

Three more Tax Court nominees heads to the bench

The Senate this week voted to confirm Rose Jenkins, Jeffrey Arbeit, and Benjamin Guider III to 15-year terms as judges on the US Tax Court.

Jenkins, who had been serving as an attorney in the office of the IRS Associate Chief Counsel (Procedure and Administration), was confirmed on September 23 by a vote of 69-17. She was tapped for the post by President Biden in February and her nomination cleared the Senate Finance Committee in June.

Arbeit, who served nine years as a staff lawyer at the Joint Committee on Taxation and previously clerked for a Tax Court judge, and Guider, formerly an affordable housing lawyer with Longwell Riess, were both confirmed by voice vote on September 25. Both were nominated to the court in May and vetted by the Senate Finance Committee in July.

The three now join newly minted Tax Court judges Adam Landy and Kashi Way, who were also confirmed by the Senate in July.

And then there was one . . .

With Jenkins, Arbeit, and Guider now taking the bench alongside Landy and Way, there is just one remaining nominee who, if confirmed by the Senate, would fill the last of the current vacancies on the 19-seat Tax Court.

Cathy Fung, who has worked in the IRS Office of Chief Counsel since 2009 and currently is a deputy counsel, began her legal career as an attorney-advisor at the court. She was nominated to be a judge in May and the Finance Committee advanced her nomination to the full Senate in July, along with those of Arbeit and Guider, although she drew 8 “no” votes from Republicans on the taxwriting panel, while Arbeit and Guider received unanimous support. (For coverage of their joint nomination hearing at the Finance Committee, see *Tax News & Views*, Vol. 25, No. 24, July 12, 2024.)

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The Senate was unable to reach a unanimous consent agreement on Fung’s confirmation this week, which foreclosed the possibility of an expedited floor vote. And with lawmakers now adjourned for a recess until after the upcoming presidential and congressional elections, no further action is even possible until Congress returns for a lame duck legislative session, which is set to begin on November 12. If the Senate does not vote to confirm Fung before the 118th Congress officially adjourns early next year, her nomination will expire and decisions around filling the remaining Tax Court vacancy will fall to the next president and the incoming 119th Congress.

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