

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

October 3, 2008

PRESS RELEASE

Chief Judge John O. Colvin announced today that the United States Tax Court has adopted amendments to its Rules of Practice and Procedure regarding whistleblower actions and electronic service. The Court has also adopted various technical and conforming amendments to its Rules and forms. The appendix to this press release includes the amendments and an explanation of each amendment.

The amendments are generally effective as of October 3, 2008, except the amendments regarding whistleblower actions which are effective as to whistleblower actions commenced with respect to determinations regarding awards based on information provided on or after December 20, 2006.

Chief Judge Colvin also announced that the Rules of Practice and Procedure, as amended, are available on the Court's Internet Web site, www.ustaxcourt.gov. Also, a copy of the amendments announced today may be obtained by writing to the Clerk's Office at 400 Second Street, N.W., Washington, D.C. 20217.

I. Whistleblower Awards

Introduction

In 2006, Congress amended section 7623 by adding new subsection (b), which authorizes the Whistleblower Office of the IRS to determine the amount of awards to whistleblowers based on a percentage of the tax collected. Section 7623(b)(4) confers jurisdiction on the Court over appeals of the award determinations, effective for determinations with respect to information provided on or after December 20, 2006. Accordingly, Rules 13, 34, and 182 are amended and new Title XXXIII (Rules 340-344) is adopted to provide procedures for commencing a whistleblower action.

Paragraphs (a), (b), and (c) of Rule 13 are deleted and replaced with the following. [Paragraphs (d) and (e) remain unchanged and are omitted here.]

RULE 13. JURISDICTION

(a) Notice of Deficiency or of Transferee or Fiduciary Liability Required: Except in actions for declaratory judgment, for disclosure, for readjustment or adjustment of partnership items, for administrative costs, for review of failure to abate interest, for redetermination of employment status, for determination of relief from joint and several liability, for lien and levy, or for review of whistleblower awards (see Titles XXI, XXII, XXIV, and XXVI through XXXIII), the jurisdiction of the Court depends (1) in a case commenced in the Court by a taxpayer, upon the issuance by the Commissioner of a notice of deficiency in income, gift, or estate tax or, in the taxes under Code Chapter 41, 42, 43, or 44 (relating to the excise taxes on certain organizations and persons dealing with them), or in the tax under Code Chapter 45 (relating to the windfall profit tax), or in any other taxes which are the subject of the issuance of a notice of deficiency by the Commissioner; and (2) in a case commenced in the Court by a transferee or fiduciary, upon the issuance by the Commissioner of a notice of liability to the transferee or fiduciary. See Code secs. 6212, 6213, and 6901.

(b) Declaratory Judgment, Disclosure, Partnership, Administrative Costs, Review of Failure To Abate Interest, Redetermination of Employment Status, Determination of Relief From Joint and Several Liability, Lien and Levy, or Whistleblower Actions: For the jurisdictional requirements in an action for declaratory judgment, for disclosure, for readjustment or adjustment of partnership items, for administrative costs, for review of failure to abate interest, for redetermination of employment status, for determination of relief from joint and

several liability, for lien and levy, or for review of whistleblower awards, see Rules 210(c), 220(c), 240(c), 270(c), 280(b), 290(b), 300(c), 310(c), 320(b), 330(b), and 340(b).

(c) Timely Petition Required: In all cases, the jurisdiction of the Court also depends on the timely filing of a petition. See Code sections 6213, 7502; with respect to administrative costs actions, see Code section 7430(f); with respect to declaratory judgment actions, see Code sections 6234, 7428, 7476, 7477, 7478, and 7479; with respect to determination of relief from joint and liability actions, see Code section 6015(e); with respect to disclosure actions, see Code section 6110; with respect to lien and levy actions, see Code sections 6320 and 6330; with respect to partnership actions, see Code sections 6226, 6228, and 6247; with respect to redetermination of employment status actions, see Code section 7436; with respect to review of failure to abate interest actions, see Code section 6404(h); and with respect to whistleblower actions, see Code section 7623(b) (4).

* * * * *

Explanation

Conforming amendments to paragraphs (a), (b), and (c) of Rule 13 are adopted to include references to whistleblower actions. Paragraphs (b) and (c) also are amended to include references to actions for redetermination of employment status, determination of relief from joint and several liability, and lien or levy.

