

108TH CONGRESS  
1ST SESSION

# S. 753

To amend the Internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1, 2003

Mr. HATCH (for himself, Mr. BREAUX, Mr. BAUCUS, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Tax Court Modernization Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-  
7 wise expressly provided, whenever in this Act an amend-  
8 ment or repeal is expressed in terms of an amendment  
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for  
 4 this Act is as follows:

Sec. 1. Short title; etc.

#### TITLE I—TAX COURT PROCEDURE

Sec. 101. Jurisdiction of Tax Court over collection due process cases.

Sec. 102. Authority for special trial judges to hear and decide certain employ-  
 ment status cases.

Sec. 103. Confirmation of authority of Tax Court to apply doctrine of equitable  
 recoupment.

Sec. 104. Tax Court filing fee in all cases commenced by filing petition.

Sec. 105. Amendments to appoint employees.

Sec. 106. Expanded use of Tax Court practice fee for pro se taxpayers.

#### TITLE II—TAX COURT PENSION AND COMPENSATION

Sec. 201. Annuities for survivors of Tax Court judges who are assassinated.

Sec. 202. Cost-of-living adjustments for Tax Court judicial survivor annuities.

Sec. 203. Life insurance coverage for Tax Court judges.

Sec. 204. Cost of life insurance coverage for Tax Court judges age 65 or over.

Sec. 205. Modification of timing of lump-sum payment of judges' accrued an-  
 nual leave.

Sec. 206. Participation of Tax Court judges in the Thrift Savings Plan.

Sec. 207. Exemption of teaching compensation of retired judges from limitation  
 on outside earned income.

Sec. 208. General provisions relating to magistrate judges of the Tax Court.

Sec. 209. Annuities to surviving spouses and dependent children of magistrate  
 judges of the Tax Court.

Sec. 210. Retirement and annuity program.

Sec. 211. Incumbent magistrate judges of the Tax Court.

Sec. 212. Provisions for recall.

Sec. 213. Effective date.

## 5 **TITLE I—TAX COURT** 6 **PROCEDURE**

### 7 **SEC. 101. JURISDICTION OF TAX COURT OVER COLLECTION**

#### 8 **DUE PROCESS CASES.**

9 (a) IN GENERAL.—Paragraph (1) of section 6330(d)  
 10 (relating to proceeding after hearing) is amended to read  
 11 as follows:

1           “(1) JUDICIAL REVIEW OF DETERMINATION.—  
 2           The person may, within 30 days of a determination  
 3           under this section, appeal such determination to the  
 4           Tax Court (and the Tax Court shall have jurisdic-  
 5           tion with respect to such matter).”.

6           (b) EFFECTIVE DATE.—The amendment made by  
 7           this section shall apply to determinations made after the  
 8           date of the enactment of this Act.

9   **SEC. 102. AUTHORITY FOR SPECIAL TRIAL JUDGES TO**  
 10                           **HEAR AND DECIDE CERTAIN EMPLOYMENT**  
 11                           **STATUS CASES.**

12           (a) IN GENERAL.—Section 7443A(b) (relating to  
 13           proceedings which may be assigned to special trial judges)  
 14           is amended by striking “and” at the end of paragraph (4),  
 15           by redesignating paragraph (5) as paragraph (6), and by  
 16           inserting after paragraph (4) the following new paragraph:

17                   “(5) any proceeding under section 7436(c),  
 18           and”.

19           (b) CONFORMING AMENDMENT.—Section 7443A(c)  
 20           is amended by striking “or (4)” and inserting “(4), or  
 21           (5)”.

22           (c) EFFECTIVE DATE.—The amendments made by  
 23           this section shall apply to any proceeding under section  
 24           7436(c) of the Internal Revenue Code of 1986 with re-  
 25           spect to which a decision has not become final (as deter-

1 mined under section 7481 of such Code) before the date  
2 of the enactment of this Act.

3 **SEC. 103. CONFIRMATION OF AUTHORITY OF TAX COURT**  
4 **TO APPLY DOCTRINE OF EQUITABLE**  
5 **RECOUPMENT.**

6 (a) CONFIRMATION OF AUTHORITY OF TAX COURT  
7 TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—  
8 Section 6214(b) (relating to jurisdiction over other years  
9 and quarters) is amended by adding at the end the fol-  
10 lowing new sentence: “Notwithstanding the preceding sen-  
11 tence, the Tax Court may apply the doctrine of equitable  
12 recoupment to the same extent that it is available in civil  
13 tax cases before the district courts of the United States  
14 and the United States Court of Federal Claims.”.

15 (b) EFFECTIVE DATE.—The amendment made by  
16 this section shall apply to any action or proceeding in the  
17 United States Tax Court with respect to which a decision  
18 has not become final (as determined under section 7481  
19 of the Internal Revenue Code of 1986) as of the date of  
20 the enactment of this Act.

21 **SEC. 104. TAX COURT FILING FEE IN ALL CASES COM-**  
22 **MENCED BY FILING PETITION.**

23 (a) IN GENERAL.—Section 7451 (relating to fee for  
24 filing a Tax Court petition) is amended by striking all that  
25 follows “petition” and inserting a period.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall take effect on the date of the enactment  
3 of this Act.

4 **SEC. 105. AMENDMENTS TO APPOINT EMPLOYEES.**

5 (a) IN GENERAL.—Subsection (a) of section 7471  
6 (relating to Tax Court employees) is amended to read as  
7 follows:

8 “(a) APPOINTMENT AND COMPENSATION.—

9 “(1) CLERK.—The Tax Court may appoint a  
10 clerk without regard to the provisions of title 5,  
11 United States Code, governing appointments in the  
12 competitive service. The clerk shall serve at the  
13 pleasure of the Tax Court.

14 “(2) LAW CLERKS AND SECRETARIES.—

15 “(A) IN GENERAL.—The judges and spe-  
16 cial trial judges of the Tax Court may appoint  
17 law clerks and secretaries, in such numbers as  
18 the Tax Court may approve, without regard to  
19 the provisions of title 5, United States Code,  
20 governing appointments in the competitive serv-  
21 ice. Any such law clerk or secretary shall serve  
22 at the pleasure of the appointing judge.

23 “(B) EXEMPTION FROM FEDERAL LEAVE  
24 PROVISIONS.—A law clerk appointed under this  
25 subsection shall be exempt from the provisions

1 of subchapter I of chapter 63 of title 5, United  
2 States Code. Any unused sick leave or annual  
3 leave standing to the employee's credit as of the  
4 effective date of this subsection shall remain  
5 credited to the employee and shall be available  
6 to the employee upon separation from the Fed-  
7 eral Government.

8 “(3) DEPUTIES AND OTHER EMPLOYEES.—The  
9 clerk may appoint necessary deputies and employees  
10 without regard to the provisions of title 5, United  
11 States Code, governing appointments in the competi-  
12 tive service. Such deputies and employees shall be  
13 subject to removal by the clerk.

14 “(4) PAY.—The Tax Court may fix and adjust  
15 the compensation for the clerk and other employees  
16 of the Tax Court without regard to the provisions of  
17 chapter 51, subchapter III of chapter 53, or section  
18 5373 of title 5, United States Code. To the max-  
19 imum extent feasible, the Tax Court shall com-  
20 pensate employees at rates consistent with those for  
21 employees holding comparable positions in the judi-  
22 cial branch.

23 “(5) PROGRAMS.—The Tax Court may establish  
24 programs for employee evaluations, incentive awards,

1 flexible work schedules, premium pay, and resolution  
2 of employee grievances.

3 “(6) DISCRIMINATION PROHIBITED.—The Tax  
4 Court shall—

5 “(A) prohibit discrimination on the basis  
6 of race, color, religion, age, sex, national origin,  
7 political affiliation, marital status, or handi-  
8 capping condition; and

9 “(B) promulgate regulations providing pro-  
10 cedures for resolving complaints of discrimina-  
11 tion by employees and applicants for employ-  
12 ment.

13 “(7) EXPERTS AND CONSULTANTS.—The Tax  
14 Court may procure the services of experts and con-  
15 sultants under section 3109 of title 5, United States  
16 Code.

