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Chief Counsel

# Notice

CC-2008-010

January 29, 2008

Tax Court Rules Amendments on  
Privacy Protection and Public  
**Subject:** Access to Electronic Case Files  
Upon incorporation  
**Cancel Date:** into CCDM

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## PURPOSE

On January 15, 2008, the Tax Court adopted amendments to its Rules of Practice and Procedure. The new rules can be found at <http://www.ustaxcourt.gov/press/011508.pdf>. The most significant changes were made to address privacy issues and public access to the court's electronic case files. Other amendments make conforming and clerical changes to a number of the court's existing rules, as well as a number of the forms in Appendix I to the rules. The amendments are generally effective as of March 1, 2008, except the amendments regarding remote access to electronic files by parties and their counsel. Those amendments will be effective at a future date, to be announced by the court, pending completion of the on-going registration for electronic access for Tax Court practitioners. See CC Notice CC-2008-004, Tax Court "Practitioner Services" Correspondence (Dec. 7, 2007). For a temporary transition period beginning immediately, the court will accept filings on either its current forms or the new forms. All amendments should be carefully reviewed by Chief Counsel attorneys who practice before the Tax Court.

This Notice informs Chief Counsel attorneys of the significant changes to the court's rules and announces procedures to be followed in light of the rule changes.

## DISCUSSION

### Privacy Protection

The most significant changes to the rules were the adoption of a new **Rule 20(b), Statement of Taxpayer Identification Number**, and the addition of a new **Rule 27, Privacy Protection For Filings Made With The Court**. Together, these amendments implement the court's newly announced privacy policy regarding personal information contained in Tax Court filings. This new policy applies to individual taxpayers as well as business entities and estates, and brings the Tax Court into conformity with other federal courts that have adopted privacy protection policies pursuant to the E-Government Act of 2002 (Pub. L. 107-347, sec. 205, 116 Stat. 2913).

Upon the filing of a petition, petitioners are now required, under new T.C. Rule 20(b), to submit a statement of the petitioner's taxpayer identification number (e.g., social security number or

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employer identification number), or lack thereof. The amendments include the adoption of a new **Form 4, Statement of Taxpayer Identification Number**, which is intended to supply sufficient information to identify the petitioner in order to access the petitioner's account information and timely locate the administrative file. Form 4 also directs a petitioner seeking relief from joint and several liability under section 6015 to state the name and taxpayer identification number of the other individual with whom the petitioner filed a joint return. A properly completed Form 4 should prevent premature assessments from being made when petitions are otherwise timely filed with the court. The Form 4 will be served on the respondent at the same time the petition is served, but the Form 4 will not otherwise be filed or made a part of the court's file. Any Form 4 received by the court prior to the effective date of Rule 20(b) will be processed by the court in accordance with the implementation of Rule 20(b) and will not be made part of the public record.

New Rule 27 establishes the basic rules providing privacy protections for filings made with the Tax Court. Rule 27 is modeled after new Rule 5.2 of the Federal Rules of Civil Procedure and new Rule 9037 of the Federal Rules of Bankruptcy Procedure (both of which became effective December 1, 2007). Unlike those rules, however, Rule 27 does not require the inclusion of the last four digits of a social security number, since the complete number should be available to the respondent through a properly completed Form 4.

Under Rule 27(a), all paper and electronic documents filed with the court, by both parties and nonparties, are either to be redacted to omit or are to refrain from including the following information:

- (1) Taxpayer identification numbers (e.g., Social Security numbers or employer identification numbers);
- (2) Dates of Birth. If a date of birth is provided, only the year should appear.
- (3) Names of minor children. If a minor child is identified, only the minor child's initials should appear; and
- (4) Financial account numbers. If a financial account number is provided, only the last four digits of the number should appear.

The requirement to redact this information also applies to exhibits filed with the court, including those exhibits entered during trial or an evidentiary hearing. All attorneys must carefully review their filings to ensure that these identifiers are omitted or redacted. For example, if the petitioner fails to attach the notice of deficiency or other determination letter to the petition, any exhibit attached to the answer must be redacted to mask the above information that may appear on the exhibit. Likewise, no personal information should be included in any responsive paragraphs or affirmative allegations in our answer.

Rule 27(c) authorizes the court to order filings containing the information described in Rule 27(a) to be made under seal without redaction. The court may later unseal such a filing or order the filing of a redacted version for the public record. The court's explanation states that Rule 27(c) does not limit or expand the statutory provisions that govern sealing. Section 7461 (a) provides that the Tax Court's records are generally open to the inspection by the public, but section 7461(b) authorizes the Tax Court to make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information, including a provision that any document or information be placed under seal to be opened only as directed by the court. It is critical to scrupulously honor any order sealing the record or any part thereof. See CCDM 35.4.6.5:(9). It is also critical to ensure that only the information described in Rule 27(a) be the subject of the order.

Rule 27(d) authorizes the court, for good cause shown, to issue protective orders requiring the redaction of additional information, or to enter other protective orders as provided in Rule 103(a). All Chief Counsel personnel must continue to follow established procedures that require the special handling of any filing made under seal. Furthermore, any motion for a protective order to seal a record, or acquiescence to a party's or non-party's request for a protective order, must first be pre-reviewed and pre-approved by Procedure & Administration Branch 6 or Branch 7. See CC Notice CC-2006-04, CCDM 35.4.6.5 Protective Orders (Oct. 27, 2005).