Paragraphs (a) (2) and (c) of Rule 34 are deleted and replaced with the following. [Paragraphs (a) (1), (b), (d), and (e) remain unchanged and are omitted here.]

RULE 34. PETITION

(a) General:

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(2) *Other Actions:* For the requirements relating to the petitions in other actions, see the following Rules: Declaratory judgment actions, Rules 211(b), 311(b); disclosure actions, Rule 221(b); partnership actions, Rules 241(b), 301(b); administrative costs actions, Rule 271(b); abatement of interest actions, Rule 281(b); redetermination of employment status actions, Rule 291(b); determination of relief from joint and several liability on a joint return

actions, Rule 321(b); lien and levy actions, Rule 331(b); and whistleblower actions, Rule 341(b). As to joinder of parties in declaratory judgment actions, in disclosure actions, and in partnership actions, see Rules 215, 226, and 241(h) and 301(f), respectively.

* * * * *

(c) Content of Petition in Other Actions: For the requirements as to the content of the petition in a small tax case, see Rule 173(a). For the requirements as to the content of the petition in other actions, see Rule 211(c), (d), (e), (f), and (g), Rule 221(c), (d), and (e), Rule 241(c), (d), and (e), Rule 271(b), Rule 281(b), Rule 291(b), Rule 301(b), Rule 311(b), Rule 321(b), Rule 331(b), and Rule 341(b).

* * * * *

Explanation

Paragraphs (a)(2) and (c) of Rule 34 are amended to include references to whistleblower actions.

The flush language of Rule 182 and paragraphs (c) and (d) are deleted and replaced with the following. [Paragraphs (a), (b), and (e) remain unchanged and are omitted here.]

RULE 182. CASES IN WHICH THE SPECIAL TRIAL JUDGE IS AUTHORIZED TO MAKE THE DECISION

Except as otherwise directed by the Chief Judge, the following procedure shall be observed in small tax cases (as defined in Rule 170); in cases where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds \$50,000; in declaratory judgment actions; in lien or levy actions; and in whistleblower actions:

* * * * *

(c) Declaratory Judgment, Lien or Levy, and Whistleblower Actions: A Special Trial Judge who conducts the trial of a declaratory judgment action or, except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a lien or levy or a whistleblower action, or to whom such a case is submitted for decision, shall, as soon after such trial or submission as shall be practicable, prepare proposed findings of

fact and opinion, which shall then be submitted promptly to the Chief Judge.

(d) Decision: The Chief Judge may authorize the Special Trial Judge to make the decision of the Court in any small tax case (as defined in Rule 170); in any case where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds \$50,000; in any declaratory judgment action; in any lien or levy action; and in any whistleblower action, subject to such conditions and review as the Chief Judge may provide.

Explanation

Section 7443A(b) (6) provides that proceedings under section 7623 may be assigned to a Special Trial Judge, and section 7443A(c) authorizes the Special Trial Judge to make the decision in the case. Accordingly, the flush language of Rule 182 and paragraphs (c) and (d) of that Rule are amended to include references to whistleblower actions.

New Title XXXIII is added.

TITLE XXXIII

WHISTLEBLOWER ACTIONS

Prefatory Note

The Rules of Practice and Procedure of the United States Tax Court are amended by adding a new Title XXXIII, relating to whistleblower actions. This title has been added because of the enlargement of the Court's jurisdiction by sec. 406 of the Tax Relief and Health Care Act of 2006, Pub. L. 109-432, 120 Stat. 2922. That section amended section 7623 by adding new subsection (b) to provide for awards to whistleblowers. Section 7623(b) (4) confers jurisdiction on the Court over appeals from determinations regarding awards under subsection (b) (1) through (b) (3).

Title XXXIII consists of the following five new Rules:

- Rule 340--General
- Rule 341--Commencement of Whistleblower Action
- Rule 342--Request for Place of Trial
- Rule 343--Other Pleadings
- Rule 344--Joinder of Issue in Whistleblower Actions

The Rules of Title XXXIII are effective as to whistleblower actions commenced with respect to determinations regarding awards based on information provided on or after December 20, 2006.

New Rule 340 is added.

RULE 340. GENERAL

(a) Applicability: The Rules of this Title XXXIII set forth the provisions that apply to whistleblower actions under Code section 7623(b)(4). Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions.

(b) Jurisdiction: The Court shall have jurisdiction of a whistleblower action under this Title when the conditions of Code section 7623(b)(4) have been satisfied.

