UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

March 27, 2009

PRESS RELEASE

Chief Judge John O. Colvin announced today that the United States Tax Court has proposed amendments to its Rules of Practice and Procedure. Several of the proposed amendments conform the Tax Court's Rules more closely with selected procedures from the Federal Rules of Civil Procedure. In addition, amendments are proposed to Rule 202 (procedures applicable to disciplinary proceedings) and to Rule 11 (payment of certain fees and charges by credit card). The proposed amendments are contained in the Notice attached to this press release and are available at the Tax Court's Web site at www.ustaxcourt.gov.

The Tax Court invites public comment on the proposed amendments. Written comments must be received by May 27, 2009. Comments must be addressed to:

Robert R. DiTrolio
Clerk of the Court
U.S. Tax Court
400 Second Street, N.W., Room 111
Washington, D.C. 20217

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

NOTICE OF PROPOSED AMENDMENTS TO RULES

Pursuant to section 7453 of the Internal Revenue Code as amended and Rule 1 of the Tax Court Rules of Practice and Procedure, the United States Tax Court hereby provides notice that it proposes the attached amendments to its Rules of Practice and Procedure and invites public comment thereon. Written comments must be addressed to:

Robert R. DiTrolio
Clerk of the Court
U.S. Tax Court
400 Second Street, N.W., Room 111
Washington, D.C. 20217

The proposed amendments and explanations are as follows:

I. Ownership Disclosure Statements

Rule 11 is deleted and replaced with the following.

RULE 11. PAYMENTS TO THE COURT

All payments to the Court for fees or charges of the Court shall be made either in cash or by check, money order, or other draft made payable to the order of "Clerk, United States Tax Court", and shall be mailed or delivered to the Clerk of the Court at Washington, D.C. Payment may also be made by credit card presented at the Court in Washington, D.C. For the Court's address, see Rule 10(e). For particular payments, see Rules 12(c) (copies of Court records), 20(d) (filing of petition), 173(a)(2) (small tax cases), 200(a) (application to practice before Court), 200(g) (periodic registration fee), 271(c) (filing of petition for administrative costs), 281(c) (filing of petition for review of failure to abate interest), 291(d) (filing of petition for redetermination of employment status), 311(c) (filing of petition for declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return), 321(d) (filing of petition for determination of relief from joint and several liability on a joint return), 331(d) (filing of petition for lien and levy action), and 341(c) (filing of petition for whistleblower

action). For fees and charges payable to the Court, see Appendix II.

New paragraph (c) of Rule 20 is added and current paragraph (c) is redesignated as paragraph (d). [Paragraphs (a) and (b) remain unchanged and are omitted here.]

Rule 20. COMMENCEMENT OF CASE

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(c) Disclosure Statement: A nongovernmental corporation, a partnership, or a limited liability company filing a petition with the Court shall submit with its petition a separate disclosure statement. In the case of a nongovernmental corporation, the disclosure statement shall identify any parent corporation and any publicly held entity owning 10 percent or more of petitioner's stock or state that there is no such entity. In the case of a partnership or a limited liability company, the disclosure statement shall identify any publicly held entity owning an interest in such partnership or limited liability company or state that there is no such entity. A petitioner shall promptly submit a supplemental statement if there is any change in the information required under this rule.

(d) Filing Fee: At the time of filing a petition, a fee of $60 shall be paid. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information the inability to make such payment.

Explanation

Introduction

Rule 7.1 of the Federal Rules of Civil Procedure requires a nongovernmental corporate party to file two copies of a disclosure statement that (1) identifies any parent corporation and any publicly held corporation owning 10 percent or more of its stock, or (2) states that there is no such corporation. See 207 F.R.D. 50 (Apr. 29, 2002); see also 195 F.R.D. 95 (May 2000). Fed. R. Civ. P. 7.1 states that a nongovernmental corporate party must file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and promptly file a supplemental statement if any required information changes. The Advisory Committee Notes to Fed. R. Civ. P. 7.1 explain that the rule was drawn from the Federal Rules of Appellate Procedure (rule 26.1) and was adopted to aid judges in making properly informed disqualification

decisions consistent with the "financial interest" standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges. The Advisory Committee Notes acknowledge that the rule "does not cover all of the circumstances that may call for disqualification under the financial interest standard" but the rule is "calculated to reach a majority of the circumstances that are likely to call for disqualification". Some Federal district courts have adopted local rules that require partnerships and other entities, in addition to corporations, to file disclosure statements as described in Fed. R. Civ. P. 7.1.

Tax Court Judges and Special Trial Judges adhere to the Code of Conduct for United States Judges. Canon 3C(1)(c) of the Code of Conduct for United States Judges provides that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding. Canon 3C(3)(c) of the Code of Conduct for United States Judges defines the term "financial interest" in pertinent part to mean ownership of a legal or equitable interest, however small, in a party to the litigation.

Proposed Amendment

The Court proposes to amend Rule 20 to require a nongovernmental corporation, partnership, or limited liability company filing a petition with the Court to submit with its petition a separate disclosure statement identifying any parent corporation and any publicly held entity owning an interest in the petitioner. The proposed amendment is intended to enhance the ability of Tax Court Judges and Special Trial Judges to timely identify matters in which automatic disqualification would be appropriate under the financial interest standard. A conforming amendment to Rule 11 is also proposed. An additional amendment to Rule 11 is proposed in section VIII (Payment of Tax Court Fees and Charges By Credit Card).

II. Service of Papers

Paragraph (b)(1) of Rule 21 is deleted and replaced with the following. [Paragraphs (a) and (b)(2) remain unchanged and are omitted here.]

RULE 21. SERVICE OF PAPERS

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(b) Manner of Service: (1) *General:* All petitions shall be served by the Clerk. Unless otherwise provided in these Rules or directed by the Court, all other papers required to be served on a party shall be served by the party filing the paper, and the original paper shall be 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 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.

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Explanation

Introduction

Rule 21(b)(1) provides that the Clerk of the Court will serve all petitions filed with the Court. The Rule also provides that, unless otherwise provided by the Court's Rules or directed by the Court, the Clerk will serve all other papers required to

be served on a party unless the original paper is filed with a certificate by a party or party's counsel that service has been made on the party to be served or the party's counsel. Rule 5(d) of the Federal Rules of Civil Procedure requires that all papers after the complaint must be filed with a certificate of service showing service on the opposing party or counsel. Amending Rule 21(b)(1) to conform with Fed. R. Civ. P. 5(d) would permit the Court to enforce service of documents by the parties, while allowing discretion to provide service by the Clerk when directed by the Court.

With respect to the Court's implementation of electronic filing, questions have been raised regarding the Court's responsibility to make service of an electronically filed document on an individual or counsel who has not consented to receive electronic service and so must be served by conventional paper service, when no certificate of service is attached to the electronically filed document, and no paper copies are provided for service. Also, when documents are filed electronically, it is anticipated that some electronic transmissions will fail due to improper e-mail addresses or other technological issues, and there are questions as to who has the ultimate responsibility for re-serving the documents. Amending Rule 21(b)(1) would help effectuate the Court's previously announced policy of placing the burden on the party filing a document electronically to make service on the opposing party or counsel using conventional paper service or to re-serve a document electronically.

Amending Rule 21(b)(1) would also align the Court's Rules with both the general practice among practitioners and the Court's Standing Pretrial Order, which requires that every pleading, motion, letter, or other document (with the exception of simultaneously filed briefs) submitted to the Court after a case is calendared for trial be served by the filing party on every other party and contain a certificate of service.

Proposed Amendment

The Court proposes to amend Rule 21(b)(1) to require that, unless otherwise provided by the Court's Rules or directed by the Court, a party filing a paper other than a petition must make service of the paper on the opposing party and attach to the paper a certificate showing that service was made. Conforming changes to various Rules also are proposed, although no amendment is proposed to the requirement in Rule 151(c) that the Clerk shall serve simultaneous briefs.

Paragraph (c) of Rule 37 is deleted and replaced with the following. [Paragraphs (a), (b), (d), and (e) remain unchanged and are omitted here.]