17 “(8) RIGHTS TO CERTAIN APPEALS RE-  
18 SERVED.—Notwithstanding any other provision of  
19 law, an individual who is an employee of the Tax  
20 Court on the day before the effective date of this  
21 subsection and who, as of that day, was entitled  
22 to—

23 “(A) appeal a reduction in grade or re-  
24 moval to the Merit Systems Protection Board  
25 under chapter 43 of title 5, United States Code,

1           “(B) appeal an adverse action to the Merit  
2           Systems Protection Board under chapter 75 of  
3           title 5, United States Code,

4           “(C) appeal a prohibited personnel practice  
5           described under section 2302(b) of title 5,  
6           United States Code, to the Merit Systems Pro-  
7           tection Board under chapter 77 of that title,

8           “(D) make an allegation of a prohibited  
9           personnel practice described under section  
10          2302(b) of title 5, United States Code, with the  
11          Office of Special Counsel under chapter 12 of  
12          that title for action in accordance with that  
13          chapter, or

14          “(E) file an appeal with the Equal Em-  
15          ployment Opportunity Commission under part  
16          1614 of title 29 of the Code of Federal Regula-  
17          tions,

18          shall be entitled to file such appeal or make such an  
19          allegation so long as the individual remains an em-  
20          ployee of the Tax Court.

21          “(9) COMPETITIVE STATUS.—Notwithstanding  
22          any other provision of law, any employee of the Tax  
23          Court who has completed at least 1 year of contin-  
24          uous service under a non temporary appointment  
25          with the Tax Court acquires a competitive status for

1 appointment to any position in the competitive serv-  
2 ice for which the employee possesses the required  
3 qualifications.

4 “(10) MERIT SYSTEM PRINCIPLES; PROHIBITED  
5 PERSONNEL PRACTICES; AND PREFERENCE ELIGI-  
6 BLES.—Any personnel management system of the  
7 Tax Court shall—

8 “(A) include the principles set forth in sec-  
9 tion 2301(b) of title 5, United States Code;

10 “(B) prohibit personnel practices prohib-  
11 ited under section 2302(b) of title 5, United  
12 States Code; and

13 “(C) in the case of any individual who  
14 would be a preference eligible in the executive  
15 branch, the Tax Court will provide preference  
16 for that individual in a manner and to an ex-  
17 tent consistent with preference accorded to  
18 preference eligibles in the executive branch.”.

19 (b) EFFECTIVE DATE.—The amendments made by  
20 this section shall take effect on the date the United States  
21 Tax Court adopts a personnel management system after  
22 the date of the enactment of this Act.

1 **SEC. 106. EXPANDED USE OF TAX COURT PRACTICE FEE**  
 2 **FOR PRO SE TAXPAYERS.**

3 (a) IN GENERAL.—Section 7475(b) (relating to use  
 4 of fees) is amended by inserting before the period at the  
 5 end “and to provide services to pro se taxpayers”.

6 (b) EFFECTIVE DATE.—The amendment made by  
 7 this section shall take effect on the date of the enactment  
 8 of this Act.

9 **TITLE II—TAX COURT PENSION**  
 10 **AND COMPENSATION**

11 **SEC. 201. ANNUITIES FOR SURVIVORS OF TAX COURT**  
 12 **JUDGES WHO ARE ASSASSINATED.**

13 (a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-  
 14 TION.—Subsection (h) of section 7448 (relating to annu-  
 15 ities to surviving spouses and dependent children of  
 16 judges) is amended to read as follows:

17 “(h) ENTITLEMENT TO ANNUITY.—

18 “(1) IN GENERAL.—

19 “(A) ANNUITY TO SURVIVING SPOUSE.—If  
 20 a judge described in paragraph (2) is survived  
 21 by a surviving spouse but not by a dependent  
 22 child, there shall be paid to such surviving  
 23 spouse an annuity beginning with the day of the  
 24 death of the judge or following the surviving  
 25 spouse’s attainment of the age of 50 years,

1           whichever is the later, in an amount computed  
2           as provided in subsection (m).

3           “(B) ANNUITY TO CHILD.—If such a judge  
4           is survived by a surviving spouse and a depend-  
5           ent child or children, there shall be paid to such  
6           surviving spouse an immediate annuity in an  
7           amount computed as provided in subsection  
8           (m), and there shall also be paid to or on behalf  
9           of each such child an immediate annuity equal  
10          to the lesser of—

11                   “(i) 10 percent of the average annual  
12                   salary of such judge (determined in accord-  
13                   ance with subsection (m)), or

14                   “(ii) 20 percent of such average an-  
15                   nual salary, divided by the number of such  
16                   children.

17          “(C) ANNUITY TO SURVIVING DEPENDENT  
18          CHILDREN.—If such a judge leaves no surviving  
19          spouse but leaves a surviving dependent child or  
20          children, there shall be paid to or on behalf of  
21          each such child an immediate annuity equal to  
22          the lesser of—

23                   “(i) 20 percent of the average annual  
24                   salary of such judge (determined in accord-  
25                   ance with subsection (m)), or

1                   “(ii) 40 percent of such average an-  
2                   nual salary, divided by the number of such  
3                   children.

4                   “(2) COVERED JUDGES.—Paragraph (1) applies  
5                   to any judge electing under subsection (b)—

6                   “(A) who dies while a judge after having  
7                   rendered at least 5 years of civilian service com-  
8                   puted as prescribed in subsection (n), for the  
9                   last 5 years of which the salary deductions pro-  
10                  vided for by subsection (c)(1) or the deposits  
11                  required by subsection (d) have actually been  
12                  made or the salary deductions required by the  
13                  civil service retirement laws have actually been  
14                  made, or

15                  “(B) who dies by assassination after hav-  
16                  ing rendered less than 5 years of civilian service  
17                  computed as prescribed in subsection (n) if, for  
18                  the period of such service, the salary deductions  
19                  provided for by subsection (c)(1) or the deposits  
20                  required by subsection (d) have actually been  
21                  made.

22                  “(3) TERMINATION OF ANNUITY.—

23                  “(A) IN THE CASE OF A SURVIVING  
24                  SPOUSE.—The annuity payable to a surviving  
25                  spouse under this subsection shall be terminable

1 upon such surviving spouse's death or such sur-  
2 viving spouse's remarriage before attaining age  
3 55.

4 “(B) IN THE CASE OF A CHILD.—The an-  
5 nuity payable to a child under this subsection  
6 shall be terminable upon (i) the child attaining  
7 the age of 18 years, (ii) the child's marriage, or  
8 (iii) the child's death, whichever first occurs, ex-  
9 cept that if such child is incapable of self-sup-  
10 port by reason of mental or physical disability  
11 the child's annuity shall be terminable only  
12 upon death, marriage, or recovery from such  
13 disability.

14 “(C) IN THE CASE OF A DEPENDENT  
15 CHILD AFTER DEATH OF SURVIVING SPOUSE.—  
16 In case of the death of a surviving spouse of a  
17 judge leaving a dependent child or children of  
18 the judge surviving such spouse, the annuity of  
19 such child or children shall be recomputed and  
20 paid as provided in paragraph (1)(C).

21 “(D) RECOMPUTATION.—In any case in  
22 which the annuity of a dependent child is termi-  
23 nated under this subsection, the annuities of  
24 any remaining dependent child or children,  
25 based upon the service of the same judge, shall

1           be recomputed and paid as though the child  
2           whose annuity was so terminated had not sur-  
3           vived such judge.

4           “(4) SPECIAL RULE FOR ASSASSINATED  
5           JUDGES.—In the case of a survivor or survivors of  
6           a judge described in paragraph (2)(B), there shall be  
7           deducted from the annuities otherwise payable under  
8           this section an amount equal to—

9                   “(A) the amount of salary deductions pro-  
10                  vided for by subsection (c)(1) that would have  
11                  been made if such deductions had been made  
12                  for 5 years of civilian service computed as pre-  
13                  scribed in subsection (n) before the judge’s  
14                  death, reduced by

15                   “(B) the amount of such salary deductions  
16                  that were actually made before the date of the  
17                  judge’s death.

18           (b) DEFINITION OF ASSASSINATION.—Section  
19           7448(a) (relating to definitions) is amended by adding at  
20           the end the following new paragraph:

21                   “(8) The terms ‘assassinated’ and ‘assassina-  
22                  tion’ mean the killing of a judge that is motivated  
23                  by the performance by that judge of his or her offi-  
24                  cial duties.”.