Explanation

New Rule 340 is adopted to provide for the general applicability of Title XXXIII and the jurisdiction of the Court regarding whistleblower actions. Title XXXIII follows the general procedures for deficiency and other types of actions before the Court.

Pursuant to section 7458, hearings before the Tax Court shall be open to the public. Pursuant to section 7461(a), all reports of the Tax Court and all evidence received by the Tax Court are generally public records open to the inspection of the public. Pursuant to section 7461(b)(1), the Court may issue protective orders, upon motion by a party or any other person and for good cause shown, to prevent or restrict the disclosure of trade secrets and other information. See Tax Court Rule 103(a). As result of this authority, in appropriate cases, the Court may permit a petitioner to proceed anonymously and seal the record in that case. See, e.g., Anonymous v. Commissioner, 127 T.C. 89 (2006). The Court contemplates that these generally applicable statutory provisions, Rule 103, and related case law, while they do not require the Court's records in all whistleblower actions to be sealed or require the Court to permit all petitioners in those cases to proceed anonymously, do provide authority for the Court to allow a petitioner to proceed anonymously and to seal the record when appropriate in whistleblower actions.

Without specific statutory direction establishing whether whistleblower actions are to be decided on the administrative record, the Court contemplates that the appropriate scope of review will be developed in case law.

New Rule 341 is added.

**RULE 341. COMMENCEMENT OF
WHISTLEBLOWER ACTION**

(a) Commencement of Action: A whistleblower action under Code section 7623(b)(4) shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule 22, relating to the place and manner of filing the petition; and Rule 32, regarding the form of pleadings.

(b) Content of Petition: A petition filed pursuant to this Rule shall be entitled "Petition for Whistleblower Action Under Code Section 7623(b)(4)" and shall contain the following:

(1) The petitioner's name, State of legal residence, and mailing address, stated as of the date that the petition is filed.

(2) The date of the determination regarding an award under Code section 7623(b)(1), (2), or (3) by the Internal Revenue Service Whistleblower Office.

(3) Lettered statements explaining why the petitioner disagrees with the determination by the Internal Revenue Service Whistleblower Office.

(4) Lettered statements setting forth the facts upon which the petitioner relies to support the petitioner's position.

(5) A prayer setting forth the relief sought by the petitioner.

(6) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(7) As an attachment, a copy of the determination.

(c) Filing Fee: The fee for filing a petition for a whistleblower action shall be \$60, payable at the time of filing.

Explanation

New Rule 341 is adopted to provide procedures for commencing a whistleblower action. Paragraph (b)(1) of new Rule 341 requires that the petition contain only the name, State of legal residence, and mailing address of an individual, as section 7623(b)(1) provides that a whistleblower award may be made to an individual, which would exclude awards to a trust, partnership, association, company, or corporation. See sec. 7701(a)(1).

Paragraph (b)(2) of new Rule 341 does not require that the petition contain the city and State of the office making the determination (see, e.g., Rules 281(b)(2), 331(b)(2)), as section

406(b) through (d) of Pub. L. 109-432 provides for the establishment of only one Whistleblower Office.

New Rule 342 is added.

RULE 342. REQUEST FOR PLACE OF TRIAL

At the time of filing a petition for a whistleblower action, a request for place of trial shall be filed in accordance with Rule 140.

Explanation

New Rule 342 is adopted to provide the procedure for requesting the place of trial of a whistleblower action. The Rule reflects the general requirement under Rule 140(a).

New Rule 343 is added.

RULE 343. OTHER PLEADINGS

(a) Answer: The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(b) Reply: For provisions relating to the filing of a reply, see Rule 37.

Explanation

New Rule 343 is adopted to provide rules for filing answers and replies in whistleblower actions. The Rule adopts the pleading procedures used in most types of actions before the Court, contained in Rules 36 and 37.

New Rule 344 is added.

RULE 344. JOINDER OF ISSUE IN WHISTLEBLOWER ACTIONS

A whistleblower action under Code section 7623(b)(4) shall be deemed at issue as provided by Rule 38.

Explanation

New Rule 344 is adopted to provide for joinder of issue in whistleblower actions.

