UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

July 6, 2012

PRESS RELEASE

Chief Judge Michael B. Thornton announced today that the United States Tax Court has adopted amendments to its Rules of Practice and Procedure. On December 28, 2011, the Court issued proposed amendments to the Rules and invited public comments thereon. After considering the comments received, the Court has made certain revisions to the proposed amendments.

In general, the adopted amendments align the Tax Court's Rules more closely with certain provisions of the Federal Rules of Civil Procedure as well as make other technical, clarifying, and conforming changes. The amendments also modify Rule 23 to reduce the number of copies required for papers filed with the Court and Rule 26 to require electronic filing by most practitioners. In addition, the Court has adopted new Rule 345 to provide privacy protections in whistleblower cases and new Form 18 that can be used as a substitute for an affidavit pursuant to 28 U.S.C. sec. 1746. The appendix to this press release includes the amendments and an explanation for each amendment.

The Rules amendments and new Form 18 generally are effective as of July 6, 2012, except the amendments to Rule 26 generally apply to cases in which the petition is filed on or after July 1, 2010.

The amendments announced today are available on the Court's Internet Web site, www.ustaxcourt.gov.

1. Number of Copies Filed, Font Requirements, and Return of Papers

Paragraphs (b), (d), and (g) of Rule 23 are deleted and replaced with the following. [Paragraphs (a), (c), (e), and (f) remain unchanged and are omitted here.]

RULE 23. FORM AND STYLE OF PAPERS

* * * * * * *

(b) Number Filed: For each document filed in paper form, there shall be filed the signed original and one conformed copy, except as otherwise provided in these Rules. Where filing is in more than one case (as a motion to consolidate, or in cases already consolidated), the number filed shall include one additional copy for each docket number in excess of one. If service of a paper is to be made by the Clerk, copies of any attachments to the original of such paper shall be attached to each copy to be served by the Clerk. As to stipulations, see Rule 91(b).

* * * * * * *

(d) Size and Style: Typewritten or printed papers shall be typed or printed only on one side, on opaque, unglazed paper, 8 1/2 inches wide by 11 inches long. All such papers shall have margins on both sides of each page that are no less than 1 inch wide, and margins on the top and bottom of each page that are no less than 3/4 inch wide. Text and footnotes shall appear in consistent typeface no smaller than 12 characters per inch produced by a typewriting element, 12-point type produced by a nonproportional print font (e.g., Courier), or 14-point type produced by a proportional print font (e.g., Times New Roman), with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations in excess of five lines shall be set off from the surrounding text and indented. Double-spaced lines shall be no more than three lines to the vertical inch, and single-spaced lines shall be no more than six lines to the vertical inch.

* * * * * * *

(g) Acceptance by the Clerk: Except as otherwise directed by the Court, the Clerk must not refuse to file a paper solely because it is not in the form prescribed by these Rules.

Explanation

Number of Copies Filed

Due to the successful implementation of electronic filing, service, and access, the Court no longer needs multiple copies of documents filed in paper form with the Court. Accordingly, Rule 23(b) is amended to require only the original and one conformed copy of each document filed in paper form with the Court in unconsolidated cases.

Font Requirements

Rule 23(d) currently provides that, for papers filed with the Court, "[t]ext and footnotes shall appear in consistent typeface no smaller than 12 characters per inch produced by a typewriting element or 12-point type produced by a nonproportional print font (e.g., Courier) * * *." A nonproportional (monospaced, or fixed-width) font uses the same spacing for each character, regardless of its shape or size. Rule 23(d) was last amended in 1997, effective August 1, 1998. The amendments were intended to reflect changes in document production technology and to ensure a consistent format and quantity of material per page in documents submitted to the Court, particularly where the Court, in its discretion, sets page limitations on certain documents. 109 T.C. 540.

Effective January 1, 2012, opinions of the Court are filed using 14-point Times New Roman font, which is a proportional typeface (i.e., it contains characters of varying widths). Accordingly, Rule 23(d) is amended to eliminate the nonproportional font requirement for documents filed by the parties. The amendment continues to allow fonts such as Courier or Courier New but also allows the use of proportional fonts such as Times New Roman.

