

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2009-007

January 15, 2009

Subject: Electronic Service of U.S. Tax Court
Case-Related Documents

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Purpose

This Notice provides guidance on how to respond to a recent e-mail communication from the Tax Court to practitioners concerning electronic service of case-related documents that is soon to be implemented by the court. Attorneys in the Office of Chief Counsel are **NOT** to make any election consenting to electronic service on the Tax Court's website.

Background

On October 3, 2008, the Tax Court adopted amendments to its Rules of Practice and Procedure authorizing electronic service of case-related documents. As amended, Rule 21(b)(1)(D) provides that service of papers may be made by electronic means if the person served consented in writing. New Rule 21(b)(1)(D) is a component of the Tax Court's initiative to implement technological advances that will eventually permit both electronic filing and electronic service of documents in a manner analogous to that available in other federal courts. The first phase of this initiative, which permits electronic access to the court's files, was described in Chief Counsel Notice 2008-018, New Electronic Access to U.S. Tax Court Files (Sept. 10, 2008). Previously, the court issued Interim Rule 22A establishing a pilot program for electronic filing. See Tax Court Press Release dated December 12, 2005, available on the Tax Court's website at www.ustaxcourt.gov. The implementation of electronic service and filing by the Tax Court and our opportunity to utilize electronic processing of Tax Court documents are positive steps for tax administration and will improve our tax practice.

On Monday, January 12, 2009, the Tax Court began sending e-mails with the subject line "Practitioner Access--Electronic Service (eService)--Action Required" to the active practitioners on its rolls who previously registered for Practitioner Services either electronically or by paper application. See Chief Counsel Notice CC-2008-04, Tax Court "Practitioner Services" Correspondence (Dec. 7, 2007). The e-mail announces the impending availability during January 2009 of electronic service of case-related documents ("eService") in lieu of conventional paper service by the court. The message directs practitioners who wish to receive electronic service to log on to their Practitioner Access accounts and consent to eService by choosing "Yes" when prompted by the system.

Distribute to: All Personnel
 Electronic Reading Room

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Procedure for Attorneys in the Office of Chief Counsel

In response to the e-mails from the court regarding Practitioner Access--Electronic Service, attorneys in the Office Chief Counsel are NOT to make any election consenting to electronic service on the Tax Court's website as directed by the court's e-mail. If you have already responded to the court's e-mail by consenting to eService, you must reenter the website and revoke your consent by following the instructions in the court's e-mail on changing consent options through the "Update Info" menu on the Practitioner Services portal.

When fully implemented, eService on the Commissioner will be made through a secure centralized transmission to the Docket, Records and User Fee Branch in the Legal Processing Division of Procedure and Administration in the National Office. The Docket, Records and User Fee Branch currently distributes documents to field offices served by the court on paper each day. The Branch will continue to perform that function when the court moves to electronic service. Any consent to electronic service by individual attorneys in the Office of Chief Counsel in response to the court's e-mail will interfere with the orderly processing of served documents through the Docket, Records and User Fee Branch as well as by local CATS operators. Therefore, it is critical that our attorneys do not consent to eService, or if they have already done so, promptly revoke their consent by following the procedure outlined above.

Our office is working to develop and put into operation the necessary hardware and software to take full advantage of the court's eService and eventual electronic filing programs. The office is developing a document management system similar to the current Tax Court Orders system that will allow the Docket, Records and User Fee Branch to distribute court documents served via the court's eService program to field offices electronically. We are currently in the testing phase of this new electronic system for the receipt and processing of petitions, and we anticipate that the system will be fully operational in late February. We will provide a more detailed description of the new system in the coming weeks.

Although we have not consented to electronic service pursuant to Rule 21(b)(1)(D) and further requested that the court delay the implementation of eService pending the finalization of Counsel's document management system, the court has begun electronic service on the Commissioner through the Docket, Records and User Fee Branch. Because we do not yet have the capability to electronically distribute documents received via eService to field offices, we are implementing interim procedures to process the documents received from the court electronically and then distribute them on paper. For the time being, the court is supplementing its electronic service on the Commissioner by making paper copies available for pickup by the Docket, Records and User Fee Branch. Unlike the court's prior mid-day conventional paper service, however, the supplemental paper copies will not be available for pickup from the court until the close of business each day or the next business day after electronic service has been made. Furthermore, the supplemental paper copies are available only in bulk form and are not entirely collated. This requires the Docket, Records and User Fee Branch staff to sort through each page of every document served to confirm that all documents relating to a case have been received and then are included in the transmission to field offices. Although the Branch is committed to making every effort to promptly process documents received via eService, as a result of the extra processing now required, the interim procedures may delay transmission of documents to field offices by one or more business days. Nevertheless, the court considers service of the documents to be complete upon electronic transmission pursuant to Rule 21(b)(1)(D). Accordingly, the due date for responsive pleadings must be computed from the