1 (c) DETERMINATION OF ASSASSINATION.—Sub-  
2 section (i) of section 7448 is amended—

3 (1) by striking the subsection heading and in-  
4 serting the following:

5 “(i) DETERMINATIONS BY CHIEF JUDGE.—

6 “(1) DEPENDENCY AND DISABILITY.—”,

7 (2) by moving the text 2 ems to the right, and

8 (3) by adding at the end the following new  
9 paragraph:

10 “(2) ASSASSINATION.—The chief judge shall  
11 determine whether the killing of a judge was an as-  
12 sassination, subject to review only by the Tax Court.  
13 The head of any Federal agency that investigates  
14 the killing of a judge shall provide information to  
15 the chief judge that would assist the chief judge in  
16 making such a determination.”.

17 (d) COMPUTATION OF ANNUITIES.—Subsection (m)  
18 of section 7448 is amended—

19 (1) by striking the subsection heading and in-  
20 serting the following:

21 “(m) COMPUTATION OF ANNUITIES.—

22 “(1) IN GENERAL.—”,

23 (2) by moving the text 2 ems to the right, and

24 (3) by adding at the end the following new  
25 paragraph:

1           “(2) ASSASSINATED JUDGES.—In the case of a  
2           judge who is assassinated and who has served less  
3           than 3 years, the annuity of the surviving spouse of  
4           such judge shall be based upon the average annual  
5           salary received by such judge for judicial service.”.

6           (e) OTHER BENEFITS.—Section 7448 is amended by  
7           adding at the end the following:

8           “(u) OTHER BENEFITS.—In the case of a judge who  
9           is assassinated, an annuity shall be paid under this section  
10           notwithstanding a survivor’s eligibility for or receipt of  
11           benefits under chapter 81 of title 5, United States Code,  
12           except that the annuity for which a surviving spouse is  
13           eligible under this section shall be reduced to the extent  
14           that the total benefits paid under this section and chapter  
15           81 of that title for any year would exceed the current sal-  
16           ary for that year of the office of the judge.”.

17           **SEC. 202. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
18   **JUDICIAL SURVIVOR ANNUITIES.**

19           (a) IN GENERAL.—Subsection (s) of section 7448  
20           (relating to annuities to surviving spouses and dependent  
21           children of judges) is amended to read as follows:

22           “(s) INCREASES IN SURVIVOR ANNUITIES.—Each  
23           time that an increase is made under section 8340(b) of  
24           title 5, United States Code, in annuities payable under  
25           subchapter III of chapter 83 of that title, each annuity

1 payable from the survivors annuity fund under this section  
2 shall be increased at the same time by the same percent-  
3 age by which annuities are increased under such section  
4 8340(b).”.

5 (b) **EFFECTIVE DATE.**—The amendments made by  
6 this section shall apply with respect to increases made  
7 under section 8340(b) of title 5, United States Code, in  
8 annuities payable under subchapter III of chapter 83 of  
9 that title, taking effect after the date of the enactment  
10 of this Act.

11 **SEC. 203. LIFE INSURANCE COVERAGE FOR TAX COURT**  
12 **JUDGES.**

13 (a) **IN GENERAL.**—Section 7447 (relating to retire-  
14 ment of judges) is amended by adding at the end the fol-  
15 lowing new subsection:

16 “(j) **LIFE INSURANCE COVERAGE.**—For pur-  
17 poses of chapter 87 of title 5, United States Code  
18 (relating to life insurance), any individual who is  
19 serving as a judge of the Tax Court or who is retired  
20 under this section is deemed to be an employee who  
21 is continuing in active employment.”.

22 (b) **EFFECTIVE DATE.**—The amendment made by  
23 this section shall apply to any individual serving as a judge  
24 of the United States Tax Court or to any retired judge

1 of the United States Tax Court on the date of the enact-  
2 ment of this Act.

3 **SEC. 204. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
4 **COURT JUDGES AGE 65 OR OVER.**

5 Section 7472 (relating to expenditures) is amended  
6 by inserting after the first sentence the following new sen-  
7 tence: “Notwithstanding any other provision of law, the  
8 Tax Court is authorized to pay on behalf of its judges,  
9 age 65 or over, any increase in the cost of Federal Em-  
10 ployees’ Group Life Insurance imposed after April 24,  
11 1999, including any expenses generated by such payments,  
12 as authorized by the chief judge in a manner consistent  
13 with such payments authorized by the Judicial Conference  
14 of the United States pursuant to section 604(a)(5) of title  
15 28, United States Code.”.

16 **SEC. 205. MODIFICATION OF TIMING OF LUMP-SUM PAY-**  
17 **MENT OF JUDGES’ ACCRUED ANNUAL LEAVE.**

18 (a) IN GENERAL.—Section 7443 (relating to mem-  
19 bership of the Tax Court) is amended by adding at the  
20 end the following new subsection:

21 “(h) LUMP-SUM PAYMENT OF JUDGES’ ACCRUED  
22 ANNUAL LEAVE.—Notwithstanding the provisions of sec-  
23 tions 5551 and 6301 of title 5, United States Code, when  
24 an individual subject to the leave system provided in chap-  
25 ter 63 of that title is appointed by the President to be

1 a judge of the Tax Court, the individual shall be entitled  
2 to receive, upon appointment to the Tax Court, a lump-  
3 sum payment from the Tax Court of the accumulated and  
4 accrued current annual leave standing to the individual's  
5 credit as certified by the agency from which the individual  
6 resigned.”.

7 (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to any judge of the United States  
9 Tax Court who has an outstanding leave balance on the  
10 date of the enactment of this Act and to any individual  
11 appointed by the President to serve as a judge of the  
12 United States Tax Court after such date.

13 **SEC. 206. PARTICIPATION OF TAX COURT JUDGES IN THE**  
14 **THRIFT SAVINGS PLAN.**

15 (a) IN GENERAL.—Section 7447 (relating to retire-  
16 ment of judges), as amended by this Act, is amended by  
17 adding at the end the following new subsection:

18 “(k) THRIFT SAVINGS PLAN.—

19 “(1) ELECTION TO CONTRIBUTE.—

20 “(A) IN GENERAL.—A judge of the Tax  
21 Court may elect to contribute to the Thrift Sav-  
22 ings Fund established by section 8437 of title  
23 5, United States Code.

24 “(B) PERIOD OF ELECTION.—An election  
25 may be made under this paragraph only during

1 a period provided under section 8432(b) of title  
2 5, United States Code, for individuals subject to  
3 chapter 84 of such title.

4 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—  
5 Except as otherwise provided in this subsection, the  
6 provisions of subchapters III and VII of chapter 84  
7 of title 5, United States Code, shall apply with re-  
8 spect to a judge who makes an election under para-  
9 graph (1).

10 “(3) SPECIAL RULES.—

11 “(A) AMOUNT CONTRIBUTED.—The  
12 amount contributed by a judge to the Thrift  
13 Savings Fund in any pay period shall not ex-  
14 ceed the maximum percentage of such judge’s  
15 basic pay for such period as allowable under  
16 section 8440f of title 5, United States Code.  
17 Basic pay does not include any retired pay paid  
18 pursuant to this section.

19 “(B) CONTRIBUTIONS FOR BENEFIT OF  
20 JUDGE.—No contributions may be made for the  
21 benefit of a judge under section 8432(c) of title  
22 5, United States Code.

23 “(C) APPLICABILITY OF SECTION 8433(b)  
24 OF TITLE 5 WHETHER OR NOT JUDGE RE-  
25 TIRES.—Section 8433(b) of title 5, United

1 States Code, applies with respect to a judge  
2 who makes an election under paragraph (1) and  
3 who either—

4 “(i) retires under subsection (b), or

5 “(ii) ceases to serve as a judge of the  
6 Tax Court but does not retire under sub-  
7 section (b).

8 Retirement under subsection (b) is a separation  
9 from service for purposes of subchapters III  
10 and VII of chapter 84 of that title.

11 “(D) APPLICABILITY OF SECTION  
12 8351(b)(5) OF TITLE 5.—The provisions of sec-  
13 tion 8351(b)(5) of title 5, United States Code,  
14 shall apply with respect to a judge who makes  
15 an election under paragraph (1).

16 “(E) EXCEPTION.—Notwithstanding sub-  
17 paragraph (C), if any judge retires under this  
18 section, or resigns without having met the age  
19 and service requirements set forth under sub-  
20 section (b)(2), and such judge’s nonforfeitable  
21 account balance is less than an amount that the  
22 Executive Director of the Office of Personnel  
23 Management prescribes by regulation, the Exec-  
24 utive Director shall pay the nonforfeitable ac-

1           count balance to the participant in a single pay-  
2           ment.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall take effect on the date of the enactment  
5 of this Act, except that United States Tax Court judges  
6 may only begin to participate in the Thrift Savings Plan  
7 at the next open season beginning after such date.