II. Electronic Service

Introduction

The Court is proceeding with implementation of technological advances that will enable it to commence electronic service and electronic filing of documents in the near future. Interim Rule 22A (to be renumbered as eventual Rule 26) and Interim Procedures regarding the Court's proposed electronic filing project were published for comment on December 12, 2005. The amendment to Rule 21(b) authorizes service by electronic means. The details regarding service by the Court and parties using electronic means will be addressed in a practitioners' guide and a users' manual to be provided by the Court.

Paragraphs (b) (1) and (2) of Rule 21 are deleted and replaced with the following and new paragraph (b) (5) is added. [Paragraphs (a) and (b) (3) and (4) remain unchanged and are omitted here.]

RULE 21. SERVICE OF PAPERS

* * * * *

(b) Manner of Service: (1) *General:* All petitions shall be served by the Clerk. All other papers required to be served on a party shall also be served by the Clerk unless otherwise provided in these Rules or directed by the Court, or unless the original paper is filed with a certificate by a party or a party's counsel that service of that paper has been made on the party to be served or such party's counsel. For the form of such certificate of service, see Form 9, Appendix I. Such service may be made by:

(A) Mail directed to the party or the party's counsel at such person's last known address. Service by mail is complete upon mailing, and the date of such mailing shall be the date of such service.

(B) Delivery to a party, or a party's counsel or authorized representative in the case of a party other than an individual (see Rule 24(b)).

(C) Mail directed or delivery to the Commissioner's counsel at the office address shown in the Commissioner's answer filed in the case or, if no answer has been filed, the Chief Counsel, Internal Revenue Service, Washington, D.C. 20224.

(D) Electronic means if the person served consented in writing, in which event service is complete upon transmission, but is not effective if the

serving party learns that it did not reach the person to be served.

Service on a person other than a party shall be made in the same manner as service on a party, except as otherwise provided in these Rules or directed by the Court. In cases consolidated pursuant to Rule 141, a party making direct service of a paper shall serve each of the other parties or counsel for each of the other parties, and the original and copies thereof required to be filed with the Court shall each have a certificate of service attached.

(2) *Counsel of Record:* Whenever under these Rules service is required or permitted to be made upon a party represented by counsel who has entered an appearance, service shall be made upon such counsel unless service upon the party is directed by the Court. Where more than one counsel appear for a party, service is required to be made only on that counsel whose appearance was first entered of record, unless that counsel notifies the Court, by a designation of counsel to receive service filed with the Court, that other counsel of record is to receive service, in which event service is required to be made only on the person so designated.

* * * * *

(5) *Using Court Transmission Facilities:* A party may make service under Rule 21(b)(1)(D) through the Court's transmission facilities pursuant to electronic service procedures prescribed by the Court.

Explanation

Paragraph (b)(1) of Rule 21 is amended to authorize service by electronic means, but only if written consent is obtained from the person served. The written consent can be provided by electronic means. The amendment to paragraph (b)(1) is modeled after rule 5(b)(2)(E) of the Federal Rules of Civil Procedure and rule 25(c)(1)(D) of the Federal Rules of Appellate Procedure. The Committee notes to those rules provide that transmission is complete when the sender performs the last act that he or she must perform to transmit a paper electronically; typically, it occurs when the sender hits the "send" or "transmit" button on an electronic mail program. As the Committee notes to the 2002 amendments to Fed. R. App. P. 25(c)(1)(D) explain:

There is one exception to the rule that electronic service is complete upon transmission: If the sender is notified--by the sender's e-mail program or

otherwise--that the paper was not received, service is not complete, and the sender must take additional steps to effect service. A paper has been "received" by the party on which it has been served as long as the party has the ability to retrieve it. A party cannot defeat service by choosing not to access electronic mail on its server.

In amending F. R. Civ. P. 5(b)(2)(E), the Advisory Committee on the Rules of Civil Procedure noted the absence of any specified period within which notice to the sender of nondelivery would cause electronic service to be considered incomplete but indicated that the issue required further consideration. The Committee on Rules of Practice and Procedure proposed in revised F. R. App. P. 25(c) that electronic service would be considered incomplete if the serving party learned of the failure of electronic service within 3 calendar days; the rule as adopted, however, did not include any such provision. Because the Court has modeled new Rule 21(b)(1)(D) on the Federal rules, it will monitor those rules for future amendments and revise the Rule as appropriate.