RULE 37. REPLY

* * * * * * *

(c) Effect of Reply or Failure Thereof: Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied unless the Commissioner, within 45 days after expiration of the time for filing the reply, files a motion that specified allegations in the answer be deemed admitted. That motion may be granted unless the required reply is filed within the time directed by the Court.

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Explanation

The Court proposes to amend Rule 37(c) to delete the language referring to service of the motion. The amendment would conform the Rule with the proposed amendment to Rule 21(b)(1) and require the Commissioner to serve on the taxpayer his motion that undenied allegations in the answer be admitted, which is consistent with existing practice.

Paragraph (b)(1) of Rule 50 is deleted and replaced with the following. Paragraph (f) of Rule 50 is deleted and current paragraph (g) is redesignated as paragraph (f). [Paragraphs (a), (b)(2), (b)(3), (c), (d), and (e) remain unchanged and are omitted here.]

RULE 50. GENERAL REQUIREMENTS

* * * * * * *

(b) Disposition of Motions: A motion may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take action after directing that a written response be filed. In that event, the opposing party shall file such response within such period as the

Court may direct. Written response to a motion shall conform to the same requirements of form and style as apply to motions.

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(f) Effect of Orders: 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 doctrine.

Explanation

The Court proposes to amend Rule 50(b)(1) to delete the language in that Rule referring to service by the Court of a motion with its order directing the filing of a written response. The amendment would conform Rule 50(b)(1) with the proposed amendment to Rule 21(b)(1), requiring service of the motion by the filing party. It is also proposed that paragraph (f) of Rule 50 be deleted as unnecessary and paragraph (g) be relettered as paragraph (f).

Paragraph (d) of Rule 76 is deleted and replaced with the following. [Paragraphs (a), (b), (c), (e), (f), (g), and (h) remain unchanged and are omitted here.]

RULE 76. DEPOSITION OF EXPERT WITNESSES

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(d) Procedure: (1) *In General:* A party desiring to depose an expert witness under paragraph (a)(2) of this Rule shall file a written motion and shall set forth therein the matters specified in subparagraph (2). The Court shall take such action on the motion as it deems appropriate.

(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:

(A) The name and address of the witness to be examined;

(B) a statement describing any books, papers, documents, or tangible things to be produced at the deposition of the witness to be examined;

(C) a statement of issues in controversy to which the expected testimony of the expert witness, or the document or thing, relates, and the reasons for deposing the witness;

(D) the time and place proposed for the deposition;

(E) the officer before whom the deposition is to be taken;

(F) any provision desired with respect to the payment of the costs, expenses, fees, and charges relating to the deposition (see paragraph (g)); and

(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.)

If the movant proposes to take the deposition of the expert witness on written questions, then the movant shall annex to the motion a copy of the questions to be propounded. The movant shall also show that prior notice of the motion has been given to the expert witness whose deposition is sought and to each other party, or counsel for each other party, and shall state the position of each of these persons with respect to the motion, in accordance with Rule 50(a).

(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 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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Explanation

The Court proposes to amend Rule 76(d)(3) to delete the parenthetical requiring the attachment of a certificate of service. Such requirement is contained in the proposed amendment to Rule 21(b)(1). An additional amendment to Rule 76 is proposed in section V (Electronically Stored Information).

Paragraph (b) of Rule 81 is deleted and replaced with the following. [Paragraphs (a), (c), (d), (e), (f), (g), (h), (i), and (j) remain unchanged and are omitted here.]

RULE 81. DEPOSITIONS IN PENDING CASE

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(b) The Application: (1) *Content of Application:* The application to take a deposition pursuant to paragraph (a) of this Rule shall be signed by the party seeking the deposition or such party's counsel, and shall show the following:

(A) The names and addresses of the persons to be examined;

(B) the reasons for deposing those persons rather than waiting to call them as witnesses at the trial;

(C) the substance of the testimony which the party expects to elicit from each of those persons;

(D) a statement showing how the proposed testimony or document or thing is material to a matter in controversy;

(E) a statement describing any books, papers, documents, or tangible things to be produced at the deposition by the persons to be examined;

(F) the time and place proposed for the deposition;

(G) the officer before whom the deposition is to be taken;

(H) the date on which the petition was filed with the Court, and whether the pleadings have been closed and the case placed on a trial calendar;

(I) any provision desired with respect to payment of expenses, fees, and charges relating to the deposition (see paragraph (g) of this Rule, and Rule 103); and

(J) if the applicant proposes to video record the deposition, then the application shall so state, and shall show the name and address of the video recorder operator and of the operator's employer. (The video recorder operator and the officer before whom the deposition is to be taken may be the same person. See subparagraph (2) of paragraph (j) of this Rule.)

The application shall also have annexed to it a copy of the questions to be propounded, if the deposition is to be taken on written questions. For the form of application to take a deposition, see Appendix I.

(2) *Filing and Disposition of Application:* The application may be filed with the Court at any time after the case is docketed in the Court, but must be filed at least 45 days prior to the date set for the trial of the case. The application and a conformed copy thereof, together with an additional conformed copy for each

additional docket number involved, shall be filed with the Clerk. In addition to serving each of the other parties to the case, the applicant shall serve a copy of the application on such other persons who are to be examined pursuant to the application, and shall file with the Clerk a certificate showing such service. Such other parties or persons shall file their objections or other response, with the same number of copies and with a certificate of service thereof on the other parties and such other persons, within 15 days after such service of the application. A hearing on the application will be held only if directed by the Court. Unless the Court shall determine otherwise for good cause shown, an application to take a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set. 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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Explanation

The Court proposes to amend Rule 81(b)(2) to reflect the proposed amendment to Rule 21(b)(1) requiring service of the filed application on each of the other parties to the case. An additional amendment to Rule 81 is proposed in section V (Electronically Stored Information).

Paragraph (f)(1) of Rule 91 is deleted and replaced with the following. [Paragraphs (a), (b), (c), (d), (e), (f)(2), (f)(3), and (f)(4) remain unchanged and are omitted here.]

RULE 91. STIPULATIONS FOR TRIAL

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(f) Noncompliance by a Party: (1) *Motion To Compel Stipulation:* If, after the date of issuance of trial notice in a case, a party has refused or failed to confer with an adversary with respect to entering into a stipulation in accordance with this Rule, or a party has refused or failed to make such a stipulation of any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than 45 days prior to the date set for call of the case from a trial

calendar, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall: (A) Show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (B) set forth in express language the specific stipulation which the moving party proposes with respect to each such matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation; (C) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; and (D) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation.

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Explanation

The Court proposes to amend Rule 91(f)(1) to delete the requirement that the party filing a motion to compel stipulation show proof of service, as a certificate of service would be required by the proposed amendment to Rule 21(b)(1).

Paragraph (c) of Rule 151 is deleted and replaced with the following. [Paragraphs (a), (b), (d), and (e) remain unchanged and are omitted here.]

RULE 151. BRIEFS

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(c) Service: Each brief shall be served upon the opposite party when it is filed, except that, in the event of simultaneous briefs, such brief shall be served by the Clerk after the corresponding brief of the other party has been filed, unless the Court directs otherwise. Delinquent briefs will not be accepted unless accompanied by a motion setting forth reasons deemed sufficient by the Court to account for the delay. In the case of simultaneous briefs, the Court may return without filing a delinquent brief from a party after such party's adversary's brief has been served upon such party.

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Explanation

The Court proposes to amend Rule 151(c) to require that the parties serve seriatim briefs on each other. The Rule retains the requirement that the Clerk serve simultaneous briefs on the parties after both briefs have been filed. It is also proposed that the language referring to service in partnership actions be deleted, as the service requirements for partnership actions would not differ from those contained in proposed Rule 21(b)(1).

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

RULE 155. COMPUTATION BY PARTIES FOR ENTRY OF DECISION

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(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 and 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.

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Explanation

The Court proposes to amend Rule 155(b) to eliminate the requirement that the Clerk serve an unagreed computation on the opposite party.

Paragraphs (a) and (b) of Rule 215 are deleted and replaced with the following. [Paragraph (c) remains unchanged and is omitted here.]