8   **SEC. 207. EXEMPTION OF TEACHING COMPENSATION OF**  
9                           **RETIRED JUDGES FROM LIMITATION ON**  
10                           **OUTSIDE EARNED INCOME.**

11           (a) **IN GENERAL.**—Section 7447 (relating to retire-  
12 ment of judges), as amended by this Act, is amended by  
13 adding at the end the following new subsection:

14           “(1) **TEACHING COMPENSATION OF RETIRED**  
15 **JUDGES.**—For purposes of the limitation under section  
16 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.  
17 App.), any compensation for teaching approved under sub-  
18 section (a)(5) of that section shall not be treated as out-  
19 side earned income when received by a judge of the Tax  
20 Court who has retired under subsection (b) for teaching  
21 performed during any calendar year for which such a  
22 judge has met the requirements of subsection (c), as cer-  
23 tified by the chief judge of the Tax Court.”.

24           (b) **EFFECTIVE DATE.**—The amendment made by  
25 this section shall apply to any individual serving as a re-

1 tired judge of the United States Tax Court on or after  
2 the date of the enactment of this Act.

3 **SEC. 208. GENERAL PROVISIONS RELATING TO MAG-**  
4 **ISTRATE JUDGES OF THE TAX COURT.**

5 (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO  
6 MAGISTRATE JUDGE OF THE TAX COURT.—The heading  
7 of section 7443A is amended to read as follows:

8 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”.**

9 (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-  
10 section (a) of section 7443A is amended to read as follows:

11 “(a) APPOINTMENT, TENURE, AND REMOVAL.—

12 “(1) APPOINTMENT.—The chief judge may,  
13 from time to time, appoint and reappoint magistrate  
14 judges of the Tax Court for a term of 8 years. The  
15 magistrate judges of the Tax Court shall proceed  
16 under such rules as may be promulgated by the Tax  
17 Court.

18 “(2) REMOVAL.—Removal of a magistrate  
19 judge of the Tax Court during the term for which  
20 he or she is appointed shall be only for incom-  
21 petency, misconduct, neglect of duty, or physical or  
22 mental disability, but the office of a magistrate  
23 judge of the Tax Court shall be terminated if the  
24 judges of the Tax Court determine that the services  
25 performed by the magistrate judge of the Tax Court

1 are no longer needed. Removal shall not occur unless  
2 a majority of all the judges of the Tax Court concur  
3 in the order of removal. Before any order of removal  
4 shall be entered, a full specification of the charges  
5 shall be furnished to the magistrate judge of the Tax  
6 Court, and he or she shall be accorded by the judges  
7 of the Tax Court an opportunity to be heard on the  
8 charges.”.

9 (c) SALARY.—Section 7443A(d) (relating to salary)  
10 is amended by striking “90” and inserting “92”.

11 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-  
12 SIONS.—Section 7443A is amended by adding at the end  
13 the following new subsection:

14 “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-  
15 SIONS.—

16 “(1) IN GENERAL.—A magistrate judge of the  
17 Tax Court appointed under this section shall be ex-  
18 empt from the provisions of subchapter I of chapter  
19 63 of title 5, United States Code.

20 “(2) TREATMENT OF UNUSED LEAVE.—

21 “(A) AFTER SERVICE AS MAGISTRATE  
22 JUDGE.—If an individual who is exempted  
23 under paragraph (1) from the subchapter re-  
24 ferred to in such paragraph was previously sub-  
25 ject to such subchapter and, without a break in

1 service, again becomes subject to such sub-  
2 chapter on completion of the individual's service  
3 as a magistrate judge, the unused annual leave  
4 and sick leave standing to the individual's cred-  
5 it when such individual was exempted from this  
6 subchapter is deemed to have remained to the  
7 individual's credit.

8 “(B) COMPUTATION OF ANNUITY.—In  
9 computing an annuity under section 8339 of  
10 title 5, United States Code, the total service of  
11 an individual specified in subparagraph (A) who  
12 retires on an immediate annuity or dies leaving  
13 a survivor or survivors entitled to an annuity  
14 includes, without regard to the limitations im-  
15 posed by subsection (f) of such section 8339,  
16 the days of unused sick leave standing to the  
17 individual's credit when such individual was ex-  
18 empted from subchapter I of chapter 63 of title  
19 5, United States Code, except that these days  
20 will not be counted in determining average pay  
21 or annuity eligibility.

22 “(C) LUMP SUM PAYMENT.—Any accumu-  
23 lated and current accrued annual leave or vaca-  
24 tion balances credited to a magistrate judge as  
25 of the date of the enactment of this subsection

1 shall be paid in a lump sum at the time of separa-  
2 tion from service pursuant to the provisions  
3 and restrictions set forth in section 5551 of  
4 title 5, United States Code, and related provi-  
5 sions referred to in such section.”.

6 (e) CONFORMING AMENDMENTS.—

7 (1) The heading of subsection (b) of section  
8 7443A is amended by striking “SPECIAL TRIAL  
9 JUDGES” and inserting “MAGISTRATE JUDGES OF  
10 THE TAX COURT”.

11 (2) Section 7443A(b) is amended by striking  
12 “special trial judges of the court” and inserting  
13 “magistrate judges of the Tax Court”.

14 (3) Subsections (c) and (d) of section 7443A  
15 are amended by striking “special trial judge” and  
16 inserting “magistrate judge of the Tax Court” each  
17 place it appears.

18 (4) Section 7443A(e) is amended by striking  
19 “special trial judges” and inserting “magistrate  
20 judges of the Tax Court”.

21 (5) Section 7456(a) is amended by striking  
22 “special trial judge” each place it appears and in-  
23 serting “magistrate judge”.

24 (6) Subsection (c) of section 7471 is amend-  
25 ed—

1 (A) by striking the subsection heading and  
2 inserting “MAGISTRATE JUDGES OF THE TAX  
3 COURT.—”, and

4 (B) by striking “special trial judges” and  
5 inserting “magistrate judges”.

6 **SEC. 209. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
7 **PENDENT CHILDREN OF MAGISTRATE**  
8 **JUDGES OF THE TAX COURT.**

9 (a) DEFINITIONS.—Section 7448(a) (relating to defi-  
10 nitions), as amended by this Act, is amended by redesignig-  
11 nating paragraphs (5), (6), (7), and (8) as paragraphs (7),  
12 (8), (9), and (10), respectively, and by inserting after  
13 paragraph (4) the following new paragraphs:

14 “(5) The term ‘magistrate judge’ means a judi-  
15 cial officer appointed pursuant to section 7443A, in-  
16 cluding any individual receiving an annuity under  
17 section 7443B, or chapters 83 or 84, as the case  
18 may be, of title 5, United States Code, whether or  
19 not performing judicial duties under section 7443C.

20 “(6) The term ‘magistrate judge’s salary’  
21 means the salary of a magistrate judge received  
22 under section 7443A(d), any amount received as an  
23 annuity under section 7443B, or chapters 83 or 84,  
24 as the case may be, of title 5, United States Code,  
25 and compensation received under section 7443C.”.

1 (b) ELECTION.—Subsection (b) of section 7448 (re-  
 2 lating to annuities to surviving spouses and dependent  
 3 children of judges) is amended—

4 (1) by striking the subsection heading and in-  
 5 serting the following:

6 “(b) ELECTION.—

7 “(1) JUDGES.—”,

8 (2) by moving the text 2 ems to the right, and

9 (3) by adding at the end the following new  
 10 paragraph:

11 “(2) MAGISTRATE JUDGES.—Any magistrate  
 12 judge may by written election filed with the chief  
 13 judge bring himself or herself within the purview of  
 14 this section. Such election shall be filed not later  
 15 than the later of 6 months after—

16 “(A) 6 months after the date of the enact-  
 17 ment of this paragraph,

18 “(B) the date the judge takes office, or

19 “(C) the date the judge marries.”.

20 (c) CONFORMING AMENDMENTS.—

21 (1) The heading of section 7448 is amended by  
 22 inserting “**AND MAGISTRATE JUDGES**” after  
 23 “**JUDGES**”.

24 (2) The item relating to section 7448 in the  
 25 table of sections for part I of subchapter C of chap-

1 ter 76 is amended by inserting “and magistrate  
2 judges” after “judges”.

