

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2008-018

September 10, 2008

Subject: New Electronic Access to U.S. Tax
Court Files

Cancel Date: Upon incorporation
into CCDM

Introduction

The U.S. Tax Court has notified us that beginning Wednesday, September 10, 2008, practitioners will have electronic access to the court's files for purposes of on-line viewing of documents filed with the court. This service is the first phase of the court's implementation of its new Rule 27(b), adopted January 15, 2008. (See Chief Counsel Notice CC-2008-010, Tax Court Rules Amendments on Privacy Protection & Public Access to Electronic Case Files (Jan. 29, 2008)). This Notice provides information and interim instructions for Chief Counsel attorneys on remote electronic access to the Tax Court's files pending the development of comprehensive guidance on how Chief Counsel attorneys may best utilize the feature in a manner consistent with our overall operations. **Chief Counsel attorneys are hereby instructed not to attempt on-line viewing of Tax Court documents through the court's new feature pending the issuance of future guidance.**

Background

On January 15, 2008, the Tax Court adopted new Rule 27(b), which provides:

(b) Limitations on Remote Access to Electronic Files:

Except as otherwise directed by the Court, access to an electronic file is authorized as follows:

- (1) the parties and their counsel may have remote electronic access to any part of the case file maintained by the Court in electronic form; and
- (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 or order of the Court, but not any other part of the case file.

Distribute to: All Personnel
 Electronic Reading Room

Filename: CC-2008-018 File copy in: CC:FM:PF

Prior to the adoption of new Rule 27(b), the court undertook an initiative to update its active practitioner roles and assign user-identification names and passwords to facilitate future electronic filing of court documents and remote electronic access to its files. See Chief Counsel Notice CC-2008-004, Tax Court “Practitioner Services” Correspondence (Dec. 7, 2007). In our comments to the proposed rule prior to its adoption, we noted that Chief Counsel attorneys do not file entries of appearances in Tax Court cases or otherwise formally notify the court of the attorney within the Office of Chief Counsel to whom a particular Tax Court case may be assigned. We stated that our activities of nationwide litigation oversight and coordination often require that government attorneys other than those assigned to the primary responsibility for a case, such as local field managers, regional managers, and National Office officials, have access to case files.

New Electronic Access Capability

On September 10, 2008, a new feature entitled “eAccess” will be available on the Tax Court’s web site, www.ustaxcourt.gov. The “eAccess” portal replaces the “Practitioner Services” tab on the court’s home page. By entering the “eAccess” portal, practitioners will have the capability of viewing on line documents filed with the court in case files for which they are the designated representative. Only those practitioners who updated their personal information and were assigned user-IDs and passwords by the court will have access to the system.

Taxpayer representatives will have remote electronic access to cases in which they have filed an entry of appearance, or in which they have subscribed the original petition with a signature and Tax Court bar number as the petitioner’s representative. Chief Counsel attorneys, who do not enter appearances in Tax Court cases, will have remote electronic access to cases for which they are designated as respondent’s representative in the court’s eAccess database. The court will designate as respondent’s representative the Chief Counsel attorneys whose signatures and Tax Court bar numbers appear on the first document (pleading or motion) filed by respondent in each case. The court will not designate as respondent’s representative those attorneys appearing in the “Of Counsel” or other sections of a document unless those attorneys have also signed the document and included their bar numbers. Taxpayers appearing pro se may acquire remote electronic access to their own case files by completing a registration procedure with the court.

Once designated as respondent’s representative in a particular case in the court’s database, respondent’s attorneys may add additional Chief Counsel attorneys as respondent’s representatives for that case. Additionally, a Chief Counsel attorney listed as one of respondent’s representatives in a case may remove other Chief Counsel attorneys as representatives from that case, but may not remove themselves from the case. (Accordingly, if there is only one of respondent’s attorneys listed as respondent’s representative in a case, that attorney may not be removed from that case record, even if that attorney is no longer assigned to the case or employed by the Office of Chief Counsel.) Taxpayer representatives may only be added or removed from a case record

through the established procedures of filing entries of appearance, motions to withdraw, or substitution of counsel pursuant to T.C. Rule 24.

At this time, practitioners with remote electronic access to case files will only be able to view documents filed with the court. The court is not yet implementing electronic filing or electronic service of documents. On-line viewing will be available for all documents that have been filed with the court since March 1, 2008. The documents available for on-line viewing will include all pleadings, motions, court orders, opinions, and decisions. In general, exhibits will not be available for on-line viewing, with the exception of exhibits to jurisdictional motions, proposed stipulations attached to Rule 91(f) motions, declarations or affidavits, and formal discovery requests and responses accompanying discovery enforcement motions. Because of restrictions in reporting company contracts, trial or hearing transcripts will not be available for on-line viewing until one year after the conclusion of the transcribed proceedings. Documents accessed for viewing on line are PDF files and may be saved, copied, printed, e-mailed, or otherwise handled in the same manner as any ordinary PDF file.

The number of times a document may be viewed on line via the Tax Court's web site is severely limited. The court will permit each document to be viewed only three times by each party's side (not each practitioner), i.e., three times for respondent, and three times for petitioner. After the third view, a message will be generated by the system stating that no further views of that document are available. Therefore, it is critically important to print and/or save a viewed document in some manner before the document is inaccessible for further viewing on line.

The first time a practitioner (both petitioners' and respondent's representatives) attempts to view any document through the eAccess facility, the system will prompt the user to agree to its "Terms of Use." In general, the Terms of Use discuss the protection of user-IDs and passwords, and the proper use of the eAccess system. On-line help and user guides are available on the system.

Interim Guidance

Pending the issuance of future comprehensive guidance, Chief Counsel attorneys are hereby instructed not to attempt to use the eAccess feature on the Tax Court's web site. Our office is working on developing a consistent approach for use of the eAccess system that will best conform with our operations, particularly in light of the strict limitations on the number of opportunities for viewing an individual document and the unprecedented and unfamiliar procedure of assigning, adding, and removing Chief Counsel attorneys as respondent's representative in Tax Court cases. We will be meeting with affected stakeholders to establish protocols for official use of the eAccess system. Until these protocols have been finalized, Chief Counsel attorneys may continue to visit the Tax Court's web site for docket information and the on-line viewing of court orders that is available to the public, so long as viewing is not attempted through the eAccess portal.

