together with my established practice of independent thought would bolster my commitment and propensity toward fairness and impartiality.

Senator Daines

Question 1

As of April 2024, the US Tax Court had a backlog of 750 conservation easement cases. Last Congress, my bill, the Charitable Conservation Easement Program Integrity Act, was signed into law to provide clarity on a number of these cases. Since then, a number of cases have been decided with differing outcomes, setting various precedents, and a large backlog remains.

If confirmed to the US Tax Court, how will you approach these cases and help clear the backlog?

In recent years, the Tax Court has seen an increase in its case load due, in part, to an increase in petitions in complex, fact-intensive cases, like conservation easement cases. If confirmed, I would endeavor to support the Tax Court mission of providing expeditious resolution of cases in order to address the case load and provide certainty to taxpayers as quickly as possible, taking into account applicable precedent and legislation. I would seek to minimize resolution time by encouraging cooperation between the parties in all phases of the proceedings. I would also strongly consider opportunities to decide cases or issues based on motions and stipulations, in order to minimize the amount of time needed to wait for and conduct trials. And, as the Tax Court has already done in some conservation easement cases, I would consider ways of narrowing the scope of factual review required in cases with parallel or otherwise related issues.

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?

I believe that the Tax Court mission of uniform interpretation of the Internal Revenue Code serves an important function in society by providing all taxpayers certainty, stability, and confidence in the tax system. If confirmed as a judge on the United States Tax Court, my approach to cases would be one of respect for established precedent and a commitment to consider all issues and arguments presented by petitioners, regardless of their background, with an open mind. From the variety of experiences I have had in my career, I have learned the importance of considering the perspectives from which different parties may approach an issue and listening carefully and engaging actively to ensure open and clear communication.

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 would place emphasis on the expeditious resolution of cases in order to address the Tax Court case load and support its mission. I would encourage cooperation between the parties in all phases of the proceedings. I would also strongly consider opportunities to decide cases or issues based on motions and stipulations, in order to minimize the amount of time needed to wait for and conduct trials. And I would keep a perpetual eye on efficiency in my courtroom and my chambers.

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

If confirmed, I would consider, based on my experience and learning as a judge, and in consultation with the Chief Judge, ways to enhance productivity, taking into account applicable laws, regulations, and systems, as well as the staffing of the Tax Court.

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

Taxpayers deserve certainty as quickly as possible both in order to minimize the financial costs relating to prolonged litigation and so that they can go on with their lives. I expect that a full bench of judges on the Tax Court working toward efficient adjudication of petitions will help to continue to mitigate the negative effects on taxpayers of the recent increase in the Tax Court case load.

Question 3

The lack of access to the Public Access to Court Electronic Records (PACER) service has been a significant concern for many taxpayers. It often takes an expensive courier service or an in person visit for a taxpayer to access records on their case.

- a) *What measures would you propose to enhance the accessibility and transparency of court records through PACER?*

It is important for the Tax Court to have an electronic record system to ensure accessibility for petitioners and to foster efficiency in managing the court's case load. The Tax Court has, in recent years, improved accessibility and transparency through its DAWSON case management system. From public statements, my understanding is that the Tax Court continues to consider possibilities for enhancements while taking into account the need to protect personally identifiable information. If confirmed, I would look forward to learning about the Tax Court's efforts and considering how to further and balance the important goals of accessibility, transparency, and privacy protection.

- b) *How do you believe improved access to these records would impact taxpayer service and trust in the judicial process?*

Electronic access to records related to a taxpayer's own case can facilitate timely, effective participation with minimal burden and thus improve case management and the experience of the taxpayer with the system. Broader electronic access to court records can provide stakeholders throughout the system greater insight into function and thinking of the court that can both facilitate enhanced administration and foster increased trust in the legal process.