RULE 215. JOINDER OF PARTIES

(a) Joinder in Retirement Plan Action: The joinder of parties in retirement plan actions shall be subject to the following requirements:

(1) *Permissive Joinder:* Any person who, under Code section 7476(b)(1), is entitled to commence an action for declaratory judgment with respect to the qualification of a retirement plan may join in filing a petition with any other such person in such an action with respect to the same plan. If the Commissioner has issued a notice of determination with respect to the qualification of the plan, then any person joining in the petition must do so within the period specified in Code section 7476(b)(5). If more than one petition is filed with respect to the qualification of the same retirement plan, then see Rule 141 (relating to the possibility of consolidating the actions with respect to the plan).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment with respect to the qualification of a retirement plan may move to have joined in the action any employer who established or maintains the plan, plan administrator, or any person in whose absence complete relief cannot be accorded among those already parties. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue. See Rule 214. In addition to serving the parties to the action, the movant shall cause personal service to be made on each person sought to be joined by a United States marshal or by a deputy marshal, or by any other person who is not a party and is not less than 18 years of age, who shall make a return of service. See Form 9, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If the motion is granted, such person will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory judgment and that such person has not been joined, then the Court may, on its own motion or on the motion of any party or any such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in the absent person's absence, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

(b) Joinder in Estate Tax Installment Payment Action: The joinder of parties in estate tax installment payment actions shall be subject to the following requirements:

(1) *Permissive Joinder:* Any person who, under Code section 7479(b)(1), is entitled to commence an action for declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code section 6166 may join in filing a petition with any other such person in such an action with respect to such estate. If the Commissioner has issued a notice of determination with respect to the eligibility of the estate, then any person joining in the petition must do so within the period specified in Code section 7479(b)(3). If more than one petition is filed with respect to the eligibility of the same estate, then see Rule 141 (relating to the possibility of consolidating the actions with respect to the estate).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code section 6166 may move to have joined in the action any executor or any person who has assumed an obligation to make payments under Code section 6166 with respect to such estate. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue. See Rule 214. In addition to serving the parties to the action, the movant shall cause personal service to be made on each person sought to be joined by a United States marshal or by a deputy marshal, or by any other person who is not a party and is not less than 18 years of age, who shall make a return of service. See Form 9, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If

the motion is granted, such person will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory judgment, or, in the case of an action brought by a person described in Code section 7479(b)(1)(B), is another such person described in Code section 7479(b)(1)(B), and that such person has not been joined, then the Court may, on its own motion or on the motion of any party or any such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in the absence of such person, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

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Explanation

The Court proposes to amend paragraphs (a) and (b) of Rule 215 to clarify that the party moving for joinder of additional parties must serve the motion on the other parties to the case, as well as on the person sought to be joined.

III. Limitation On Number of Interrogatories

Paragraph (a) of Rule 71 is deleted and replaced with the following. [Paragraphs (b), (c), (d), and (e) remain unchanged and are omitted here.]

RULE 71. INTERROGATORIES

(a) Availability: Unless otherwise stipulated or ordered by the Court, a party may serve upon any other party no more than 25 written interrogatories, including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by an officer or agent who shall furnish such information as is available to the party. A motion for leave to serve additional interrogatories may be granted by the Court to the extent consistent with Rule 70(b)(2).

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Explanation

Introduction

Rule 33(a) of the Federal Rules of Civil Procedure provides that, unless otherwise stipulated by the parties or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts of an interrogatory. See 146 F.R.D. 401, 672-677 (Dec. 1, 1993). Fed. R. Civ. P. 33(a) was implemented in conjunction with broader changes to discovery procedures in Federal district courts, including amendments to Fed. R. Civ. P. 26(a) that impose on the parties an affirmative duty to disclose (without awaiting formal discovery) basic information that the parties need in most cases to prepare for trial or make an informed decision about settlement. The Advisory Committee Notes to Fed. R. Civ. P. 33(a) state that experience in Federal district courts confirmed that interrogatory limits were useful and manageable, and the 25 interrogatory limit was imposed to reduce the frequency and increase the efficiency of interrogatory practice.

The term "discrete subparts" is not defined in Fed. R. Civ. P. 33(a). The Advisory Committee Notes to Fed. R. Civ. P. 33(a) discuss the meaning of "discrete subparts" and the manner in which separate interrogatories are to be counted as follows:

> Parties cannot evade [the 25 interrogatory limit] through the device of joining as "subparts" questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each communication.

Rule 70(a)(1) states in pertinent part that "the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures provided in these Rules." See Branerton v. Commissioner, 61 T.C. 691, 692 (1974). Rule 70(a)(1) is akin to so much of Fed. R. Civ. P. 26(a) as imposes on the parties an affirmative duty to disclose basic information (without awaiting formal discovery).

Although, when established, the Tax Court's discovery procedures generally were more restrictive than the Federal Rules of Civil Procedure, see Note 60 T.C. 1057, 1097 (1973), Rule 71, which governs the use of interrogatories, does not impose any

limit on the number of written interrogatories one party may serve on another party. To conform Rule 71 with Fed. R. Civ. P. 33(a), and with the aims of (1) encouraging the parties to voluntarily exchange information, (2) enhancing the efficiency of interrogatory practice, and (3) allowing the Court to exercise greater discretion over the use of interrogatories, the Court proposes to amend Rule 71 to generally limit to 25 the number of interrogatories one party may serve on another party.

The presumptive limit on the number of interrogatories one party may serve on another is not intended to prevent needed discovery but requires the agreement of the parties or judicial scrutiny before the limit may be exceeded. Consistent with Rule 70(b)(2), a motion by a party for leave to serve more than 25 interrogatories on an opposing party may be denied if (A) the interrogatories are unreasonably cumulative or duplicative, or the information sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, (B) the party seeking additional interrogatories has had ample opportunity by discovery in the action to obtain the information sought, or (C) the interrogatories are unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. Interrogatories "should be simple, concise and concerning only matters relevant to the action" and should be framed as a single, definite question. Pleier v. Commissioner, 92 T.C. 499, 501 (1989).

Proposed Amendment

The Court proposes to amend Rule 71(a) to include a presumptive limit of 25 interrogatories that one party may serve on another party. An additional amendment to Rule 71 is proposed in section V (Electronically Stored Information).

IV. Depositions Of A Party (Without Consent)

New paragraph (e) of Rule 75 is added and current paragraph (e) is redesignated as paragraph (f). [Paragraphs (a), (b), (c), and (d) remain unchanged and are omitted here.]

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

* * * * * * *

(e) Deposition of a Party: (1) *When Depositions May Be Taken:* After a notice of trial has been issued or after a case has been assigned to a Judge or Special Trial Judge of the Court, and within the time for completion of discovery under Rule 70(a)(2), any party may file a motion to take the deposition of another party or in the exercise of its discretion the Court may order the taking of a deposition of a party in the circumstances described in paragraph (e)(2) of this Rule. A motion to take the deposition of a party may be granted by the Court to the extent consistent with Rule 70(b)(2).

(2) *Availability:* The taking of a deposition of a party under this Rule is an extraordinary method of discovery and may be used only where a party can give testimony or possesses documents, electronically stored information, or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, electronically stored information, or things practicably cannot be obtained through informal consultation or communication (Rule 70(a)(1)), interrogatories (Rule 71), a request for production of documents (Rule 72), or a deposition taken with consent of the parties (Rule 74).

(3) *Service of Motion and Objection:* Upon the filing of a motion to take the deposition of a party, the Court shall issue an order directing the non-moving party to file a written objection thereto.

(f) Other Applicable Rules: Depositions for discovery purposes 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(g) (expenses), 81(h) (execution, form, and return of deposition), and 81(i) (use of deposition); and Rule 85(a), (b), (c), (d), and (e) (objections 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

Introduction

Rule 30(a)(1) of the Federal Rules of Civil Procedure provides that one party generally may take the deposition of another party without leave of court. Fed. R. Civ. P. 30(a)(2)(A) provides that leave of court is required to take a deposition if (i) the parties have not stipulated to the deposition, and (ii) the deposition would result in more than 10 depositions by one of the parties, the deponent was already deposed in the case, or the party seeks to take the deposition before scheduling a discovery conference with the opposing party.