3 (3) Subsections (c)(1), (d), (f), (g), (h), (j),  
4 (m), (n), and (u) of section 7448, as amended by  
5 this Act, are each amended—

6 (A) by inserting “or magistrate judge”  
7 after “judge” each place it appears other than  
8 in the phrase “chief judge”, and

9 (B) by inserting “or magistrate judge’s”  
10 after “judge’s” each place it appears.

11 (4) Section 7448(c) is amended—

12 (A) in paragraph (1), by striking “Tax  
13 Court judges” and inserting “Tax Court judi-  
14 cial officers”,

15 (B) in paragraph (2)—

16 (i) in subparagraph (A), by inserting  
17 “and section 7443A(d)” after “(a)(4)”,  
18 and

19 (ii) in subparagraph (B), by striking  
20 “subsection (a)(4)” and inserting “sub-  
21 sections (a)(4) and (a)(6)”.

22 (5) Section 7448(g) is amended by inserting  
23 “or section 7443B” after “section 7447” each place  
24 it appears, and by inserting “or an annuity” after  
25 “retired pay”.

1 (6) Section 7448(j)(1) is amended—

2 (A) in subparagraph (A), by striking  
3 “service or retired” and inserting “service, re-  
4 tired”, and by inserting “, or receiving any an-  
5 nuity under section 7443B or chapters 83 or 84  
6 of title 5, United States Code,” after “section  
7 7447”, and

8 (B) in the last sentence, by striking “sub-  
9 sections (a)(6) and (7)” and inserting “para-  
10 graphs (8) and (9) of subsection (a)”.

11 (7) Section 7448(m)(1), as amended by this  
12 Act, is amended—

13 (A) by inserting “or any annuity under  
14 section 7443B or chapters 83 or 84 of title 5,  
15 United States Code” after “7447(d)”, and

16 (B) by inserting “or 7443B(m)(1)(B) after  
17 “7447(f)(4)”.

18 (8) Section 7448(n) is amended by inserting  
19 “his years of service pursuant to any appointment  
20 under section 7443A,” after “of the Tax Court,”.

21 (9) Section 3121(b)(5)(E) is amended by in-  
22 serting “or magistrate judge” before “of the United  
23 States Tax Court”.

1           (10) Section 210(a)(5)(E) of the Social Secu-  
2           rity Act is amended by inserting “or magistrate  
3           judge” before “of the United States Tax Court”.

4   **SEC. 210. RETIREMENT AND ANNUITY PROGRAM.**

5           (a) RETIREMENT AND ANNUITY PROGRAM.—Part I  
6           of subchapter C of chapter 76 is amended by inserting  
7           after section 7443A the following new section:

8   **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
9                                   **THE TAX COURT.**

10          “(a) RETIREMENT BASED ON YEARS OF SERVICE.—  
11          A magistrate judge of the Tax Court to whom this section  
12          applies and who retires from office after attaining the age  
13          of 65 years and serving at least 14 years, whether continu-  
14          ously or otherwise, as such magistrate judge shall, subject  
15          to subsection (f), be entitled to receive, during the remain-  
16          der of the magistrate judge’s lifetime, an annuity equal  
17          to the salary being received at the time the magistrate  
18          judge leaves office.

19          “(b) RETIREMENT UPON FAILURE OF REAPPOINT-  
20          MENT.—A magistrate judge of the Tax Court to whom  
21          this section applies who is not reappointed following the  
22          expiration of the term of office of such magistrate judge,  
23          and who retires upon the completion of the term shall,  
24          subject to subsection (f), be entitled to receive, upon at-  
25          taining the age of 65 years and during the remainder of

1 such magistrate judge's lifetime, an annuity equal to that  
2 portion of the salary being received at the time the mag-  
3 istrate judge leaves office which the aggregate number of  
4 years of service, not to exceed 14, bears to 14, if—

5           “(1) such magistrate judge has served at least  
6           1 full term as a magistrate judge, and

7           “(2) not earlier than 9 months before the date  
8           on which the term of office of such magistrate judge  
9           expires, and not later than 6 months before such  
10          date, such magistrate judge notified the chief judge  
11          of the Tax Court in writing that such magistrate  
12          judge was willing to accept reappointment to the po-  
13          sition in which such magistrate judge was serving.

14          “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate  
15          judge of the Tax Court to whom this section applies and  
16          who retires after serving at least 8 years, whether continu-  
17          ously or otherwise, as such a magistrate judge shall, sub-  
18          ject to subsection (f), be entitled to receive, upon attaining  
19          the age of 65 years and during the remainder of the mag-  
20          istrate judge's lifetime, an annuity equal to that portion  
21          of the salary being received at the time the magistrate  
22          judge leaves office which the aggregate number of years  
23          of service, not to exceed 14, bears to 14. Such annuity  
24          shall be reduced by  $\frac{1}{6}$  of 1 percent for each full month  
25          such magistrate judge was under the age of 65 at the time

1 the magistrate judge left office, except that such reduction  
2 shall not exceed 20 percent.

3 “(d) RETIREMENT FOR DISABILITY.—A magistrate  
4 judge of the Tax Court to whom this section applies, who  
5 has served at least 5 years, whether continuously or other-  
6 wise, as such a magistrate judge, and who retires or is  
7 removed from office upon the sole ground of mental or  
8 physical disability shall, subject to subsection (f), be enti-  
9 tled to receive, during the remainder of the magistrate  
10 judge’s lifetime, an annuity equal to 40 percent of the sal-  
11 ary being received at the time of retirement or removal  
12 or, in the case of a magistrate judge who has served for  
13 at least 10 years, an amount equal to that proportion of  
14 the salary being received at the time of retirement or re-  
15 moval which the aggregate number of years of service, not  
16 to exceed 14, bears to 14.

17 “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate  
18 judge of the Tax Court who is entitled to an annuity under  
19 this section is also entitled to a cost-of-living adjustment  
20 in such annuity, calculated and payable in the same man-  
21 ner as adjustments under section 8340(b) of title 5,  
22 United States Code, except that any such annuity, as in-  
23 creased under this subsection, may not exceed the salary  
24 then payable for the position from which the magistrate  
25 judge retired or was removed.

1       “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-  
2 ITIES.—

3           “(1) IN GENERAL.—A magistrate judge of the  
4 Tax Court shall be entitled to an annuity under this  
5 section if the magistrate judge elects an annuity  
6 under this section by notifying the chief judge of the  
7 Tax Court not later than the later of—

8           “(A) 5 years after the magistrate judge of  
9 the Tax Court begins judicial service, or

10          “(B) 5 years after the date of the enact-  
11 ment of this subsection.

12 Such notice shall be given in accordance with proce-  
13 dures prescribed by the Tax Court.

14          “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—  
15 A magistrate judge who elects to receive an annuity  
16 under this section shall not be entitled to receive—

17          “(A) any annuity to which such magistrate  
18 judge would otherwise have been entitled under  
19 subchapter III of chapter 83, or under chapter  
20 84 (except for subchapters III and VII), of title  
21 5, United States Code, for service performed as  
22 a magistrate or otherwise,

23          “(B) an annuity or salary in senior status  
24 or retirement under section 371 or 372 of title  
25 28, United States Code,

1 “(C) retired pay under section 7447, or

2 “(D) retired pay under section 7296 of  
3 title 38, United States Code.

4 “(3) COORDINATION WITH TITLE 5.—A mag-  
5 istrate judge of the Tax Court who elects to receive  
6 an annuity under this section—

7 “(A) shall not be subject to deductions and  
8 contributions otherwise required by section  
9 8334(a) of title 5, United States Code,

10 “(B) shall be excluded from the operation  
11 of chapter 84 (other than subchapters III and  
12 VII) of such title 5, and

13 “(C) is entitled to a lump-sum credit under  
14 section 8342(a) or 8424 of such title 5, as the  
15 case may be.

16 “(g) CALCULATION OF SERVICE.—For purposes of  
17 calculating an annuity under this section—

18 “(1) service as a magistrate judge of the Tax  
19 Court to whom this section applies may be credited,  
20 and

21 “(2) each month of service shall be credited as  
22  $\frac{1}{12}$  of a year, and the fractional part of any month  
23 shall not be credited.

24 “(h) COVERED POSITIONS AND SERVICE.—This sec-  
25 tion applies to any magistrate judge of the Tax Court or

1 special trial judge of the Tax Court appointed under this  
2 subchapter, but only with respect to service as such a mag-  
3 istrate judge or special trial judge after a date not earlier  
4 than 9½ years before the date of the enactment of this  
5 subsection.