Return of Papers

Rule 23(g) currently provides that the Court may return without filing any paper that does not conform to the requirements of the Rule. As originally adopted in 1983, effective January 16, 1984, Rule 23(g) provided that "[t]he Clerk may return without filing any paper that does not conform to the requirements of

this Rule." 81 T.C. 1048. The Rule was amended effective August 1, 1998, to clarify that the Court, rather than the Clerk, may return a document without filing. 109 T.C. 540.

It has been suggested that the 1998 amendment did not adequately clarify the meaning of Rule 23(g), resulting in some misunderstandings by appeals courts. See, e.g., Urtekar v. Commissioner, 302 Fed. Appx. 64, 66-67 and n.4 (3d Cir. 2008)(appearing to compare unfavorably Rule 23(g) with Fed. R. Civ. P. 5(d)(4) and holding that the Tax Court abused its discretion in denying the taxpayer's motion for leave to file a motion to vacate where the Court had previously rejected the taxpayer's incorrectly captioned motion to vacate or revise that would have been timely if filed). Rule 5(d)(4) of the Federal Rules of Civil Procedure provides:

> **(4) Acceptance by the Clerk.** The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

The Advisory Committee's note to the 1991 amendment to subdivision (d)(4) (formerly subdivision (e)) states:

> Several local district rules have directed the office of the clerk to refuse to accept for filing papers not conforming to certain requirements of form imposed by local rules or practice. This is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this revision. The enforcement of these rules and of the local rules is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form, and may be directed to so inform the court.

The Court therefore amends Rule 23(g) to conform its language with that of rule 5(d)(4) of the Federal Rules of Civil Procedure. Amended Rule 23(g) is substantially identical to rule 5(d)(4). However, as amended, Rule 23(g) includes language expressly stating that, as noted by the Advisory Committee with respect to rule 5(d)(4), the Court's judicial officers retain the discretion to enforce the Rules of the Court.

2. Number of Copies Filed in Small Tax Cases

Rule 175 is deleted.

~~RULE 175. NUMBER OF COPIES OF PAPERS~~

~~Only the signed original of each petition and each request for place of trial is required to be filed. For all other papers, only an original and two copies need be filed in a small tax case. An additional copy shall be filed for each additional docketed case which has been, or is requested to be, consolidated.~~

Explanation

Except as otherwise provided by the Rules, current Rule 23(b) requires the original and four conformed copies to be received for each paper filed with the Court, while current Rule 175 requires only the original and two copies for each paper filed in small tax cases. The effect of adopting the amendment to Rule 23(b) in part 1. to require only one conformed copy, combined with a conforming amendment to Rule 175, would be that the number of papers required to be filed in all cases would be the original and one conformed copy. As such, there is no longer any reason to provide a special rule for small tax cases. Accordingly, Rule 175 is deleted.

3. Mandatory eFiling for Most Represented Parties

Rule 26 is deleted and replaced with the following.

RULE 26. ELECTRONIC FILING

(a) General: The Court will accept for filing papers submitted, signed, or verified by electronic means that comply with procedures established by the Court. A paper filed electronically in compliance with the Court's electronic filing procedures is a written paper for purposes of these Rules.

(b) Electronic Filing Requirement: Electronic filing is required for all papers filed by parties represented by counsel in open cases. Mandatory electronic filing does not apply to:

(1) petitions and other papers not eligible for electronic filing in the Court (for a complete list of those papers, see the Court's eFiling Instructions on the Court's Web site at www.ustaxcourt.gov);

(2) self-represented petitioners, including petitioners assisted by low-income taxpayer clinics and Bar-sponsored pro bono programs; and

(3) any counsel in a case who, upon motion filed in paper form and for good cause shown, is granted an exception from the electronic filing requirement. Because a motion for exception does not extend any period provided by these Rules, the motion shall be accompanied by any document sought to be filed in paper form.