The use of depositions as a discovery tool in Tax Court practice has evolved gradually over time. When the Court adopted its first discovery rules in 1973, discovery was limited to interrogatories and requests for production of documents. At the time, the Notes to Rule 70(a) stated that any additional benefits that might be associated with depositions as a discovery tool were outweighed by the problems and burdens depositions would entail for the parties and the Court. See 60 T.C. 1097. The Court's reluctance to permit discovery depositions "was based primarily on the concern for the burden and cost imposed on litigants". H. Dubroff, Recent Developments In The Business And Procedures Of The United States Tax Court, 52 Alb. L. Rev. 33, 222 (1987-88).

By 1979, the Court's position with regard to discovery depositions began to change, and it added Rule 74 (then titled "Depositions for Discovery Purposes"), which provides that, upon consent of all the parties to a case, a deposition for discovery purposes may be taken of either a party or a nonparty witness. The Notes to Rule 74 stated that the Rule limits the availability of depositions to avoid the excessive and abusive use of discovery depositions. See 71 T.C. at 1195. A few years later, in 1982, the Court added Rule 75 (titled "Depositions for Discovery Purposes--Without Consent of Parties in Certain Cases") which provides for the taking of discovery depositions of non-party witnesses--"an extraordinary method of discovery which may be used only where the information sought cannot be obtained by informal consultation or by other discovery methods." See 79 T.C. at 1141-1142. A deposition under Rule 75 may only be taken after a notice of trial has been issued or after a case has been assigned to a Judge or Special Trial Judge, and within the time for completion of discovery under Rule 70(a)(2). Finally, in 1990, the Court added Rule 76 (titled "Deposition of Expert Witnesses") which authorizes depositions of expert witnesses upon

the consent of all the parties (under Rule 74) or, in extraordinary cases, without the consent of all the parties. The Notes to Rule 76 stated that the Court's experience led the Court to reconsider the utility of depositions of experts and "it is expected that such depositions will not only enhance trial preparation and hence the presentation of evidence at trial, but will also increase the number of settlements in cases requiring the assistance of experts." See 93 T.C. at 910-911.

The Tax Court Rules of Practice and Procedure currently do not permit a party to take the deposition of another party for discovery purposes absent consent to the deposition under Rule 74.[1] In some cases, a Judge or Special Trial Judge may conclude that the inability of one party to depose an opposing party may both hamper a party's ability to prepare for trial and unnecessarily complicate the presentation of evidence at trial.

Proposed Amendment

The Court proposes to amend Rule 75 to provide that a party may move to take the deposition of another party or the Court in the exercise of its discretion may order the deposition of a party sua sponte. The deposition of a party under Rule 75 is an extraordinary method of discovery and may be taken only pursuant to an order of the Court. Whether to issue such an order is a matter solely within the discretion of the Judge or Special Trial Judge who is responsible for the case. Discretion may be exercised either sua sponte or pursuant to a motion filed by a party. A Judge or Special Trial Judge should only order such a deposition where the testimony or information sought practicably cannot be obtained through informal communications or the Court's normal discovery procedures and to the extent consistent with Rule 70(b)(2). An additional amendment to Rule 75 is proposed in section V (Electronically Stored Information).

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[1] Since 1973, Title VIII of the Court's Rules of Practice and Procedure (Rules 80-85) have permitted depositions of party and non-party witnesses for the (non-discovery) purpose of making testimony and documents available as evidence at trial. See 60 T.C. 1103-1114 (1973). Such depositions may be taken in a pending case before trial (Rule 81), in anticipation of commencing a case (Rule 82), or in connection with the trial (Rule 83).

V. Electronically Stored Information

Subparagraph (a)(1) of Rule 70 is deleted and replaced with the following and new subparagraph (b)(3) is added to the Rule. [Subparagraphs (a)(2) and (3), subparagraphs (b)(1) and (2), and paragraphs (c), (d), (e), and (f) remain unchanged and are omitted here.]

RULE 70. GENERAL PROVISIONS

(a) General: (1) *Methods and Limitations of Discovery:* In conformity with these Rules, a party may obtain discovery by written interrogatories (Rule 71), by production of documents, electronically stored information, or things (Rules 72 and 73), by depositions upon consent of the parties (Rule 74), by depositions without consent of the parties in certain cases (Rule 75), or by depositions of expert witnesses (Rule 76). However, the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures provided in these Rules. Discovery is not available under these Rules through depositions except to the limited extent provided in Rules 74, 75, and 76. See Rules 91(a) and 100 regarding relationship of discovery to stipulations.

* * * * * * *

(b) Scope of Discovery:

* * * * * * *

(3) *Specific Limitations on Electronically Stored Information:* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 70(b)(2). The Court may specify conditions for the discovery.

* * * * * * *

Explanation

Introduction

The Federal Rules of Civil Procedure governing discovery procedures state that, in addition to "documents", "records", and "things", a discovery request may encompass any type of information that is stored electronically in any medium from which information can be obtained. See 234 F.R.D. 219 (Dec. 1, 2006). For example, the Advisory Committee Notes underlying Fed. R. Civ. P. 34 (Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, For Inspection and Other Purposes), state in pertinent part:

> Discoverable information often exists in both paper and electronic form and the same or similar information might exist in both. The items listed in Rule 34(a) show different ways in which information may be recorded or stored. Images, for example, might be hard-copy documents or electronically stored information. The wide variety of computer systems currently in use, and the rapidity of technological change, counsel against a limiting or precise definition of electronically stored information. Rule 34(a)(1) is expansive and includes any type of information that is stored electronically. A common example often sought in discovery is electronic communications, such as e-mail. The rule covers--either as documents or as electronically stored information--information "stored in any medium," to encompass future developments in computer technology. Rule 34(a)(1) is intended to be broad enough to cover all current types of computer-based information and flexible enough to encompass future changes and developments.
>
> Reference elsewhere in the rules to "electronically stored information" should be understood to invoke this expansive approach.

However, the Advisory Committee Notes underlying Fed. R. Civ. P. 26(b)(2)(B) recognize that the burden and cost of locating, retrieving, and providing discovery of some electronically stored information may make such information not reasonably accessible. Thus, Fed. R. Civ. P. 26(b)(2)(B) provides that the Court may limit discovery from such sources in appropriate circumstances. The Advisory Committee Notes underlying Fed. R. Civ. P. 26(f)(3) state that the parties should engage in early discussions of the forms of production of

electronically stored information so that both parties' needs might be met and to "help avoid the expense and delay of searches or productions using inappropriate forms."

In addition, Fed. R. Civ. P. 37(e) limits the imposition of sanctions for failure to provide electronically stored information in certain circumstances. The Advisory Committee Notes underlying Fed. R. Civ. P. 37(e) (formerly rule 37(f)) state as follows:

> **Subdivision (f).** Subdivision (f) is new. It focuses on a distinctive feature of computer operations, the routine alteration and deletion of information that attends ordinary use. Many steps essential to computer operation may alter or destroy information for reasons that have nothing to do with how that information might relate to litigation. As a result, the ordinary operation of computer systems creates a risk that a party may lose potentially discoverable information without culpable conduct on its part. Under Rule 37(f), absent exceptional circumstances, sanctions cannot be imposed for loss of electronically stored information resulting from the routine, good-faith operation of an electronic information system.
>
> Rule 37(f) applies only to information lost due to the "routine operation of an electronic information system"--the ways in which such systems are generally designed, programmed, and implemented to meet the party's technical and business needs. The "routine operation" of computer systems includes the alteration and overwriting of information, often without the operator's specific direction or awareness, a feature with no direct counterpart in hard-copy documents. Such features are essential to the operation of electronic information systems.

Information subject to discovery in a Tax Court case may be stored electronically in a variety of devices and formats. In this regard, electronically stored information is different from paper records, documents, and tangible things. Electronically stored information can pose unique discovery problems due to the volume of such information, the lack of accessibility to such information, the format in which it is stored and/or produced, the potential for destruction or loss of such information, and difficulties related to assertion of a privilege and/or inadvertent waiver of a privilege. The Tax Court Rules of Practice and Procedure currently do not make reference to the

discovery or use of electronically stored information in Tax Court proceedings.