Paragraph (b)(2) of Rule 21 is amended to provide that service is required to be made only on the first counsel of record or the designated counsel for service. In a case with multiple counsel who have entered their appearances for a party, it is anticipated that electronic service will be made on all those counsel who have consented to or registered for electronic service. Pursuant to the proposed amendment, in the event it were learned that one of the registered counsel did not receive electronic service, neither the filing party nor the Court would be required to provide service to him or her by alternate means so long as service upon the first counsel of record or the designated service counsel was completed.

New paragraph (b)(5) is added to Rule 21 to authorize the parties' use of the Court's electronic transmission facilities for service. After the Court has implemented electronic filing, service of an electronically filed document will be effected between the parties through the use of the Court's transmission facilities, pursuant to procedures established by the Court.

III. Miscellaneous and Conforming Corrections

Introduction

Upon careful review of the Rules for publication in the Tax Court reports, various errors and omissions were detected

regarding the previous amendments adopted effective March 1, 2008. Accordingly, the following amendments are adopted.

Paragraph (b) (2) of Rule 27 is deleted and replaced with the following. [Paragraphs (a), (b) (1), and (c) through (h) remain unchanged and are omitted here.]

**RULE 27. PRIVACY PROTECTION
FOR FILINGS MADE WITH THE COURT**

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(b) Limitations on Remote Access to Electronic Files:

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(2) any other person may have electronic access at the courthouse to the public record maintained by the Court in electronic form, but may have remote electronic access only to:

- (A) The docket record maintained by the Court;
- and
- (B) any opinion, order, or decision of the Court, but not any other part of the case file.

* * * * *

Explanation

Rule 27(b) (2) (B) is amended to include decisions among the documents to which the public has remote electronic access. This amendment will foster consistency by treating a decision in the same manner as, for example, an order of dismissal and decision and is in accord with rule 5.2 of the Federal Rules of Civil Procedure, upon which Rule 27 is based.

Paragraph (b) (1) of Rule 75 is deleted and replaced with the following. [Paragraphs (a) and (c) through (e) remain unchanged and are omitted here.]

**RULE 75. DEPOSITIONS FOR DISCOVERY PURPOSES--
WITHOUT CONSENT OF PARTIES IN CERTAIN CASES**

* * * * *

(b) Availability: The taking of a deposition of a nonparty witness under this Rule is an extraordinary method of discovery

and may be used only where a nonparty witness can give testimony or possesses documents or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, or things practicably cannot be obtained through informal consultation or communication (Rule 70(a)(1)) or by a deposition taken with consent of the parties (Rule 74). If such requirements are satisfied, then a deposition may be taken under this Rule, for example, where a party is a member of a partnership and an issue in the case involves an adjustment with respect to such partnership, or a party is a shareholder of an S corporation (as described in Code section 1361(a)), and an issue in the case involves an adjustment with respect to such S corporation. See Title XXIV, relating to partnership actions, brought under provisions first enacted by the Tax Equity and Fiscal Responsibility Act of 1982.

* * * * *

Explanation

Paragraph (b) of Rule 75 is amended by deleting the reference to Code section 1371(b) prior to the enactment of the Subchapter S Revision Act of 1982. The correct reference is to Code section 1361(a).

Paragraphs (d) (2) (G), (d) (3), and (h) are deleted and replaced with the following. [Paragraphs (a) through (c) and (e) through (g) remain unchanged and are omitted here.]

RULE 76. DEPOSITION OF EXPERT WITNESSES

* * * * *

(d) Procedure:

* * * * *

(2) *Content of Motion:* Any motion seeking an order authorizing the deposition of an expert witness under paragraph (a)(2) of this Rule shall set forth the following:

* * * * *

(G) if the movant proposes to video record the deposition, then a statement to that effect and the name and address of the video recorder operator and the operator's employer. (The video recorder operator and

the officer before whom the deposition is to be taken may be the same person.)

* * * * *

(3) *Disposition of Motion:* Any objection or other response to the motion for order to depose an expert witness under paragraph (a)(2) of this Rule shall be filed with the Court (along with a certificate of service) within 15 days after service of the motion. A hearing on the motion will be held only if directed by the Court. If the Court approves the taking of a deposition, then it will issue an order which will include in its terms the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken. If the deposition is to be video recorded, then the Court's order will so state.