Explanation

On May 6, 2010, the Court announced that electronic filing (eFiling) is mandatory for most parties represented by counsel in cases in which the petition is filed on or after July 1, 2010. In accordance with rule 5(d)(3) of the Federal Rules of Civil Procedure, the mandatory eFiling policy allows reasonable exceptions. Rule 26, Electronic Filing, is amended to formalize the eFiling requirements. The amendment incorporates in new Rule 26(b) the procedures contained in the May 6, 2010, announcement. Consistent with those procedures, mandatory eFiling does not apply to self-represented taxpayers, including those assisted by low-income taxpayer clinics and Bar-sponsored pro bono programs. However, unlike the procedures explained in the Court's eFiling Instructions for Practitioners, the amendment contains no provision permitting practitioners with low-income taxpayer clinics or Bar-sponsored pro bono programs who enter appearances on behalf of taxpayers to be exempted from mandatory eFiling by filing a Notice To Be Exempt from eFiling in each case in which they wish to be exempt. It is contemplated that, if good cause exists for an exception from the eFiling requirement, such practitioners will file a motion for exception under Rule 26(b)(3). Mandatory eFiling applies to cases in which the petition is filed on or after July 1, 2010, except that a practitioner who filed a Notice To Be Exempt from eFiling in a case before July 6, 2012 is not required to file a motion for exception to maintain his or her exemption in that case unless otherwise directed by the Court.

Additionally, the amendment includes in Rule 26(a) most of the final sentence of rule 5(d)(3) of the Federal Rules of Civil Procedure. That language

clarifies that an electronically filed document constitutes a written paper for purposes of the Court's Rules.

4. Protection for Trial Preparation Materials and Draft Expert Witness Reports

Paragraphs (b) through (f) of Rule 70 are deleted and replaced with the following. [Paragraph (a) remains unchanged and is omitted here.]

RULE 70. GENERAL PROVISIONS

* * * * * * *

(b) Scope of Discovery: The information or response sought through discovery may concern any matter not privileged and which is relevant to the subject matter involved in the pending case. It is not ground for objection that the information or response sought will be inadmissible at the trial, if that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of the burden of proof involved. If the information or response sought is otherwise proper, it is not objectionable merely because the information or response involves an opinion or contention that relates to fact or to the application of law to fact. But the Court may order that the information or response sought need not be furnished or made until some designated time or a particular stage has been reached in the case or until a specified step has been taken by a party.

(c) Limitations on Discovery: (1) *General:* The frequency or extent of use of the discovery methods set forth in paragraph (a) shall be limited by the Court if it determines that: (A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the discovery is 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. The Court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 103.

(2) *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(c)(1). The Court may specify conditions for the discovery.

(3) *Documents and Tangible Things:*

(A) A party generally may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent), unless, subject to Rule 70(c)(4),

(i) they are otherwise discoverable under Rule 70(b); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) If the Court orders discovery of those materials, it must protect against disclosure of mental impressions, conclusions, opinions, or legal theories of a party's counsel or other representative concerning the litigation.

(4) *Experts:*

(A) Rule 70(c)(3) protects drafts of any expert witness report required under Rule 143(g), regardless of the form in which the draft is recorded.

(B) Rule 70(c)(3) protects communications between a party's counsel and any witness required to provide a report under Rule 143(g), regardless of the form of the communications, except to the extent the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's counsel provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's counsel provided and that the expert relied on in forming the opinions to be expressed.

(C) A party generally may not, by interrogatories or depositions, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial, except on a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(d) Party's Statements: * * *

(e) Use In Case: * * *

(f) Signing of Discovery Requests, Responses, and Objections: * * *

(g) Other Applicable Rules: For Rules concerned with the frequency and timing of discovery in relation to other procedures, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

Explanation

Effective December 1, 2010, rule 26(b)(4) of the Federal Rules of Civil Procedure was amended to provide that drafts of expert witness reports and certain pretrial communications between counsel and experts are not discoverable. Rule 70 is amended to provide the same protections from discovery as does rule 26. The amendments restructure paragraph (b) and add new paragraph (c)(4) addressing limitations on discovery regarding experts. The amendments contain most of the relevant language in rule 26(b)(4)(B), (C), and (D).

The Court further adds new paragraph (c)(3) to formalize the Court's application of the work product doctrine, set forth in rule 26(b)(3) of the Federal Rules of Civil Procedure. The provisions of rule 26(b)(3) were not included in the Court's discovery rules as adopted in 1973, but were given negative recognition in the notes at 60 T.C. 1098, which state in pertinent part:

The other areas, i.e., the "work product" of counsel and material prepared in anticipation of litigation or for trial, are generally intended to be outside the scope of allowable discovery under these Rules, and therefore the specific provisions for disclosure of such materials in FRCP 26(b)(3) have not been adopted.

