

COMPARATIVE PROCEDURES
STATE – FEDERAL TAX REFUND LITIGATION

PROCEDURE/TOPIC	MD. TAX CT.	FED. DISTRICT CT.	FED. BANKR. CT.	CT. OF FED. CLMS.
Official name	Maryland Tax Court	United States District Court for the District of Maryland	United States Bankruptcy Court for the District of Maryland	United States Court of Federal Claims
Website url	http://www.txcrct.state.md.us/	http://www.mdd.uscourts.gov/	http://www.mdb.uscourts.gov/	http://www.uscfc.uscourts.gov/
Type of forum	Administrative agency - MD. CODE ANN., TAX-GEN. § 3-102	Constitutional court - U.S. CONST., Art. III; 28 U.S.C. § 132	Statutory court, division of USDC - 28 U.S.C. § 151	Statutory court - 28 U.S.C. § 171
Judges	5 (-1 vac) specialists - part time, six-year appts - TG 3-106	10 (+5 sr js) generalists - lifetime apps - 28 U.S.C. § 133	7 (+1 sr j) bankr. specialists - 14-year term appts - 28 U.S.C. § 152	16 (+8 sr js) specialists-15-year appts - 28 U.S.C. § §§ 171, 172
Refund jurisdiction	TG § 13-510(a)(6)	28 U.S.C. § 1346(a)(1)	11 U.S.C. § 505	28 U.S.C. §1346(a)(1); but no jurisdiction for § 6700 or § 6701 penalties - 28 U.S.C. § 1509
S/L for filing suit	30 days from denial of claim - TG § 13-510	Two years from denial of claim - 26 U.S.C. § 6532	Two years from denial of claim - 26 U.S.C. § 6532	Two years from denial of claim - 26 U.S.C. § 6532
Mailbox rule applicable	Yes - TG § 13-510(c)	No provision	No provision	Modified rule - RCFC 3(b)(2)(C)
Constructive exhaustion	Six months - TG § 13-510(b)	Six months - 26 U.S.C. § 6532	Six months - 26 U.S.C. § 6532	Six months - 26 U.S.C. § 6532
Administrative claim	Required - TG §§ 13-510(a)(6), 13-514	Required - 26 U.S.C. § 7422	Required - 11 U.S.C. § 505; 26 U.S.C. § 7422	Required - 26 U.S.C. § 7422

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Prepayment of tax	Not required, <i>but ...</i>	Required, with exceptions for “divisible” taxes - <i>Flora v. U.S.</i> , 362 U.S. 145 (1960)	Required, with exceptions for “divisible” taxes, for refund jurisdiction, <i>but ...</i>	Required, with exceptions for “divisible” taxes - <i>Flora v. U.S.</i> , 362 U.S. 145 (1960)
Counterclaims	No provision	Yes - Fed. R. Civ. P. 13	Yes - Fed. R. Bankr. P. 7013	Yes - RCFC 13
3d-party practice	No, but consolidation permitted - Code of Md. Regulations 14.12.01.10	Yes - Fed. R. Civ. P. 14	Yes - Fed. R. Bankr. P. 7014	Yes - RCFC 14
Consolidation	Yes - COMAR 14.12.01.10	Yes - Fed. R. Civ. P. 42	Yes - Fed. R. Bankr. P. 7042	Yes - RCFC 42
Deficiency/revision jurisdiction	Yes	None	Yes	None
Collection jurisdiction	None	Yes - 26 U.S.C. § 7403; 28 U.S.C. § 1340	Yes - 26 U.S.C. § 7403; 28 U.S.C. § 1340	Yes - 26 U.S.C. § 7403; 28 U.S.C. § 1340, but limited to ctclms & 3d pty clms
Tax injunction jurisdiction	None–TG § 13-505	Limited–26 U.S.C. § 7421; 28 U.S.C. §1341	Limited–11 U.S.C. § 26 U.S.C. § 7421; 28 U.S.C. § 1341	Limited–26 U.S.C. § 7421
Declaratory jurisdiction	<i>Questions of law</i> - TG § 13-525	Limited - 28 U.S.C. § 2201	Limited - 11 U.S.C. § 505; 28 U.S.C. § 2201	Limited - 28 U.S.C. § 2201
Other jurisdiction	None	Broad	Broad	Limited to special subject matter areas, incl. tax