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(h) Other Applicable Rules: The deposition of an expert witness under this Rule shall be governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 74(d) (transcript) and 74(e) (depositions upon written questions); Rule 81(c) (designation of person to testify), 81(e) (person before whom deposition taken), 81(f) (taking of deposition), 81(h) (execution, form, and return of deposition), and 81(j) (video recorded depositions); and Rule 85 (objections, errors, and irregularities). For Rules concerned with the timing and frequency of depositions, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

Explanation

Paragraphs (b) and (h) of Rule 76 are amended to conform to the language used in Rule 81(j), Video Recorded Depositions. Rule 81(j) was amended to refer more generically to video recorded depositions, including those recorded on DVDs.

Paragraphs (b) and (c) of Rule 152 are deleted and replaced with the following. [Paragraph (a) remains unchanged and is omitted here.]

RULE 152. ORAL FINDINGS OF FACT OR OPINION

* * * * *

(b) Transcript: Oral findings of fact or opinion shall be recorded in the transcript of the hearing or trial. The pages of the transcript that contain such findings of fact or opinion (or a written summary thereof) shall be served by the Clerk upon all parties.

(c) Nonprecedential Effect: Opinions stated orally in accordance with paragraph (a) of this Rule shall not be relied upon as precedent, except as may be relevant for purposes of establishing the law of the case, res judicata, collateral estoppel, or other similar doctrine.

Explanation

Paragraph (b) of Rule 152 is amended to conform the Rule to the practice of the Court providing for the issuance of bench opinions upon the conclusion of a hearing.

Paragraph (c) of Rule 152 no longer refers to citation of bench opinions. Accordingly, the caption of paragraph (c) of Rule 152 is amended to be more descriptive of the language of the paragraph, as amended.

Paragraphs (b) and (c) of Rule 155 are deleted and replaced with the following. [Paragraph (a) remains unchanged and is omitted here.]

RULE 155. COMPUTATION BY PARTIES FOR ENTRY OF DECISION

* * * * *

(b) Procedure in Absence of Agreement: If, however, the parties are not in agreement as to the amount to be included in the decision in accordance with the findings and conclusions of the Court, then either of them may file with the Court a computation of the amount believed by such party to be in accordance with the Court's findings and conclusions. In the case of an overpayment, the computation shall also include the amount and date of each payment made by the petitioner. The

Clerk will serve upon the opposite party a notice of such filing accompanied by a copy of such computation. If, on or before a date specified in the Clerk's notice, the opposite party fails to file an objection, accompanied or preceded by an alternative computation, then the Court may enter decision in accordance with the computation already submitted. If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, then the parties may, at the Court's discretion, be afforded an opportunity to be heard in argument thereon and the Court will determine the correct amount and will enter its decision accordingly.

(c) Limit on Argument: Any argument under this Rule will be confined strictly to consideration of the correct computation of the amount to be included in the decision resulting from the findings and conclusions made by the Court, and no argument will be heard upon or consideration given to the issues or matters disposed of by the Court's findings and conclusions or to any new issues. This Rule is not to be regarded as affording an opportunity for retrial or reconsideration.

Explanation

Paragraphs (b) and (c) of Rule 155 are amended to conform to the language used in paragraph (a) of the Rule. That paragraph was amended to delete the limitation that the computation show the amount of deficiency, liability, or overpayment due in accordance with the opinion of the Court, so that the Rule would not be limited to deficiency and liability cases but would permit the filing of computations in all cases.

Paragraph (b) of Rule 221 is deleted and replaced with the following. [Paragraphs (a) and (c) through (g) remain unchanged and are omitted here.]

RULE 221. COMMENCEMENT OF DISCLOSURE ACTION

* * * * *

(b) Content of Petition: Every petition shall be entitled "Petition for Additional Disclosure" or "Petition To Restrain Disclosure" or "Petition To Disclose Identity". Subject to the provisions of Rule 227, dealing with anonymity, each petition shall contain the petitioner's name and State of legal residence, an appropriate prayer for relief, and the signature, mailing address, and telephone number of the petitioner or the petitioner's counsel, as well as counsel's Tax Court bar number.

In addition, each petition shall contain the allegations described in paragraph (c), (d), or (e) of this Rule.

* * * * *

Explanation

Paragraph (b) of Rule 221 is amended to conform with the amendment to Rule 34(b)(1). Rule 34(b)(1) was amended to, among other things, enhance privacy by requiring only an individual taxpayer's State of legal residence for venue purposes. If the taxpayer resides in the District of Columbia or any commonwealth, territory, or possession of the United States, or in any foreign country, the taxpayer should provide that information instead.