Proposed Amendment

The Court proposes to amended its Rules[2] to include an express reference to electronically stored information and to provide specific rules applicable to the discovery of electronically stored information. The amendments are intended to clarify that electronically stored information generally is subject to discovery in Tax Court proceedings and that a cooperative effort may be required to ensure that such information is disclosed in a form or format that will be useful to the parties and the Court. The term "electronically stored information" is intended to be broad enough to cover all current types of computer-based information and flexible enough to encompass future changes and technological developments.

The Court proposes to amend Rule 70(a)(1) to include a reference to electronically stored information and to add new subparagraph (b)(3) to the Rule to prescribe possible limits on discovery of electronically stored information. See Fed. R. Civ. P. 26(b)(2)(B).

Paragraph (e) of Rule 71 is deleted and replaced with the following. [Paragraphs (a), (b), (c), and (d) remain unchanged and are omitted here.]

RULE 71. INTERROGATORIES

* * * * * * *

(e) Option To Produce Business Records: If the answer to an interrogatory may be derived or ascertained from the business records (including electronically stored information) of the party upon whom the interrogatory has been served, or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable

[2] The Court proposes to amend Rules 70(a) and (b), 71(e), 72(a) and (b), 73(a), (b), and (c), 75(b), 76(d)(2), 80(a), 81(a) and (b), 82, 100, 103(a), 104(e), 147(a), (b), and (d), and 181)

opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

Explanation

The Court proposes to amend Rule 71(e) to include a reference to discovery of electronically stored information. An additional amendment to Rule 71 is proposed in section III (Limitation on Number of Interrogatories).

Paragraphs (a) and (b) of Rule 72 are deleted and replaced with the following. [Paragraph (c) remains unchanged and is omitted here.]

RULE 72. PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS

(a) Scope: Any party may, without leave of Court, serve on any other party a request to:

(1) Produce and permit the party making the request, or someone acting on such party's behalf, to inspect and copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data compilations stored in any medium from which information can be obtained, either directly or translated, if necessary, by the responding party into a reasonably usable form), or to inspect and copy, test, or sample any tangible thing, to the extent that any of the foregoing items are in the possession, custody, or control of the party on whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(b) Procedure:

(1) *Contents of the Request:* The request shall set forth the items to be inspected, either by individual item or category, describe each item and category with reasonable particularity, and may specify the form or forms in which electronically stored information is to be produced. It shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) *Responses and Objections:* The party upon whom the request is served shall serve a written response within 30 days after service of the request. The Court

may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, then that part shall be specified. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form--or if no form was specified in the request--the party shall state the form or forms it intends to use. To obtain a ruling on an objection by the responding party, on a failure to respond, or on a failure to produce or permit inspection, the requesting party shall file an appropriate motion with the Court and shall annex thereto the request, with proof of service on the other party, together with the response and objections if any. Prior to a motion for such a ruling, neither the request nor the response shall be filed with the Court.

(3) *Producing Documents or Electronically Stored Information:* Unless otherwise stipulated or ordered by the Court, these procedures apply to producing documents or electronically stored information: (A) A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request; (B) If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and (C) A party need not produce the same electronically stored information in more than one form.

* * * * * * *

Explanation

The Court proposes to amend Rule 72(a) and (b) to include references to discovery of electronically stored information and to prescribe specific procedures applicable to the production of electronically stored information. See Fed. R. Civ. P. 34.

Paragraphs (a), (b), and (c) of Rule 73 are deleted and replaced with the following.

RULE 73. EXAMINATION BY TRANSFEREES

(a) General: Upon application to the Court and subject to these Rules, a transferee of property of a taxpayer shall be entitled to examine before trial the books, papers, documents, correspondence, electronically stored information, and other evidence of the taxpayer or of a preceding transferee of the taxpayer's property, but only if the transferee making the application is a petitioner seeking redetermination of such transferee's liability in respect of the taxpayer's tax liability (including interest, additional amounts, and additions provided by law). Such books, papers, documents, correspondence, electronically stored information, and other evidence may be made available to the extent that the same shall be within the United States, will not result in undue hardship to the taxpayer or preceding transferee, and in the opinion of the Court are necessary in order to enable the transferee to ascertain the liability of the taxpayer or preceding transferee.

(b) Procedure: A petitioner desiring an examination permitted under paragraph (a) shall file an application with the Court, showing that such petitioner is entitled to such an examination, describing the documents, electronically stored information, and other materials sought to be examined, giving the names and addresses of the persons to produce the same, and stating a reasonable time and place where the examination is to be made. If the Court shall determine that the applicable requirements are satisfied, then it shall issue a subpoena, signed by a Judge, directed to the appropriate person and ordering the production at a designated time and place of the documents, electronically stored information, and other materials involved. If the person to whom the subpoena is directed shall object thereto or to the production involved, then such person shall file the objections and the reasons therefor in writing with the Court, and serve a copy thereof upon the applicant, within 10 days after service of the subpoena or on or before such earlier time as may be specified in the subpoena for compliance. To obtain a ruling on such objections, the applicant for the subpoena shall file an appropriate motion with the Court. In all respects not inconsistent with the provisions of this Rule, the provisions of Rule 72(b) shall apply where appropriate.

(c) Scope of Examination: The scope of the examination authorized under this Rule shall be as broad as is authorized under Rule 72(a), including, for example, the copying of such documents, electronically stored information, and materials.

Explanation

The Court proposes to amend Rule 73(a), (b), and (c) to include references to discovery of electronically stored information.

Paragraph (b) of Rule 75 is deleted and replaced with the following. [Paragraphs (a), (c), (d), and (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, electronically stored information, or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, electronically stored information, 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 electing small business corporation (as described in Code section 1371(a)), and an issue in the case involves an adjustment with respect to such corporation. See Title XXIV, relating to partnership actions, brought under provisions first enacted by the Tax Equity and Fiscal Responsibility Act of 1982.

* * * * * * *

Explanation

The Court proposes to amend Rule 75(b) to include references to the discovery of electronically stored information. An additional amendment to Rule 75 is proposed in section IV (Depositions of a Party (Without Consent)).

Paragraph (d) of Rule 76 is deleted and replaced with the following. [Paragraphs (a), (b), (c), and (e) remain unchanged and are omitted here.]

RULE 76. DEPOSITION OF EXPERT WITNESSES

* * * * * * *

(d) Procedure: (1) *In General:* A party desiring to depose an expert witness under paragraph (a)(2) of this Rule shall file a written motion and shall set forth therein the matters specified in subparagraph (2). The Court shall take such action on the motion as it deems appropriate.

(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:

(A) The name and address of the witness to be examined;

(B) a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition of the witness to be examined;

(C) a statement of issues in controversy to which the expected testimony of the expert witness, or the document, electronically stored information, or thing, relates, and the reasons for deposing the witness;

(D) the time and place proposed for the deposition;

(E) the officer before whom the deposition is to be taken;

(F) any provision desired with respect to the payment of the costs, expenses, fees, and charges relating to the deposition (see paragraph (g)); and

(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.)

If the movant proposes to take the deposition of the expert witness on written questions, then the movant shall annex to the motion a copy of the questions to be propounded. The movant shall also show that prior notice of the motion has been given to the expert witness whose deposition is sought and to each other party, or counsel for each other party, and shall state the position of each of these persons with respect to the motion, in accordance with Rule 50(a).

* * * * * * *

Explanation

The Court proposes to amend Rule 76(d) to include references to discovery of electronically stored information. An additional amendment to Rule 76 is proposed in section II (Service of Papers).

Paragraph (a) of Rule 80 is deleted and replaced with the following. [Paragraph (b) remains unchanged and is omitted here.]

RULE 80. GENERAL PROVISIONS

(a) General: On complying with the applicable requirements, depositions to perpetuate evidence may be taken in a pending case before trial (Rule 81), or in anticipation of commencing a case in this Court (Rule 82), or in connection with the trial (Rule 83). Depositions under this Title may be taken only for the purpose of making testimony or any document, electronically stored information, or thing available as evidence in the circumstances herein authorized by the applicable Rules. Depositions for discovery purposes may be taken only in accordance with Rules 74, 75, and 76.

* * * * * * *

Explanation

The Court proposes to amend Rule 80(a) to include a reference to electronically stored information.