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Venue	Concept not applicable	Ind. pltf's res. or corp's place of bus. - 28 U.S.C. § 1402(a)	Venue of main case	Concept not applicable
Place of sitting	City of Baltimore & 23 county seats-TG § 3-104	Baltimore, <i>Cumberland, Denton</i> , Greenbelt - 28 U.S.C. § 100	Baltimore, Salisbury, Greenbelt - 28 U.S.C. § 152(b)	Anywhere in U.S. - 28 U.S.C. § 2505
Transfer of venue or place of sitting	No provision	To district or division where venue proper - 28 U.S.C. § 1406; to court where proper - 28 U.S.C. § 1631	To another district in int. of justice or for convenience - 28 U.S.C. § 1412; Fed. R. Bankr. P. 7087	Place of trial determined by trial judge - RCFC 39(a)
Representation of parties	Md. lawyers; <i>pro se</i> inds., corp. officers - TG § 13-515	USDC D. Md. lawyers; <i>pro se</i> inds. - LR 101.1	USDC D. Md. lawyers; <i>pro se</i> inds. - LR 9010-3, 1	<i>Pro se</i> ; lawyers - 28 U.S.C. § 2503(a)
Rules of procedure	COMAR 14.12.01	Fed. R. Civ. P.; Local Rules USDC D. Md.	Fed. R. Bankr. P.; Local Rules USBC D. Md.	R.C.F.C.
Fee for filing	None - COMAR 14.12.01.01B	\$350 - 28 U.S.C. § 1914(a)	\$250 (not charged if debtor is pltf) - 28 U.S.C. § 1930(b)	\$250 - 28 U.S.C. § 1926
Original pleading	Petition of appeal - TG § 13-516; COMAR 14.12.01.01A	Complaint - Fed. R. Civ. P. 3	Adversary complaint - Fed. R. Bankr. P. 7003	Complaint - RCFC 3
Opposing party	Comptroller of the Treasury - COMAR 14.12.01.01A	United States - 26 U.S.C. § 7422(f)(1)	United States - 26 U.S.C. § 7422(f)(1)	United States - 26 U.S.C. § 7422(f)(1)
Served on whom	Comptroller & AG of Md. - COMAR 14.12.01.06B	AG in D.C.; USAO in Balt. or Greenbelt - Fed. R. Civ. P. 4(i)	AG in D.C.; USAO in Balt. or Greenbelt - Fed. R. Bankr. P. 7004(b)(4)	AG in D.C. - RCFC 4(a)

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Served <i>by</i> whom	Clerk - COMAR 14.12.01.06B	Person ≥ 18 & not a party or U.S. Marshal - Fed. R. Civ. P. 4(c)(2)	Person ≥ 18 & not party - Fed. R. Bankr. P. 7004(a)	Clerk - RCFC 4(a)
Time limit for service of initial pleading	No provision	120 days of filing - Fed. R. Civ. P. 4(m)	14 days of issuance - Fed. R. Bankr. P. 7004(e)	No provision
Opposing counsel	Assistant Attorney General, Comptroller's office	Trial Attorney, Tax Division, CTE	Trial Attorney, Tax Division, CTE	Trial Attorney, Tax Division, CFC
Resp. pleading period	30 days - COMAR 14.12.01.02A	60 days - Fed. R. Civ. P. 12(a)(3)(A)	35 days - Fed. R. Bankr. P. 7012(a)	60 days - RCFC 12(a)
Responsive pleading or motion	Answer, notice of intention to defend, motion to dismiss - COMAR 14.12.01.02A	Answer, motion to dismiss, motion for judgment on the pleadings, motion for summary judgment - Fed. R. Civ. P. 7, 12, 56	Answer, motion to dismiss, motion for judgment on the pleadings, motion for summary judgment - Fed. R. Bankr. P. 7007, 7012, 7056	Answer, motion to dismiss, motion for judgment on the pleadings, motion for summary judgment - RCFC 7, 12, 56
Pretrial conference	Discretionary, use varies depending on type of case - COMAR 14.12.01.13	Discretionary, held in most cases - Fed. R. Civ. P. 16	Discretionary, use varies widely - Fed. R. Civ. P. 7016	Discretionary, held in most cases - RCFC 16
Discovery	Limited	Extremely broad-Fed. R. Civ. P. 26, <i>et seq.</i>	Extremely broad - Fed. R. Bankr. P. 7026, <i>et seq.</i>	Extremely broad- RCFC 26, <i>et seq.</i>
Interrogatories	No provision	Fed. R. Civ. P. 33	Fed. R. Bankr. P. 7033	RCFC 33
RFPs	Document production in connection w/ depositions - TG § 13-521(b)(2)	Fed. R. Civ. P. 34, 45	Fed. R. Bankr. P. 7034, 9016	RCFC 34, 45