The language of new paragraph (c)(3) is drawn from rule 26(b)(3)(A) and (B) of the Federal Rules of Civil Procedure and includes the exception to the work product privilege provided upon a showing of substantial need for the materials sought to be discovered. See Ratke v. Commissioner, 129 T.C. 45, 50-53 (2007).

Paragraph (g) of Rule 143 is deleted and replaced with the following. [Paragraphs (a) through (f) remain unchanged and are omitted here.]

RULE 143. EVIDENCE

* * * * * * *

(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 if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report, prepared and signed by the witness, shall contain:

(A) a complete statement of all opinions the witness expresses and the basis and reasons for them;

(B) the facts or data considered by the witness in forming them;

(C) any exhibits used to summarize or support them;

(D) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(E) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(F) a statement of the compensation to be paid for the study and testimony in the case.

(2) The report 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.

(3) 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.

(4) 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 74(d).

Explanation

The Court amends Rule 143(g), Expert Witness Reports, to include the contents of an expert witness report set forth in rule 26(a)(2)(B) of the Federal Rules of Civil Procedure and to use the terminology contained in rule 26(a)(2)(B)(ii).

5. Conforming Changes to Rule 121, Summary Judgment

Paragraphs (a), (b), and (d) through (f) of Rule 121 are deleted and replaced with the following. [Paragraph (c) remains unchanged and is omitted here.]

RULE 121. SUMMARY JUDGMENT

(a) General: Either party may move, with or without supporting affidavits or declarations, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 30 days after the pleadings are closed but within such time as not to delay the trial, and in any event no later than 60 days before the first day of the Court's session at which the case is calendared for trial, unless otherwise permitted by the Court.

(b) Motion and Proceedings Thereon: The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. An opposing written response, with or without supporting affidavits or declarations, shall be filed within such period as the Court may direct. A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law. A partial summary adjudication may be made which does not dispose of all the issues in the case.

* * * * * * *

(d) Form of Affidavits or Declarations; Further Testimony; Defense Required: Supporting and opposing affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant or declarant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit or a declaration shall be attached thereto or filed therewith. The Court may permit affidavits or declarations to be supplemented or opposed by answers to interrogatories, depositions, further affidavits or declarations, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or declarations or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine

dispute for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

(e) When Affidavits or Declarations Are Unavailable: If it appears from the affidavits or declarations of a party opposing the motion that such party cannot for reasons stated present by affidavit or declaration facts essential to justify such party's opposition, then the Court may deny the motion or may order a continuance to permit affidavits or declarations to be obtained or other steps to be taken or may make such other order as is just. If it appears from the affidavits or declarations of a party opposing the motion that such party's only legally available method of contravening the facts set forth in the supporting affidavits or declarations of the moving party is through cross-examination of such affiants or declarants or the testimony of third parties from whom affidavits or declarations cannot be secured, then such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits or declarations are genuinely disputed.

(f) Affidavits or Declarations Made in Bad Faith: If it appears to the satisfaction of the Court at any time that any of the affidavits or declarations presented pursuant to this Rule are presented in bad faith or for the purpose of delay, then the Court may order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits or declarations caused the other party to incur, including reasonable counsel's fees, and any offending party or counsel may be adjudged guilty of contempt or otherwise disciplined by the Court.

Explanation

In 2010, rule 56(a) of the Federal Rules of Civil Procedure was revised, as relevant here, by substituting the term "genuine dispute" for the term "genuine issue". The Advisory Committee's notes to the 2010 Amendments state that "dispute" better reflects the focus of a summary judgment determination. However, the notes also state that subdivision (a) of rule 56 carries forward the summary judgment standard expressed in former subdivision (c), changing only the one word; the language of subdivision (a) continues to require that there be no genuine dispute as to any material fact and that the movant be entitled to judgment as a matter of law; and the amendments will not affect continuing development of

the decisional law construing and applying these phrases. Also in 2010, rule 56(c)(4) of the Federal Rules of Civil Procedure was amended to provide that a motion for summary judgment no longer is required to be supported by a formal affidavit, recognizing that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit.