Paragraphs (a) and (b) of Rule 81 are deleted and replaced with the following. [Paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) remain unchanged and are omitted here.]

RULE 81. DEPOSITIONS IN PENDING CASE

(a) Depositions To Perpetuate Testimony: A party to a case pending in the Court, who desires to perpetuate testimony or to preserve any document, electronically stored information, or thing, shall file an application pursuant to these Rules for an order of the Court authorizing such party to take a deposition for such purpose. Such depositions shall be taken only where there is a substantial risk that the person or document, electronically stored information, or thing involved will not be available at the trial of the case, and shall relate only to

testimony or document, electronically stored information, or thing which is not privileged and is material to a matter in controversy.

(b) The Application: (1) *Content of Application:* The application to take a deposition pursuant to paragraph (a) of this Rule shall be signed by the party seeking the deposition or such party's counsel, and shall show the following:

(A) The names and addresses of the persons to be examined;

(B) the reasons for deposing those persons rather than waiting to call them as witnesses at the trial;

(C) the substance of the testimony which the party expects to elicit from each of those persons;

(D) a statement showing how the proposed testimony or document, electronically stored information, or thing is material to a matter in controversy;

(E) a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition by the persons to be examined;

(F) the time and place proposed for the deposition;

(G) the officer before whom the deposition is to be taken;

(H) the date on which the petition was filed with the Court, and whether the pleadings have been closed and the case placed on a trial calendar;

(I) any provision desired with respect to payment of expenses, fees, and charges relating to the deposition (see paragraph (g) of this Rule, and Rule 103); and

(J) if the applicant proposes to video record the deposition, then the application shall so state, and shall show the name and address of the video recorder operator and of the operator's employer. (The video recorder operator and the officer before whom the deposition is to be taken may be the same person. See subparagraph (2) of paragraph (j) of this Rule.)

The application shall also have annexed to it a copy of the questions to be propounded, if the deposition is to be taken on written questions. For the form of application to take a deposition, see Appendix I.

* * * * * * *

Explanation

The Court proposes to amend Rule 81(a) and (b) to include references to electronically stored information. An additional amendment to Rule 81 is proposed in section II (Service of Papers).

Rule 82 is deleted and replaced with the following.

RULE 82. DEPOSITIONS BEFORE COMMENCEMENT OF CASE

A person who desires to perpetuate testimony or to preserve any document, electronically stored information, or thing regarding any matter that may be cognizable in this Court may file an application with the Court to take a deposition for such purpose. The application shall be entitled in the name of the applicant, shall otherwise be in the same style and form as apply to a motion filed with the Court, and shall show the following: (1) The facts showing that the applicant expects to be a party to a case cognizable in this Court but is at present unable to bring it or cause it to be brought; (2) the subject matter of the expected action and the applicant's interest therein; and (3) all matters required to be shown in an application under paragraph (b)(1) of Rule 81 except item (H) thereof. Such an application will be entered upon a special docket, and service thereof and pleading with respect thereto will proceed subject to the requirements otherwise applicable to a motion. A hearing on the application may be required by the Court. If the Court is satisfied that the perpetuation of the testimony or the preservation of the document, electronically stored information, or thing may prevent a failure or delay of justice, then it will make an order authorizing the deposition and including such other terms and conditions as it may deem appropriate consistently with these Rules. If the deposition is taken, and if thereafter the expected case is commenced in this Court, then the deposition may be used in that case subject to the Rules which would apply if the deposition had been taken after commencement of the case.

Explanation

The Court proposes to amend Rule 82 to include references to electronically stored information.

Rule 100 is deleted and replaced with the following.

RULE 100. APPLICABILITY

The Rules in this Title apply according to their terms to written interrogatories (Rule 71), production of documents, electronically stored information, or things (Rule 72), examination by transferees (Rule 73), depositions (Rules 74, 75, 76, 81, 82, 83, and 84), and requests for admission (Rule 90). Such procedures may be used in anticipation of the stipulation of facts required by Rule 91, but the existence of such procedures or their use does not excuse failure to comply with the requirements of that Rule. See Rule 91(a)(2).

Explanation

The Court proposes to amend Rule 100 to include a reference to electronically stored information.

Rule 103(a) is deleted and replaced with the following. [Paragraph (b) remains unchanged and is omitted here.]

RULE 103. PROTECTIVE ORDERS

(a) Authorized Orders: Upon motion by a party or any other affected person, and for good cause shown, the Court may make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, including but not limited to one or more of the following:

(1) That the particular method or procedure not be used.

(2) That the method or procedure be used only on specified terms and conditions, including a designation of the time or place.

(3) That a method or procedure be used other than the one selected by the party.

(4) That certain matters not be inquired into, or that the method be limited to certain matters or to any other extent.

(5) That the method or procedure be conducted with no one present except persons designated by the Court.

(6) That a deposition or other written materials, after being sealed, be opened only by order of the Court.

(7) That a trade secret or other information not be disclosed or be disclosed only in a designated way.

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be

opened as directed by the Court.

(9) That expense involved in a method or procedure be borne in a particular manner or by specified person or persons.

(10) That documents or records (including electronically stored information) be impounded by the Court to ensure their availability for purpose of review by the parties prior to trial and use at the trial.

If a discovery request has been made, then the movant shall attach as an exhibit to a motion for a protective order under this Rule a copy of any discovery request in respect of which the motion is filed.

* * * * * * *

Explanation

The Court proposes to amend Rule 103(a) to include references to electronically stored information.

New paragraph (e) is added to Rule 104. [Paragraphs (a), (b), (c), and (d) remain unchanged and are omitted here.]

RULE 104. ENFORCEMENT ACTION AND SANCTIONS

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(e) Failure to Provide Electronically Stored Information: Absent exceptional circumstances, sanctions may not be imposed under this Rule on a party for failing to provide electronically stored information that was lost as a result of the routine, good-faith operation of an electronic information system.

Explanation

The Court proposes to amend Rule 104 by adding new paragraph (e) to limit the imposition of sanctions for failure to provide electronically stored information in certain circumstances. See Fed. R. Civ. P. 37(e).

Paragraphs (a), (b), and (d) of Rule 147 are deleted and replaced with the following. [Paragraphs (c) and (e) remain unchanged and are omitted here.]

RULE 147. SUBPOENAS

(a) Attendance of Witnesses; Form; Issuance: Every subpoena shall be issued under the seal of the Court, shall state the name of the Court and the caption of the case, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. A subpoena, including a subpoena for the production of documentary evidence or electronically stored information, signed and sealed but otherwise blank, shall be issued to a party requesting it, who shall fill it in before service. Subpoenas may be obtained at the Office of the Clerk in Washington, D.C., or from a trial clerk at a trial session. See Code sec. 7456(a).

(b) Production of Documentary Evidence and Electronically Stored Information: A subpoena may also command the person to whom it is directed to produce the books, papers, documents, electronically stored information, or tangible things designated therein, and may specify the form or forms in which electronically stored information is to be produced. The Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, electronically stored information, or tangible things.

* * * * * * *

(d) Subpoena for Taking Depositions: (1) *Issuance and Response:* The order of the Court approving the taking of a deposition pursuant to Rule 81(b)(2), the executed stipulation pursuant to Rule 81(d), or the service of the notice of deposition pursuant to Rule 74(b) or 75(c), constitutes authorization for issuance of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things, which come within the scope of the order or stipulation pursuant to which the deposition is taken. Within 15 days after service of the subpoena or such earlier time designated therein for compliance, the person to

whom the subpoena is directed may serve upon the party on whose behalf the subpoena has been issued written objections to compliance with the subpoena in any or all respects. Such objections should not include objections made, or which might have been made, to the application to take the deposition pursuant to Rule 81(b)(2) or to the notice of deposition under Rule 74(c) or 75(d). If an objection is made, the party serving the subpoena shall not be entitled to compliance therewith to the extent of such objection, except as the Court may order otherwise upon application to it. Such application for an order may be made, with notice to the other party and to any other objecting persons, at any time before or during the taking of the deposition, subject to the time requirements of Rule 70(a)(2) or 81(b)(2). As to availability of protective orders, see Rule 103; and, as to enforcement of such subpoenas, see Rule 104.