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RFAs	No provision	Fed. R. Civ. P. 36	Fed. R. Bankr. P. 7036	RCFC 36
Depositions	TG § 13-521(a) & Md. Rules 2-411 - 418	Fed. R. Civ. P. 30, 31	Fed. R. Bankr. P. 7030, 7031	RCFC 30, 31
Powers of contempt & sanctions	Indirect, enforced thru circuit court - TG § 13-522	Inherent - <i>Chambers v. NASCO, Inc.</i> , 501 U.S. 32 (1991); Fed. R. Civ. P. 11, 37	Statutory - 11 U.S.C. § 105; Fed. R. Bankr. P. 9011, 7037	Inherent - <i>Chambers v. NASCO, Inc.</i> , 501 U.S. 32 (1991); RCFC 11, 37
Burden of proof	Taxpayer - TG § 13-528, but Comptroller bears burden w/ fraud penalty - <i>Genie & Co., Inc. v. Comptroller</i> , 107 Md.App. 551, 566 (1995)	Generally on taxpayer, except certain fraud penalties & under 26 U.S.C. § 7491	Generally on taxpayer, except certain fraud penalties & under 26 U.S.C. § 7491	Generally on taxpayer, except certain fraud penalties & under 26 U.S.C. § 7491
Rules of evidence	Not bound by “technical” rules - TG § 13-524; COMAR 14.12.01.11A	Governed by Fed. R. Evid. - Fed. R. Evid. 1101	Governed by Fed. R. Evid. - Fed. R. Evid. 1101	Governed by Fed. R. Evid. - Fed. R. Evid. 1101
Jury trial	<i>Fact issues by reference to circuit ct.</i> - TG § 13-526; <i>see Clise Coal Co. v. Comptroller</i> , 173 Md.App. 689, 706-07 (2007)	Yes - 28 U.S.C. § 2402	Yes - 28 U.S.C. §§ 157, 2402	None available
Inferior judicial officers	Hearing examiners in real property cases - COMAR 14.12.01.15	Magistrate judges & special masters - Fed. R. Civ. P. 73, 53	None	Masters - RCFC 53

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Rationale for decision	F & C req'd - SG § 10-221(b); on motion of party, ct shall provide statement of grounds for decision - COMAR 14.12.01.11B	F & C req'd in bench trial - Fed. R. Civ. P. 52	F & C req'd in bench trial - Fed. R. Bankr. P. 7052	F & C req'd - RCFC 52
Decisional document	Written order required - TG § 13-529	Separate document req'd - Fed. R. Civ. P. 58(a)	Separate document req'd - Fed. R. Bankr. P. 7058	Separate document req'd - RCFC 58
1st appeal of right	Judicial review in circuit court where any party located or Balt. City - TG § 13-532; MD. CODE ANN., STATE GOV'T §§ 10-222	Ct. of Appeals for the Fourth Circuit - 28 U.S.C. §§ 41, 1291	District Court for the District of Maryland - 28 U.S.C. §§ 100, 158	Court of Appeals for the Federal Circuit - 28 U.S.C. §§ 41, 1295
2d appeal of right	Court of Special Appeals - SG § 10-223(b)	None	Ct. of Appeals for the Fourth Circuit - 28 U.S.C. §§ 41, 1291	None
Certiorari review	Court of Appeals - MD. CODE ANN., CTS. & JUD. PROCS. § 12-201	SCUS - 28 U.S.C. § 1254	SCUS - 28 U.S.C. § 1254	SCUS - 28 U.S.C. § 1254
2d certiorari review	SCUS - 28 U.S.C. § 1257	None	None	None