The Court amends Rule 121(b) and (d) to conform its terminology to that used in rule 56(a) of the Federal Rules of Civil Procedure, i.e., genuine "issue" is revised to read genuine "dispute". Consistent with the Advisory Committee's notes to the 2010 Amendments, this amendment is not intended to alter substantively the operation of Rule 121 or to affect the continuing development of decisional law construing and applying Rule 121. In addition, the language amends paragraphs (a), (b), (d), (e), and (f) to permit the use of an unsworn written declaration. See infra part 10, for new Form 18, Unsworn Declaration Under Penalty of Perjury, that provides a fill-in-the-blank form to use for the declaration.

6. Use of Rule 155 Computations With Dispositive Orders

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

RULE 155. COMPUTATION BY PARTIES FOR ENTRY OF DECISION

(a) Agreed Computations: Where the Court has filed or stated its opinion or issued a dispositive order determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount to be included in the decision. Unless otherwise directed by the Court, if the parties are in agreement as to the amount to be included in the decision pursuant to the findings and conclusions of the Court, then they, or either of them, shall file with the Court within 90 days of service of the opinion or order an original and one copy of a computation showing the amount and that there is no disagreement that the figures shown are in accordance with the findings and conclusions of the Court. In the case of an overpayment, the computation shall

also include the amount and date of each payment made by the petitioner. The Court will then enter its decision.

(b) Procedure in Absence of Agreement: If 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 each party shall 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. A party shall file such party's computation within 90 days of service of the opinion or order, unless otherwise directed by the Court. 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 or 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.

* * * * * * *

Explanation

As originally drafted and pursuant to its literal language, Rule 155 applied only to deficiency and liability proceedings. Consistent with the Court's expanding jurisdiction, the Rule was amended in 2008, effective October 3, 2008, deleting the words "deficiency, liability, or overpayment" and making other conforming changes, to clarify that the Rule is not limited to deficiency and liability cases but permits the filing of computations in all cases. Rule 155 is amended to clarify that the Rule also applies to dispositive orders. The amendment expressly permits the filing of Rule 155 computations after the Court's issuance of a dispositive order.

7. Notice by the Tax Matters Partner of the Filing of a Petition

Paragraph (f) of Rule 241 is deleted and replaced with the following. [Paragraphs (a) through (e), (g), and (h) remain unchanged and are omitted here.]

RULE 241. COMMENCEMENT OF PARTNERSHIP ACTION

* * * * * * *

(f) Notice of Filing: (1) *Petitions by Tax Matters Partner:* After receiving the Notification of Receipt of Petition from the Court and within 30 days after filing the petition, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as required by Code section 6223(g). Said notice shall include the docket number assigned to the case by the Court (see Rule 35) and the date the petition was served by the Clerk on the Commissioner.

(2) *Petitions by Other Partners:* Within 5 days after receiving the Notification of Receipt of Petition from the Court, the petitioner shall serve a copy of the petition on the tax matters partner, and at the same time notify the tax matters partner of the docket number assigned to the case by the Court (see Rule 35) and the date the petition was served by the Clerk on the Commissioner. Within 30 days after receiving a copy of the petition and the aforementioned notification from the petitioner, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as required by Code section 6223(g). Said notice shall include the docket number assigned to the case by the Court and the date the petition was served by the Clerk on the Commissioner.

* * * * * * *

Explanation

Section 6223(g) requires the tax matters partner (TMP) of a partnership, to the extent and in the manner provided by the regulations, to keep each partner informed of all judicial proceedings for the adjustment at the partnership level of partnership items. Section 301.6223(g)-1(b)(1)(vii) and (3), Proced. & Admin.

Regs., requires the TMP to furnish notice to the partners of the filing by the TMP or any other partner of any petition for judicial review under section 6226 or 6228(a) within 30 days of filing or receiving notice of the filing of a petition for judicial review.