Paragraph (b) of Rule 262 is deleted and replaced with the following. [Paragraphs (a) and (c) through (f) remain unchanged and are omitted here.]

**RULE 262. PROCEEDING TO MODIFY DECISION IN
ESTATE TAX CASE INVOLVING SECTION 6166
ELECTION**

* * * * *

(b) Content of Motion: A motion to modify a decision filed pursuant to this Rule shall contain the following:

- (1) The name and current mailing address of each fiduciary authorized to act on behalf of the estate.
- (2) A copy of the decision entered by the Court which the petitioner now seeks to modify.
- (3) A statement that the time for payment by the estate of an amount of tax imposed by Code section 2001 has been extended pursuant to Code section 6166.
- (4) A schedule setting forth--
 - (A) the amount of interest paid by the estate on any portion of the tax imposed by Code section 2001 on the estate for which the time of payment has been extended under Code section 6166;
 - (B) the amount of interest on any estate, succession, legacy, or inheritance tax imposed by a State on the estate during the period of the extension of time for payment under Code section 6166; and
 - (C) the date that each such amount of interest was paid by the estate.
- (5) A statement describing the nature of any dispute within the purview of Code section 7481(d), or if no such dispute exists, then a statement to that effect.

(6) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

* * * * *

Explanation

Paragraph (b) of Rule 262 is amended to delete the requirement that a taxpayer provide his or her taxpayer identification number. The amendment is consistent with changes to Rule 34 and with new Rule 27. A proceeding to modify a decision in an estate tax case under Rule 262 presupposes a prior action for the redetermination of a deficiency in estate tax. The taxpayer in that prior action will have provided the taxpayer identification number, so there is no need to collect again the taxpayer identification number. Consequently, it is not contemplated that the taxpayer would submit with the motion a Statement of Taxpayer Identification Number pursuant to Rule 20(b), which is to be submitted with any petition.

Rule 34(b)(1) has been amended to use terminology that would apply generally to legal entities in addition to corporations. However, because the proper venue on appeal for an estate has not been conclusively resolved by either statute or opinion, the amendment does not attempt to resolve the issue and does not add language specifically applicable to estates. See Code sec. 7482(b)(1); Estate of Clack v. Commissioner, 106 T.C. 131 (1996); cf. Israel v. Commissioner, 159 F.3d 593 (D.C. Cir. 1998) (holding that the executor of the estate is the petitioner for purposes of appellate venue). Therefore, paragraph (b) of Rule 262 is amended to delete any suggestion that the estate is the petitioner.

Appendix II is deleted and replaced with the following.

APPENDIX II

FEES AND CHARGES

(See Rules 148, 190(a), 200(a), and 200(g))

(a) Fees and Charges Payable to the Court:

1. Filing petition	\$60.00
2. Application for admission to practice	*
3. Periodic registration fee	**
4. Photocopies (plain or certified)--per page50
5. Certification--per document	5.00
6. Filing notice of appeal	***
7. Transmitting record on appeal	****

* Amount set by order of the Court (see Rule 200(a))

** Frequency and amount set by order of the Court (see Rule 200(g))

*** Amount determined in accordance with rule 3(e) of the Federal Rules of Appellate Procedure (see also rules 13 and 14 of such rules)

**** Actual cost of insurance and postage

(b) Charges for Copies of Transcripts of Proceedings:

Transcripts of proceedings before the Tax Court are supplied to the parties and to the public by the official reporter at such rates as may be fixed by contract between the Court and the reporter. Information as to those rates may be obtained from the Clerk of the Court or from the trial clerk at a trial session.

Explanation

Appendix II is amended to correct the reference to periodic registration fees, which are now discussed in Rule 200(g).

Form 1 is deleted and replaced with the following.

FORM 1

PETITION (Sample Format)*
(See Rules 30 through 34)
www.ustaxcourt.gov

UNITED STATES TAX COURT

	}	Docket No.
Petitioner(s)		
v. COMMISSIONER OF INTERNAL REVENUE, Respondent		

PETITION

Petitioner hereby petitions for a redetermination of the deficiency (or liability) set forth by the Commissioner of Internal Revenue in the Commissioner's notice of deficiency (or liability) dated, and as the basis for petitioner's case alleges as follows:

1. Petitioner is [set forth whether an individual, corporation, etc., as provided in Rule 60] with mailing address now at

Street (or P.O. Box)	City	State	ZIP Code

and with the State of legal residence (or principal office) now in (if different from the mailing address)