6 “(i) PAYMENTS PURSUANT TO COURT ORDER.—

7 “(1) IN GENERAL.—Payments under this sec-  
8 tion which would otherwise be made to a magistrate  
9 judge of the Tax Court based upon his or her service  
10 shall be paid (in whole or in part) by the chief judge  
11 of the Tax Court to another person if and to the ex-  
12 tent expressly provided for in the terms of any court  
13 decree of divorce, annulment, or legal separation, or  
14 the terms of any court order or court-approved prop-  
15 erty settlement agreement incident to any court de-  
16 cree of divorce, annulment, or legal separation. Any  
17 payment under this paragraph to a person bars re-  
18 covery by any other person.

19 “(2) REQUIREMENTS FOR PAYMENT.—Para-  
20 graph (1) shall apply only to payments made by the  
21 chief judge of the Tax Court after the date of re-  
22 ceipt by the chief judge of written notice of such de-  
23 cree, order, or agreement, and such additional infor-  
24 mation as the chief judge may prescribe.

1           “(3) COURT DEFINED.—For purposes of this  
2 subsection, the term ‘court’ means any court of any  
3 State, the District of Columbia, the Commonwealth  
4 of Puerto Rico, Guam, the Northern Mariana Is-  
5 lands, or the Virgin Islands, and any Indian tribal  
6 court or courts of Indian offense.

7           “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-  
8 ITS.—

9           “(1) DEDUCTIONS.—Beginning with the next  
10 pay period after the chief judge of the Tax Court re-  
11 ceives a notice under subsection (f) that a mag-  
12 istrate judge of the Tax Court has elected an annu-  
13 ity under this section, the chief judge shall deduct  
14 and withhold 1 percent of the salary of such mag-  
15 istrate judge. Amounts shall be so deducted and  
16 withheld in a manner determined by the chief judge.  
17 Amounts deducted and withheld under this sub-  
18 section shall be deposited in the Treasury of the  
19 United States to the credit of the Tax Court Judi-  
20 cial Officers’ Retirement Fund. Deductions under  
21 this subsection from the salary of a magistrate judge  
22 shall terminate upon the retirement of the mag-  
23 istrate judge or upon completion of 14 years of serv-  
24 ice for which contributions under this section have  
25 been made, whether continuously or otherwise, as

1       calculated under subsection (g), whichever occurs  
2       first.

3           “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF  
4       CLAIMS.—Each magistrate judge of the Tax Court  
5       who makes an election under subsection (f) shall be  
6       deemed to consent and agree to the deductions from  
7       salary which are made under paragraph (1). Pay-  
8       ment of such salary less such deductions (and any  
9       deductions made under section 7448) is a full and  
10      complete discharge and acquittance of all claims and  
11      demands for all services rendered by such magistrate  
12      judge during the period covered by such payment,  
13      except the right to those benefits to which the mag-  
14      istrate judge is entitled under this section (and sec-  
15      tion 7448).

16      “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-  
17      istrate judge of the Tax Court who makes an election  
18      under subsection (f) may deposit, for service performed  
19      before such election for which contributions may be made  
20      under this section, an amount equal to 1 percent of the  
21      salary received for that service. Credit for any period cov-  
22      ered by that service may not be allowed for purposes of  
23      an annuity under this section until a deposit under this  
24      subsection has been made for that period.

1       “(1) INDIVIDUAL RETIREMENT RECORDS.—The  
2 amounts deducted and withheld under subsection (j), and  
3 the amounts deposited under subsection (k), shall be cred-  
4 ited to individual accounts in the name of each magistrate  
5 judge of the Tax Court from whom such amounts are re-  
6 ceived, for credit to the Tax Court Judicial Officers’ Re-  
7 tirement Fund.

8       “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

9           “(1) 1-YEAR FORFEITURE FOR FAILURE TO  
10 PERFORM JUDICIAL DUTIES.—Subject to paragraph  
11 (3), any magistrate judge of the Tax Court who re-  
12 tires under this section and who fails to perform ju-  
13 dicial duties required of such individual by section  
14 7443C shall forfeit all rights to an annuity under  
15 this section for a 1-year period which begins on the  
16 1st day on which such individual fails to perform  
17 such duties.

18           “(2) PERMANENT FORFEITURE OF RETIRED  
19 PAY WHERE CERTAIN NON-GOVERNMENT SERVICES  
20 PERFORMED.—Subject to paragraph (3), any mag-  
21 istrate judge of the Tax Court who retires under this  
22 section and who thereafter performs (or supervises  
23 or directs the performance of) legal or accounting  
24 services in the field of Federal taxation for the indi-  
25 vidual’s client, the individual’s employer, or any of

1 such employer’s clients, shall forfeit all rights to an  
2 annuity under this section for all periods beginning  
3 on or after the first day on which the individual per-  
4 forms (or supervises or directs the performance of)  
5 such services. The preceding sentence shall not apply  
6 to any civil office or employment under the Govern-  
7 ment of the United States.

8 “(3) FORFEITURES NOT TO APPLY WHERE IN-  
9 DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-  
10 ITY.—

11 “(A) IN GENERAL.—If a magistrate judge  
12 of the Tax Court makes an election under this  
13 paragraph—

14 “(i) paragraphs (1) and (2) (and sec-  
15 tion 7443C) shall not apply to such mag-  
16 istrate judge beginning on the date such  
17 election takes effect, and

18 “(ii) the annuity payable under this  
19 section to such magistrate judge, for peri-  
20 ods beginning on or after the date such  
21 election takes effect, shall be equal to the  
22 annuity to which such magistrate judge is  
23 entitled on the day before such effective  
24 date.

1           “(B) ELECTION REQUIREMENTS.—An elec-  
2           tion under subparagraph (A)—

3                   “(i) may be made by a magistrate  
4                   judge of the Tax Court eligible for retire-  
5                   ment under this section, and

6                   “(ii) shall be filed with the chief judge  
7                   of the Tax Court.

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

10           “(C) EFFECTIVE DATE OF ELECTION.—  
11           Any election under subparagraph (A) shall take  
12           effect on the first day of the first month fol-  
13           lowing the month in which the election is made.

14           “(4) ACCEPTING OTHER EMPLOYMENT.—Any  
15           magistrate judge of the Tax Court who retires under  
16           this section and thereafter accepts compensation for  
17           civil office or employment under the United States  
18           Government (other than for the performance of  
19           functions as a magistrate judge of the Tax Court  
20           under section 7443C) shall forfeit all rights to an  
21           annuity under this section for the period for which  
22           such compensation is received. For purposes of this  
23           paragraph, the term ‘compensation’ includes retired  
24           pay or salary received in retired status.

25           “(n) LUMP-SUM PAYMENTS.—

1 “(1) ELIGIBILITY.—

2 “(A) IN GENERAL.—Subject to paragraph  
3 (2), an individual who serves as a magistrate  
4 judge of the Tax Court and—

5 “(i) who leaves office and is not re-  
6 appointed as a magistrate judge of the Tax  
7 Court for at least 31 consecutive days,

8 “(ii) who files an application with the  
9 chief judge of the Tax Court for payment  
10 of a lump-sum credit,

11 “(iii) is not serving as a magistrate  
12 judge of the Tax Court at the time of fil-  
13 ing of the application, and

14 “(iv) will not become eligible to re-  
15 ceive an annuity under this section within  
16 31 days after filing the application,

17 is entitled to be paid the lump-sum credit. Pay-  
18 ment of the lump-sum credit voids all rights to  
19 an annuity under this section based on the serv-  
20 ice on which the lump-sum credit is based, until  
21 that individual resumes office as a magistrate  
22 judge of the Tax Court.

23 “(B) PAYMENT TO SURVIVORS.—Lump-  
24 sum benefits authorized by subparagraphs (C),  
25 (D), and (E) of this paragraph shall be paid to

1 the person or persons surviving the magistrate  
2 judge of the Tax Court and alive on the date  
3 title to the payment arises, in the order of prec-  
4 edence set forth in subsection (o) of section 376  
5 of title 28, United States Code, and in accord-  
6 ance with the last 2 sentences of paragraph (1)  
7 of that subsection. For purposes of the pre-  
8 ceeding sentence, the term ‘judicial official’ as  
9 used in subsection (o) of such section 376 shall  
10 be deemed to mean ‘magistrate judge of the  
11 Tax Court’ and the terms ‘Administrative Of-  
12 fice of the United States Courts’ and ‘Director  
13 of the Administrative Office of the United  
14 States Courts’ shall be deemed to mean ‘chief  
15 judge of the Tax Court’.

