



letters to the editor

Robert W. Wood Responds

Dear Ms. Duvall:

I am responding to your July 31, 2000 letter concerning my article in *Tax Notes*, "Even Tax Court Itself Divided on Attorneys' Fees Issue," July 24, 2000, p. 573. Obviously, you were quite unhappy with much of the article, so let me address only your major objections.

I did not say, nor mean to imply, that the Tax Court and/or the Chief Judge decide on "pure whim" whether a given case will be sent to "conference for review by all the judges." I am aware that there is an effort made by the Tax Court judges to promote uniformity in the court's decisions, although I admit that I do not know all of the mechanics for insuring same. For a second time in your letter you indicate that I was suggesting that consistency was left "to the whim" of individual judges. I did not so state.

I do understand (and your letter does not convince me to the contrary) that a "court-reviewed decision" is still quite an uncommon occurrence. Although you do not state the percentages, the last IRS-released statistics I saw said that court-reviewed cases made up less than 2 percent of the decided Tax Court decisions. I'm sure you are right that there are other rigorous procedures, but a court review seems likely to be the most effective in helping the judges focus on a particular matter.

In any event, I do think that the *Kenseth* case makes clear that there *are* differences of opinion on the Tax Court. I fail to see how this is even debatable, much less how it could move you to such ire. And, although you state that "Mr. Woods does not appear to have a clue that Judge Beghe was obviously the original author of the opinion in *Kenseth*," I *did* note in my

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article that Judge Beghe was the trial court judge (and yet he was a dissenter).

Finally, you were apparently upset with *Tax Notes* (and with me) over usage of what you felt was inappropriate language. I occasionally try to lighten up my writing with colloquial expressions. The one you objected to was “yuck!” after I noted that the *Kenseth* judges lined up 8-5 on the case. I thought my meaning was clear: that I would have rather seen the judges line up 5-8 (favoring excludability). There was no disrespect meant to either the court or *Tax Notes* readers.

Apparently you did not object to my equally colloquial statement which concluded the article. I said “Fortunately, the dissenters in *Kenseth* — all five judges who participated — are now taking this stuff seriously. Hallelujah!” (p. 576). At another place in the article, I used the word “Amen.” Maybe you don’t like this, but I have been writing in this style for many years, and neither *Tax Notes* (nor any reader I know of) has complained.

To sum up, I honestly don’t think my article suggested that tax cases are decided on whim, or that Tax Court procedure is inadequate. I was not making fun or using inappropriate language about Tax Court judges or the process. Had I felt this way, I suspect I would have simply responded to your letter with one word: “Yuck!”

Very truly yours,

Robert W. Wood
San Francisco
August 7, 2000