The return for the period here involved was filed with the Office of the Internal Revenue Service at

City	State

2. The notice of deficiency (or liability) was mailed to petitioner on, and was issued by the Office of the Internal Revenue Service at

City	State	

*Form 1 provides a sample format that is especially appropriate for use by counsel in complex deficiency and liability cases. See Rule 34(a)(1), (b)(1). To adapt Form 1 for use in the following types of actions, see also the applicable Rules, as indicated: Declaratory judgment actions (Rule 211); disclosure actions (Rule 221); partnership actions (Rules 241, 301); interest abatement actions (Rule 281); employment status actions (Rule 291); actions for determination of relief from joint and several liability (Rule 321); lien and levy actions (Rule 331); and whistleblower actions (Rule 341). See Form 2 for a fillable form that may be useful for pro se petitioners and may also be used by counsel in simple cases with limited issues. See Form 3 for a fillable form that may be used for administrative costs actions.

A copy of the notice of deficiency (or liability), including so much of the statement and schedules accompanying the notice as is material, should be redacted as provided by Rule 27 and attached to the petition as Exhibit A. Petitioner must submit with the petition a Form 4, Statement of Taxpayer Identification Number.

3. The deficiencies (or liabilities) as determined by the Commissioner are in income (estate, gift, or certain excise) taxes for the calendar (or fiscal) year, in the amount of \$, of which \$ is in dispute.

4. The determination of the tax set forth in the said notice of deficiency (or liability) is based upon the following errors: [Here set forth specifically in lettered subparagraphs the assignments of error in a concise manner. Do not plead facts, which properly belong in the succeeding paragraph.]

5. The facts upon which petitioner relies, as the basis of petitioner's case, are as follows: [Here set forth allegations of fact, but not the evidence, sufficient to inform the Court and the Commissioner of the positions taken and the bases therefor. Set forth the allegations in orderly and logical sequence, with subparagraphs lettered, so as to enable the Commissioner to admit or deny each allegation. See Rules 31(a) and 34(b)(5).]

WHEREFORE, petitioner prays that [here set forth the relief desired].

(Signed)

Petitioner or Counsel

.....

Present Address—City, State, ZIP Code

Dated:

.....

(Area code) Telephone No.

.....

Counsel's Tax Court Bar Number

Explanation

Note 1 of Form 1 is amended to include references to employment status actions, actions for determination of relief from joint and several liability, lien and levy actions, and whistleblower actions.

Form 2 is deleted and replaced with the following.

FORM 2

PETITION (Simplified Form)

UNITED STATES TAX COURT

www.ustaxcourt.gov

(FIRST) (MIDDLE) (LAST)

(PLEASE TYPE OR PRINT) Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent



Docket No.

PETITION

1. Please check the appropriate box(es) to show which IRS NOTICE(s) you dispute:

- Notice of Deficiency
- Notice of Determination Concerning Your Request for Relief From Joint and Several Liability. (If you requested relief from joint and several liability but the IRS has not made a determination, please see the Information for Pro Se Taxpayers booklet or the Tax Court’s Web site.)
- Notice of Determination Concerning Collection Action
- Notice of Determination Concerning Worker Classification

2. Provide the date(s) the IRS issued the NOTICE(S) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): _____

3. Provide the year(s) or period(s) for which the NOTICE(S) was/were issued: _____

4. SELECT ONE OF THE FOLLOWING:

- If you want your case conducted under small tax case procedures, check here: **(CHECK ONE BOX)**
- If you want your case conducted under regular tax case procedures, check here: **(CHECK ONE BOX)**

NOTE: A decision in a “small tax case” cannot be appealed to a Court of Appeals by the taxpayer or the IRS. If you do not check either box, the Court will file your case as a regular tax case.

5. Explain why you disagree with the IRS determination in this case (please list each point separately):

Explanation

Form 2 is revised to reinstate the direction that the petitioner list the years for which the contested notice was issued. This latter revision reflects experience by the Court and the Internal Revenue Service with new Form 2 in situations in which a petitioner fails to attach the notice to the petition. In those situations, the Court cannot ascertain whether subsequent petitions received from the petitioner are amended or duplicate petitions or are petitions to commence a new case. In addition, the Internal Revenue Service may have difficulty identifying the notice relevant to a case, especially if the Internal Revenue Service has issued more than one notice to the petitioner.