16 “(C) PAYMENT UPON DEATH OF JUDGE  
17 BEFORE RECEIPT OF ANNUITY.—If a mag-  
18 istrate judge of the Tax Court dies before re-  
19 ceiving an annuity under this section, the lump-  
20 sum credit shall be paid.

21 “(D) PAYMENT OF ANNUITY REMAIN-  
22 DER.—If all annuity rights under this section  
23 based on the service of a deceased magistrate  
24 judge of the Tax Court terminate before the

1 total annuity paid equals the lump-sum credit,  
2 the difference shall be paid.

3 “(E) PAYMENT UPON DEATH OF JUDGE  
4 DURING RECEIPT OF ANNUITY.—If a magistrate  
5 judge of the Tax Court who is receiving an an-  
6 nuity under this section dies, any accrued annu-  
7 ity benefits remaining unpaid shall be paid.

8 “(F) PAYMENT UPON TERMINATION.—Any  
9 accrued annuity benefits remaining unpaid on  
10 the termination, except by death, of the annuity  
11 of a magistrate judge of the Tax Court shall be  
12 paid to that individual.

13 “(G) PAYMENT UPON ACCEPTING OTHER  
14 EMPLOYMENT.—Subject to paragraph (2), a  
15 magistrate judge of the Tax Court who forfeits  
16 rights to an annuity under subsection (m)(4)  
17 before the total annuity paid equals the lump-  
18 sum credit shall be entitled to be paid the dif-  
19 ference if the magistrate judge of the Tax  
20 Court files an application with the chief judge  
21 of the Tax Court for payment of that dif-  
22 ference. A payment under this subparagraph  
23 voids all rights to an annuity on which the pay-  
24 ment is based.

25 “(2) SPOUSES AND FORMER SPOUSES.—

1           “(A) IN GENERAL.—Payment of the lump-  
2           sum credit under paragraph (1)(A) or a pay-  
3           ment under paragraph (1)(G)—

4                   “(i) may be made only if any current  
5                   spouse and any former spouse of the mag-  
6                   istrate judge of the Tax Court are notified  
7                   of the magistrate judge’s application, and

8                   “(ii) shall be subject to the terms of  
9                   a court decree of divorce, annulment, or  
10                  legal separation, or any court or court ap-  
11                  proved property settlement agreement inci-  
12                  dent to such decree, if—

13                   “(I) the decree, order, or agree-  
14                   ment expressly relates to any portion  
15                   of the lump-sum credit or other pay-  
16                   ment involved, and

17                   “(II) payment of the lump-sum  
18                   credit or other payment would extin-  
19                   guish entitlement of the magistrate  
20                   judge’s spouse or former spouse to  
21                   any portion of an annuity under sub-  
22                   section (i).

23           “(B) NOTIFICATION.—Notification of a  
24           spouse or former spouse under this paragraph  
25           shall be made in accordance with such proce-

1           dures as the chief judge of the Tax Court shall  
2           prescribe. The chief judge may provide under  
3           such procedures that subparagraph (A)(i) may  
4           be waived with respect to a spouse or former  
5           spouse if the magistrate judge establishes to the  
6           satisfaction of the chief judge that the where-  
7           abouts of such spouse or former spouse cannot  
8           be determined.

9           “(C) RESOLUTION OF 2 OR MORE OR-  
10          DERS.—The chief judge shall prescribe proce-  
11          dures under which this paragraph shall be ap-  
12          plied in any case in which the chief judge re-  
13          ceives 2 or more orders or decrees described in  
14          subparagraph (A).

15          “(3) DEFINITION.—For purposes of this sub-  
16          section, the term ‘lump-sum credit’ means the  
17          unrefunded amount consisting of—

18                 “(A) retirement deductions made under  
19                 this section from the salary of a magistrate  
20                 judge of the Tax Court,

21                 “(B) amounts deposited under subsection  
22                 (k) by a magistrate judge of the Tax Court cov-  
23                 ering earlier service, and

24                 “(C) interest on the deductions and depos-  
25                 its which, for any calendar year, shall be equal

1 to the overall average yield to the Tax Court  
2 Judicial Officers' Retirement Fund during the  
3 preceding fiscal year from all obligations pur-  
4 chased by the Secretary during such fiscal year  
5 under subsection (o); but does not include inter-  
6 est—

7 “(i) if the service covered thereby ag-  
8 gregates 1 year or less, or

9 “(ii) for the fractional part of a  
10 month in the total service.

11 “(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT  
12 FUND.—

13 “(1) ESTABLISHMENT.—There is established in  
14 the Treasury a fund which shall be known as the  
15 ‘Tax Court Judicial Officers' Retirement Fund’.  
16 Amounts in the Fund are authorized to be appro-  
17 priated for the payment of annuities, refunds, and  
18 other payments under this section.

19 “(2) INVESTMENT OF FUND.—The Secretary  
20 shall invest, in interest bearing securities of the  
21 United States, such currently available portions of  
22 the Tax Court Judicial Officers' Retirement Fund as  
23 are not immediately required for payments from the  
24 Fund. The income derived from these investments  
25 constitutes a part of the Fund.

1           “(3) UNFUNDED LIABILITY.—

2           “(A) IN GENERAL.—There are authorized  
3 to be appropriated to the Tax Court Judicial  
4 Officers’ Retirement Fund amounts required to  
5 reduce to zero the unfunded liability of the  
6 Fund.

7           “(B) UNFUNDED LIABILITY.—For pur-  
8 poses of subparagraph (A), the term ‘unfunded  
9 liability’ means the estimated excess, deter-  
10 mined on an annual basis in accordance with  
11 the provisions of section 9503 of title 31,  
12 United States Code, of the present value of all  
13 benefits payable from the Tax Court Judicial  
14 Officers’ Retirement Fund over the sum of—

15           “(i) the present value of deductions to  
16 be withheld under this section from the fu-  
17 ture basic pay of magistrate judges of the  
18 Tax Court, plus

19           “(ii) the balance in the Fund as of the  
20 date the unfunded liability is determined.

21           “(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

22           “(1) ELECTION TO CONTRIBUTE.—

23           “(A) IN GENERAL.—A magistrate judge of  
24 the Tax Court who elects to receive an annuity  
25 under this section or under section 211 of the

1 Tax Court Modernization Act may elect to con-  
2 tribute an amount of such individual's basic pay  
3 to the Thrift Savings Fund established by sec-  
4 tion 8437 of title 5, United States Code.

5 “(B) PERIOD OF ELECTION.—An election  
6 may be made under this paragraph only during  
7 a period provided under section 8432(b) of title  
8 5, United States Code, for individuals subject to  
9 chapter 84 of such title.

10 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—  
11 Except as otherwise provided in this subsection, the  
12 provisions of subchapters III and VII of chapter 84  
13 of title 5, United States Code, shall apply with re-  
14 spect to a magistrate judge who makes an election  
15 under paragraph (1).

16 “(3) SPECIAL RULES.—

17 “(A) AMOUNT CONTRIBUTED.—The  
18 amount contributed by a magistrate judge to  
19 the Thrift Savings Fund in any pay period shall  
20 not exceed the maximum percentage of such  
21 judge's basic pay for such pay period as allow-  
22 able under section 8440f of title 5, United  
23 States Code.

24 “(B) CONTRIBUTIONS FOR BENEFIT OF  
25 JUDGE.—No contributions may be made for the

1 benefit of a magistrate judge under section  
2 8432(c) of title 5, United States Code.

3 “(C) APPLICABILITY OF SECTION 8433(b)  
4 OF TITLE 5.—Section 8433(b) of title 5, United  
5 States Code, applies with respect to a mag-  
6 istrate judge who makes an election under para-  
7 graph (1) and—

8 “(i) who retires entitled to an imme-  
9 mediate annuity under this section (including  
10 a disability annuity under subsection (d) of  
11 this section) or section 211 of the Tax  
12 Court Modernization Act,

13 “(ii) who retires before attaining age  
14 65 but is entitled, upon attaining age 65,  
15 to an annuity under this section or section  
16 211 of the Tax Court Modernization Act,  
17 or

18 “(iii) who retires before becoming en-  
19 titled to an immediate annuity, or an an-  
20 nuity upon attaining age 65, under this  
21 section or section 211 of the Tax Court  
22 Modernization Act.