Rule 27(e) allows a person making a redacted filing to also make an unredacted filing under seal, which the court will retain as part of the public record.

Rule 27(f) permits a document containing redacted information to be filed with a reference list identifying each redaction. The reference list must be filed with a motion to seal the record, and may be amended as of right. Any such motion proposed to be filed by respondent must be pre-reviewed and pre-approved by Procedure & Administration as stated above.

Pursuant to Rule 27(g), it is the responsibility of the filer to ensure compliance with the rule by making the appropriate redactions or omissions. A person waives the protection of Rule 27 as to the person's own information if filed without first redacting or filing the information under seal.

Rule 27(h) allows a party, without leave of court, to correct an inadvertent disclosure of identifying information, provided a properly redacted filing is made within 60 days of the filing of the original unredacted copy. Any correction thereafter will require leave of the court.

In order to implement the privacy protection mandated by Rule 27, the court modified its rules describing the contents of petitions and motions in the various types of proceedings within the court's jurisdiction to eliminate the requirement to include taxpayer identification numbers. Conforming changes in this regard have been made to the following rules:

- Rule 34 (petition in deficiency or liability action)
- Rule 211 (petition in declaratory judgment action)
- Rule 241 (petition in partnership action)
- Rule 260 (motion to enforce overpayment determination)
- Rule 261 (motion to redetermine interest)
- Rule 271 (petition in administrative costs action)
- Rule 281 (petition in interest abatement action)
- Rule 291 (petition in worker classification action)
- Rule 301 (petition in large partnership action)
- Rule 321 (petition in innocent spouse action)
- Rule 331 (petition in collection due process action)

Care must be taken in preparing responsive pleadings to each of these documents to ensure that the personal information described in Rule 27(a) is omitted or redacted from the paper before it is filed with the court.

#### Access to the Court's Electronic Case Files

In addition to privacy protection, new Rule 27 provides for limited remote access to the court's electronic files. Rule 27(b)(1) authorizes parties before the court and their counsel to have remote electronic access to any part of the case file maintained by the court in electronic form. Rule 27(b)(2) limits electronic access by other persons to the public record maintained at the

courthouse, and remote electronic access to only the docket record maintained by the court and any opinion or order of the court, and not any other part of the case file. Because Chief Counsel attorneys do not enter their individual appearances for the Commissioner in the Tax Court, the extent to which remote electronic access to the court's files will be available to Chief Counsel attorneys is unknown at this time. Electronic access as described in Rule 27(b) will be effective at a future date to be announced by the court.

### Other Significant Rule Changes

Amended Rule 50(g) provides that court orders shall not be treated as precedent, except as may be relevant for purposes of establishing the law of the case, res judicata, collateral estoppel, or other similar doctrines. This amendment clarifies the effect of orders that will be available electronically. While the rule specifies that its orders are not precedential, it does not purport to restrict the citation of orders, in conformity with new Rule 32.1 of the Federal Rules of Appellate Procedure. Consistent with Rule 50(g), Rule 152(c) treats oral findings of fact or opinions (so-called "bench opinions") as nonprecedential, but removes the prior restriction on citing them to the court.

Rule 90(b), Request for Admissions, has been amended to require that a request for admissions include a statement advising the party to whom the request is directed of the consequences of failing to respond, which will result in the requests being deemed admitted pursuant to Rule 90(c). The court explained that taxpayers, particularly those appearing pro se, will more likely respond to a request for admission if they are advised of the severe consequences of failing to respond. The Office's discovery macro that generates our requests for admissions will be modified in the near future to include this advisory.

### Clerical and Conforming Changes

Clerical and conforming changes were made throughout the remaining rules. Changes were also made to several forms, including Form 1, Petition (Other Than in Small Tax Case); Form 2, Petition (Small Tax Case); and Form 5, Request For Place of Trial (providing a checklist format of possible place of trial venues).

The modification of Form 2, Petition (Small Tax Case), is of particular concern. As published, the new form does not require a petitioner to list the tax years or periods in dispute. Therefore, there may be instances in which it cannot be determined from the petition whether the years listed on an attached notice of deficiency or other determination letter are before the court, especially when notices include determinations for multiple years or periods. Although the court explained that the form was modified in an attempt to "help petitioners better identify the matters in dispute, points of disagreement with the IRS, and factual allegations," the omission of the requirement to list the tax year(s) at issue creates uncertainty as to the application of section 6503(a)(1), which suspends the statute of limitations on assessment in docketed cases until 60 days after the decision of the Tax Court becomes final. Until such time as Form 2 may be modified to eliminate this uncertainty, Chief Counsel attorneys must carefully monitor all statute of limitation periods in their cases to ensure that such a period does not expire without an assessment being made. See CCDM 35.2.1.1.2, Assessment of Uncontested Deficiencies. While this activity may result in premature assessments of deficiencies that are before the court, such assessments can be corrected by appropriate abatements. In contrast, the failure to assess a deficiency that is not before the court cannot be corrected once the statute of limitations period for assessment has expired.