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Explanation

The Court proposes to amend Rule 147(a), (b), and (d) to include references to electronically stored information.

Rule 181 is deleted and replaced with the following.

RULE 181. POWERS AND DUTIES

Subject to the specifications and limitations in orders designating Special Trial Judges and in accordance with the applicable provisions of these Rules, Special Trial Judges have and shall exercise the power to regulate all proceedings in any matter before them, including the conduct of trials, pretrial conferences, and hearings on motions, and to do all acts and take all measures necessary or proper for the efficient performance of their duties. They may require the production before them of evidence upon all matters embraced within their assignment, including the production of all books, papers, vouchers, documents, electronically stored information, and writings applicable thereto, and they have the authority to put witnesses on oath and to examine them. Special Trial Judges may rule upon the admissibility of evidence, in accordance with the provisions of Code sections 7453 and 7463, and may exercise such further and incidental authority, including ordering the issuance of subpoenas, as may be necessary for the conduct of trials or other proceedings.

Explanation

The Court proposes to amend Rule 181 to include a reference to electronically stored information.

VI. Contemporaneous Transmission of Testimony From Different Location

New paragraph (b) is added to Rule 143 and current paragraphs (b), (c), (d), (e), and (f) are redesignated as paragraphs (c), (d), (e), (f), and (g), respectively. [Paragraph (a) remains unchanged and is omitted here.]

RULE 143. EVIDENCE

* * * * * * *

(b) Testimony: The testimony of a witness generally must be taken in open court except as otherwise provided by the Court or these Rules. For good cause in compelling circumstances and with appropriate safeguards, the Court may permit testimony in open court by contemporaneous transmission from a different location.

(c) Ex Parte Statements: Ex parte affidavits, statements in briefs, and unadmitted allegations in pleadings do not constitute evidence. As to allegations in pleadings not denied, see Rules 36(c) and 37(c) and (d).

(d) Depositions: Testimony taken by deposition shall not be treated as evidence in a case until offered and received in evidence. Error in the transcript of a deposition may be corrected by agreement of the parties, or by the Court on proof it deems satisfactory to show an error exists and the correction to be made, subject to the requirements of Rules 81(h)(1) and 85(e). As to the use of a deposition, see Rule 81(i).

(e) Documentary Evidence: (1) *Copies:* A copy is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original or in the circumstances it would be unfair to admit the copy in lieu of the original. Where the original is admitted in evidence, a clearly legible copy may be substituted later for the original or such part thereof as may be material or relevant, upon leave granted in the discretion of the Court.

(2) *Return of Exhibits:* Exhibits may be disposed of as the Court deems advisable. A party desiring the return at such party's expense of any exhibit belonging to such party, shall, within 90 days after the decision of the case

by the Court has become final, make written application to the Clerk, suggesting a practical manner of delivery. If such application is not timely made, the exhibits in the case will be destroyed.

(f) Interpreters: The parties ordinarily will be expected to make their own arrangements for obtaining and compensating interpreters. However, the Court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation, which compensation shall be paid by one or more of the parties or otherwise as the Court may direct.

(g) Expert Witness Reports: (1) Unless otherwise permitted by the Court upon timely request, any party who calls an expert witness shall cause that witness to prepare a written report for submission to the Court and to the opposing party. The report shall set forth the qualifications of the expert witness and shall state the witness's opinion and the facts or data on which that opinion is based. The report shall set forth in detail the reasons for the conclusion, and it will be marked as an exhibit, identified by the witness, and received in evidence as the direct testimony of the expert witness, unless the Court determines that the witness is not qualified as an expert. Additional direct testimony with respect to the report may be allowed to clarify or emphasize matters in the report, to cover matters arising after the preparation of the report, or otherwise at the discretion of the Court. After the case is calendared for trial or assigned to a Judge or Special Trial Judge, each party who calls any expert witness shall serve on each other party, and shall submit to the Court, not later than 30 days before the call of the trial calendar on which the case shall appear, a copy of all expert witness reports prepared pursuant to this subparagraph. An expert witness's testimony will be excluded altogether for failure to comply with the provisions of this paragraph, unless the failure is shown to be due to good cause and unless the failure does not unduly prejudice the opposing party, such as by significantly impairing the opposing party's ability to cross-examine the expert witness or by denying the opposing party the reasonable opportunity to obtain evidence in rebuttal to the expert witness's testimony.

(2) The Court ordinarily will not grant a request to permit an expert witness to testify without a written report where the expert witness's testimony is based on third-party contacts, comparable sales, statistical data, or other detailed, technical information. The Court may grant such a request, for example, where the expert witness testifies only with respect to industry practice or only in rebuttal to another expert witness.

(3) For circumstances under which the transcript of the deposition of an expert witness may serve as the written report required by subparagraph (1), see Rule 76(e)(1).

Explanation

Introduction

Rule 43(a) of the Federal Rules of Civil Procedure states that "For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." The Advisory Committee Notes underlying Fed. R. Civ. P. 43 include the following cautionary language:

> Contemporaneous transmission of testimony from a different location is permitted only on showing good cause in compelling circumstances. The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truthtelling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition. Transmissions cannot be justified merely by showing that it is inconvenient for the witness to attend the trial.
>
> The most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as an accident or illness, but remains able to testify from a different place. Contemporaneous transmission may be better than an attempt to reschedule the trial, particularly if there is a risk that other--and perhaps more important--witnesses might not be available at a later time.
>
> Other possible justifications for remote transmission must be approached cautiously. Ordinarily depositions, including video depositions, provide a superior means of securing the testimony of a witness who is beyond the reach of a trial subpoena, or of resolving difficulties in scheduling a trial that can be attended by all witnesses. Deposition procedures ensure the opportunity of all parties to be represented while the witness is testifying. An unforseen need for the testimony of a remote witness that arises during trial, however, may establish good cause and compelling

circumstances. Justification is particularly likely if the need arises from the interjection of new issues during trial or from the unexpected inability to present testimony as planned from a different witness.

Good cause and compelling circumstances may be established with relative ease if all parties agree that testimony should be presented by transmission. The court is not bound by a stipulation, however, and can insist on live testimony. Rejection of the parties' agreement will be influenced, among other factors, by the apparent importance of the testimony in the full context of the trial.

A party who could reasonably foresee the circumstances offered to justify transmission of testimony will have special difficulty in showing good cause and the compelling nature of the circumstances. Notice of a desire to transmit testimony from a different location should be given as soon as the reasons are known, to enable other parties to arrange a deposition, or to secure an advance ruling on transmission so as to know whether to prepare to be present with the witness while testifying.

No attempt is made to specify the means of transmission that may be used. Audio transmission without video images may be sufficient in some circumstances, particularly as to less important testimony. Video transmission ordinarily should be preferred when the cost is reasonable in relation to the matters in dispute, the means of the parties, and the circumstances that justify transmission. Transmission that merely produces the equivalent of a written statement ordinarily should not be used.

Safeguards must be adopted that ensure accurate identification of the witness and that protect against influence by persons present with the witness. Accurate transmission likewise must be assured.

Other safeguards should be employed to ensure that advance notice is given to all parties of foreseeable circumstances that may lead the proponent to offer testimony by transmission. Advance notice is important to protect the opportunity to argue for attendance of the witness at trial. Advance notice also ensures an opportunity to depose the witness, perhaps by video

record, as a means of supplementing transmitted testimony.

The Tax Court is a court of national jurisdiction--its Judges and Special Trial Judges travel to 75 cities to conduct hearings and trial sessions, and its subpoena power extends nationwide so that a witness may be compelled to attend a trial or hearing from anywhere in the United States. I.R.C. sec. 7456. The Court also conducts motions hearings in Washington, D.C., and these hearings occasionally require witness testimony. Rules 50(b)(2), 130(a), Tax Court Rules of Practice and Procedure.

Situations sometimes arise in which a witness is unable to attend a trial or hearing for unexpected reasons, such as an accident or illness, and the parties may suffer substantial delays and incur significant additional costs if it is necessary to reschedule the trial or hearing to accommodate such a witness. However, if the witness is able to testify from a different location, the interests of justice may be better served by accepting the witness's testimony by contemporaneous transmission, particularly if there is a risk that other--and perhaps more important--witnesses might not be available at a later time.