23 “(D) SEPARATION FROM SERVICE.—With  
24 respect to a magistrate judge to whom this sub-  
25 section applies, retirement under this section or

1 section 211 of the Tax Court Modernization Act  
2 is a separation from service for purposes of sub-  
3 chapters III and VII of chapter 84 of title 5,  
4 United States Code.

5 “(4) DEFINITIONS.—For purposes of this sub-  
6 section, the terms ‘retirement’ and ‘retire’ include  
7 removal from office under section 7443A(a)(2) on  
8 the sole ground of mental or physical disability.

9 “(5) OFFSET.—In the case of a magistrate  
10 judge who receives a distribution from the Thrift  
11 Savings Fund and who later receives an annuity  
12 under this section, that annuity shall be offset by an  
13 amount equal to the amount which represents the  
14 Government’s contribution to that person’s Thrift  
15 Savings Account, without regard to earnings attrib-  
16 utable to that amount. Where such an offset would  
17 exceed 50 percent of the annuity to be received in  
18 the first year, the offset may be divided equally over  
19 the first 2 years in which that person receives the  
20 annuity.

21 “(6) EXCEPTION.—Notwithstanding clauses (i)  
22 and (ii) of paragraph (3)(C), if any magistrate judge  
23 retires under circumstances making such magistrate  
24 judge eligible to make an election under subsection  
25 (b) of section 8433 of title 5, United States Code,

1 and such magistrate judge's nonforfeitable account  
 2 balance is less than an amount that the Executive  
 3 Director of the Office of Personnel Management pre-  
 4 scribes by regulation, the Executive Director shall  
 5 pay the nonforfeitable account balance to the partici-  
 6 pant in a single payment.”.

7 (b) CONFORMING AMENDMENT.—The table of sec-  
 8 tion for part I of subchapter C of chapter 76 is amended  
 9 by inserting after the item relating to section 7443A the  
 10 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax  
 Court.”.

11 **SEC. 211. INCUMBENT MAGISTRATE JUDGES OF THE TAX**  
 12 **COURT.**

13 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND  
 14 SECTION 7443B OF THE INTERNAL REVENUE CODE OF  
 15 1986.—A magistrate judge of the United States Tax  
 16 Court in active service on the date of the enactment of  
 17 this Act shall, subject to subsection (b), be entitled, in lieu  
 18 of the annuity otherwise provided under the amendments  
 19 made by this title, to—

20 (1) an annuity under subchapter III of chapter  
 21 83, or under chapter 84 (except for subchapters III  
 22 and VII), of title 5, United States Code, as the case  
 23 may be, for creditable service before the date on

1 which service would begin to be credited for pur-  
2 poses of paragraph (2), and

3 (2) an annuity calculated under subsection (b)  
4 or (c) and subsection (g) of section 7443B of the In-  
5 ternal Revenue Code of 1986, as added by this Act,  
6 for any service as a magistrate judge of the United  
7 States Tax Court or special trial judge of the United  
8 States Tax Court but only with respect to service as  
9 such a magistrate judge or special trial judge after  
10 a date not earlier than 9½ years prior to the date  
11 of the enactment of this Act (as specified in the elec-  
12 tion pursuant to subsection (b)) for which deduc-  
13 tions and deposits are made under subsections (j)  
14 and (k) of such section 7443B, as applicable, with-  
15 out regard to the minimum number of years of serv-  
16 ice as such a magistrate judge of the United States  
17 Tax Court, except that—

18 (A) in the case of a magistrate judge who  
19 retired with less than 8 years of service, the an-  
20 nuity under subsection (c) of such section  
21 7443B shall be equal to that proportion of the  
22 salary being received at the time the magistrate  
23 judge leaves office which the years of service  
24 bears to 14, subject to a reduction in accord-  
25 ance with subsection (c) of such section 7443B

1 if the magistrate judge is under age 65 at the  
2 time he or she leaves office, and

3 (B) the aggregate amount of the annuity  
4 initially payable on retirement under this sub-  
5 section may not exceed the rate of pay for the  
6 magistrate judge which is in effect on the day  
7 before the retirement becomes effective.

8 (b) FILING OF NOTICE OF ELECTION.—A magistrate  
9 judge of the United States Tax Court shall be entitled to  
10 an annuity under this section only if the magistrate judge  
11 files a notice of that election with the chief judge of the  
12 United States Tax Court specifying the date on which  
13 service would begin to be credited under section 7443B  
14 of the Internal Revenue Code of 1986, as added by this  
15 Act, in lieu of chapter 83 or chapter 84 of title 5, United  
16 States Code. Such notice shall be filed in accordance with  
17 such procedures as the chief judge of the United States  
18 Tax Court shall prescribe.

19 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-  
20 istrate judge of the United States Tax Court who makes  
21 an election under subsection (b) shall be entitled to a  
22 lump-sum credit under section 8342 or 8424 of title 5,  
23 United States Code, as the case may be, for any service  
24 which is covered under section 7443B of the Internal Rev-  
25 enue Code of 1986, as added by this Act, pursuant to that

1 election, and with respect to which any contributions were  
2 made by the magistrate judge under the applicable provi-  
3 sions of title 5, United States Code.

4 (d) RECALL.—With respect to any magistrate judge  
5 of the United States Tax Court receiving an annuity under  
6 this section who is recalled to serve under section 7443C  
7 of the Internal Revenue Code of 1986, as added by this  
8 Act—

9 (1) the amount of compensation which such re-  
10 called magistrate judge receives under such section  
11 7443C shall be calculated on the basis of the annu-  
12 ity received under this section, and

13 (2) such recalled magistrate judge of the United  
14 States Tax Court may serve as a reemployed annu-  
15 itant to the extent otherwise permitted under title 5,  
16 United States Code.

17 Section 7443B(m)(4) of the Internal Revenue Code of  
18 1986, as added by this Act, shall not apply with respect  
19 to service as a reemployed annuitant described in para-  
20 graph (2).

21 **SEC. 212. PROVISIONS FOR RECALL.**

22 (a) IN GENERAL.—Part I of subchapter C of chapter  
23 76, as amended by this Act, is amended by inserting after  
24 section 7443B the following new section:

1 **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**  
2 **COURT.**

3 “(a) RECALLING OF RETIRED MAGISTRATE  
4 JUDGES.—Any individual who has retired pursuant to sec-  
5 tion 7443B or the applicable provisions of title 5, United  
6 States Code, upon reaching the age and service require-  
7 ments established therein, may at or after retirement be  
8 called upon by the chief judge of the Tax Court to perform  
9 such judicial duties with the Tax Court as may be re-  
10 quested of such individual for any period or periods speci-  
11 fied by the chief judge; except that in the case of any such  
12 individual—

13 “(1) the aggregate of such periods in any 1 cal-  
14 endar year shall not (without such individual’s con-  
15 sent) exceed 90 calendar days, and

16 “(2) such individual shall be relieved of per-  
17 forming such duties during any period in which ill-  
18 ness or disability precludes the performance of such  
19 duties.

20 Any act, or failure to act, by an individual performing ju-  
21 dicial duties pursuant to this subsection shall have the  
22 same force and effect as if it were the act (or failure to  
23 act) of a magistrate judge of the Tax Court.

24 “(b) COMPENSATION.—For the year in which a pe-  
25 riod of recall occurs, the magistrate judge shall receive,  
26 in addition to the annuity provided under the provisions

1 of section 7443B or under the applicable provisions of title  
2 5, United States Code, an amount equal to the difference  
3 between that annuity and the current salary of the office  
4 to which the magistrate judge is recalled. The annuity of  
5 the magistrate judge who completes that period of service,  
6 who is not recalled in a subsequent year, and who retired  
7 under section 7443B, shall be equal to the salary in effect  
8 at the end of the year in which the period of recall oc-  
9 curred for the office from which such individual retired.

10 “(c) RULEMAKING AUTHORITY.—The provisions of  
11 this section may be implemented under such rules as may  
12 be promulgated by the Tax Court.”.

13 (b) CONFORMING AMENDMENT.—The table of sec-  
14 tions for part I of subchapter C of chapter 76, as amended  
15 by this Act, is amended by inserting after the item relating  
16 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

17 **SEC. 213. EFFECTIVE DATE.**

18 Except as otherwise provided, the amendments made  
19 by this title shall take effect on the date of the enactment  
20 of this Act.

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