The Tax Court has a "high-tech" courtroom enabling the Court to receive testimony from a witness who is in a different location. The Tax Court Rules of Practice and Procedure currently do not provide for the contemporaneous transmission of testimony from a different location. Recognizing that situations may arise in which it is necessary and appropriate for the Court to receive testimony from a witness in a different location, the Court should articulate a standard for receiving such testimony.

Proposed Amendment

The Court proposes to amend Rule 143 by adding new paragraph (b) to provide that the Court may permit testimony in open court by contemporaneous transmission from another location. See Fed. R. Civ. P. 43(a).

VII. Disciplinary Matters

New paragraphs (b) and (d) are added to Rule 202. Current paragraphs (b), (c), (d), (e), (f), and (g) are redesignated as paragraphs (c), (e), (f), (g), (h), and (i), respectively. [Paragraph (a) remains unchanged and is omitted here.]

RULE 202. DISCIPLINARY MATTERS

* * * * * * *

(b) Reporting Convictions and Discipline: A member of the Bar of this Court who has been convicted of any felony or of any lesser crime described in paragraph (a)(1), who has been disciplined as described in paragraph (a)(2), or who has been disbarred or suspended from practice before an agency of the United States Government exercising professional disciplinary jurisdiction, shall inform the Chair of the Court's Committee on Admissions, Ethics, and Discipline of such action in writing no later than 30 days after entry of the judgment of conviction or order of discipline.

(c) Disciplinary Actions: Discipline may consist of disbarment, suspension from practice before the Court, reprimand, admonition, or any other sanction that the Court may deem appropriate. The Court may, in the exercise of its discretion, immediately suspend a practitioner from practice before the Court until further order of the Court. Except as provided in paragraph (d), no person shall be suspended for more than 60 days or disbarred until such person has been afforded an opportunity to be heard. A Judge of the Court may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any trial or hearing.

(d) Interim Suspension Pending Final Disposition of Disciplinary Proceedings: If a member of the Bar of this Court is convicted in any court of the United States, or of the District of Columbia, or of any State, territory, commonwealth, or possession of the United States of any felony or of any lesser crime described in paragraph (a)(1), then, notwithstanding the pendency of an appeal of the conviction, if any, the Court may, in the exercise of its discretion, immediately suspend such practitioner from practice before the Court pending final disposition of the disciplinary proceedings described in paragraph (e).

(e) Disciplinary Proceedings: Upon the occurrence or allegation of any event described in paragraph (a)(1) through (a)(4), except for any suspension imposed for 60 days or less pursuant to paragraph (c), the Court shall issue to the practitioner an order to show cause why the practitioner should not be disciplined or shall otherwise take appropriate action. The order to show cause shall direct that a written response be filed within such period as the Court may direct and shall set a prompt hearing on the matter before one or more Judges of the Court. If the disciplinary proceeding is predicated upon the complaint of a Judge of the Court, the hearing shall be conducted before a panel of three other Judges of the Court.

(f) Reinstatement: (1) A practitioner suspended for 60 days or less pursuant to paragraph (c) shall be automatically reinstated at the end of the period of suspension.

(2) A practitioner suspended for more than 60 days or disbarred pursuant to this Rule may not resume practice before the Court until reinstated by order of the Court.

(A) A disbarred practitioner or a practitioner suspended for more than 60 days who wishes to be reinstated to practice before the Court must file a petition for reinstatement. Upon receipt of the petition for reinstatement, the Court may set the matter for prompt hearing before one or more Judges of the Court. If the disbarment or suspension for more than 60 days was predicated upon the complaint of a Judge of the Court, any such hearing shall be conducted before a panel of three other Judges of the Court.

(B) In order to be reinstated before the Court, the practitioner must demonstrate by clear and convincing evidence in the petition for reinstatement and at any hearing that such practitioner's reinstatement will not be detrimental to the integrity and standing of the Court's Bar or to the administration of justice, or subversive of the public interest.

(C) No petition for reinstatement under this Rule shall be filed within 1 year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.

(g) Right to Counsel: In all proceedings conducted under the provisions of this Rule, the practitioner shall have the right to be represented by counsel.

(h) Appointment of Court Counsel: The Court, in its discretion, may appoint counsel to the Court to assist it with respect to any disciplinary matters.

(i) Jurisdiction: Nothing contained in this Rule shall be construed to deny to the Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Code Section 7456 or for costs under Code Section 6673(a)(2).

Explanation

Introduction

The Model Rules for Lawyer Disciplinary Enforcement, adopted by the American Bar Association House of Delegates in August 1989 and last amended in August 2002, recommend that a lawyer admitted to practice be referred to the appropriate lawyer disciplinary

agency in the jurisdiction with respect to the lawyer's conviction of a serious crime or the discipline of the lawyer in another jurisdiction. Mod. Rules Law. Displ. Enforce. rule 22 (Aug. 2002). The Model Rules also suggest that a court place a lawyer on interim suspension immediately upon proof that the lawyer has been found guilty of a serious crime, regardless of the pendency of an appeal. Mod. Rules Law. Displ. Enforce. rule 19 (Aug. 2002). As the commentaries to the Model Rules state, continued practice by a lawyer found guilty of a serious crime or judicially determined to be unfit leaves the public unprotected, exposes innocent clients to harm, and undermines public confidence in the legal profession. Similar rules are found in the rules of a number of State courts. See, e.g., Sup. Ct. Va. R. 8.3(e); Cal. Bus. & Prof. Code sec. 6068(o); D.C. Bar R. XI, sec. 10(c).

Proposed Amendment

The Court proposes to amend Rule 202 to add new paragraphs (b) and (d). Proposed new paragraph (b) would require a member of the Tax Court Bar to notify the Court within 30 days after: (1) Conviction of any felony, or conviction of any lesser crime described in paragraph (a)(1) of Rule 202; (2) imposition of discipline by any other court; and (3) disbarment or suspension from practice before an agency of the United States Government exercising professional disciplinary jurisdiction. Similar notice requirements are recommended by rule 22 of the Model Rules for Lawyer Disciplinary Enforcement, adopted by the ABA House of Delegates in August 1989 and last amended in August 2002, and are found in the rules of a number of State courts. See, e.g., Sup. Ct. Va. R. 8.3(e), Cal. Bus. & Prof. Code sec. 6068(o). Proposed new paragraph (d) would give the Court discretionary authority to suspend a member of the Bar who is convicted of certain serious crimes pending final disposition of the disciplinary proceedings in this Court. Again, similar provisions are recommended by rule 19 of the Model Rules for Lawyer Disciplinary Enforcement, and are found in the rules of various States. See, e.g., D.C. Bar R. XI, sec. 10(c). Various conforming amendments are also proposed.

VIII. Payment Of Tax Court Fees And Charges By Credit Card

Rule 11 is deleted and replaced with the following.

RULE 11. PAYMENTS TO THE COURT

All payments to the Court for fees or charges of the Court may be made in cash or by check, money order, or other draft made

payable to the order of "Clerk, United States Tax Court", and shall be mailed or delivered to the Clerk of the Court at Washington, D.C. The Court may also permit specified fees or charges to be paid by credit card. For the Court's address, see Rule 10(e). For particular payments, see Rules 12(c) (copies of Court records), 20(c) (filing of petition), 173(a)(2) (small tax cases), 200(a) (application to practice before Court), 200(g) (periodic registration fee), 271(c) (filing of petition for administrative costs), 281(c) (filing of petition for review of failure to abate interest), 291(d) (filing of petition for redetermination of employment status), 311(c) (filing of petition for declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return), 321(d) (filing of petition for determination of relief from joint and several liability on a joint return), 331(d) (filing of petition for lien and levy action), and 341(c) (filing of petition for whistleblower action). For fees and charges payable to the Court, see Appendix II.

Explanation

The Court proposes to amend Rule 11 to clarify that the Court may permit specified fees and charges to be paid by credit card. The Court's Web site provides specific information regarding the fees and charges that may be paid by credit card either in person at the Court, over the telephone, or through designated electronic payment systems. An additional conforming amendment to Rule 11 is proposed in section I (Ownership Disclosure Statements).