Rule 241(f)(1) currently provides that, within 5 days after receiving the Notification of Receipt of Petition, the TMP must notify the partners that the TMP filed a petition with this Court. With respect to petitions filed by a partner other than the TMP, Rule 241(f)(2) requires the partner to serve a copy of the petition on the TMP within 5 days after receiving the Notification of Receipt of Petition from the Court, and the TMP then to notify the other partners of the filing of the petition within 5 days after receiving the copy of the petition. All notices sent by the TMP must include the docket number of the case and the date the petition was served by the Clerk on the Commissioner. Rule 245 allows a TMP to file a notice of election to intervene or a partner to file a notice of election to participate in a partnership action, without leave of the Court, within 90 days after the service of the petition by the Clerk on the Commissioner.

Rule 241(f) is amended to make the time periods provided for the notice furnished by the TMP to the partners consistent with the time period provided by the regulation. Enlarging the time period in Rule 241(f)(1) for notification by the TMP from 5 days after receiving the Notification of Receipt of Petition to 30 days after the filing of the petition could effectively decrease the minimum time remaining under Rule 245(b) for a partner to file a notice of election to participate without leave of the Court from 85 days to 60 days. However, the minimum time allowed for intervention by the tax matters partner and participation by any other partner was approximately 60 days under Title XXIV of the Rules as originally promulgated. 82 T.C. 1084. As for Rule 241(f)(2), it contains two 5-day periods: the one in which the partner must notify the TMP of the filing of a petition and the one in which the TMP must notify all the other partners of the filing of the petition. There is no statutory or regulatory provision regarding the notice by a partner to the TMP that a petition was filed, and increasing the 5-day period applicable to such notice could further decrease the time remaining in the 90-day participation period under Rule 245. Consequently, the Court amends only the time periods for notification by the TMP. The amendments increase from 5 to 30 days the time periods in Rule 241(f)(1) and (2) within which the TMP is required to notify the partners of the filing of any petition. It is anticipated that motions for

leave to file notices of election to participate out of time and motions for leave to file amendments to the petition which are made pursuant to Rule 245 will be liberally granted by the Court in appropriate circumstances.

8. Privacy Protections for Filings in Whistleblower Actions

New Rule 345 is adopted.

RULE 345. PRIVACY PROTECTIONS FOR FILINGS IN WHISTLEBLOWER ACTIONS

(a) Anonymous Petitioner: A petitioner in a whistleblower action may move the Court for permission to proceed anonymously, if appropriate. Unless otherwise permitted by the Court, a petitioner seeking to proceed anonymously pursuant to this Rule shall file with the petition a motion, with or without supporting affidavits or declarations, setting forth a sufficient, fact-specific basis for anonymity. The petition and all other filings shall be temporarily sealed pending a ruling by the Court on the motion to proceed anonymously.

(b) Redacted Filings: Except as otherwise directed by the Court, in an electronic or paper filing with the Court in a whistleblower action, a party or nonparty making the filing shall refrain from including, or shall take appropriate steps to redact, the name, address, and other identifying information of the taxpayer to whom the claim relates. The party or nonparty filing a document that contains redacted information shall file under seal a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list may be amended as a matter of right. Subsequent references in the case to a listed identifier will be construed to refer to the corresponding item of information. The Court in its discretion may later unseal the reference list, in whole or in part, if appropriate.

(c) Other Applicable Rules: For Rules concerned with privacy protections and protective orders, generally, see Rules 27 and 103(a).

Explanation

Letters From Associate Chief Counsel and National Taxpayer Advocate

On March 1, 2011, Deborah Butler, Associate Chief Counsel of the Internal Revenue Service (IRS), and Nina Olson, National Taxpayer Advocate, sent separate letters to the Court raising concerns and suggesting the promulgation of rules regarding privacy protections for nonparty taxpayer information in whistleblower cases. Ms. Butler stated that the IRS does not include taxpayer information in a determination notice issued pursuant to section 7623 and does not intend to do so in the future; nevertheless, whistleblowers routinely disclose nonparty taxpayer information in petitioning the Court. The IRS recommended that the Court consider developing rules applicable to petitions filed in whistleblower cases, as well as to subsequent filings, that require filing parties to redact identifying information of nonparty taxpayers in whistleblower cases such as names, taxpayer identification numbers, and addresses, and to consider whether and in what way nonparty taxpayers should or could be included in a redaction process or be afforded some other opportunity to protect identifying or sensitive information.

Ms. Olson indicated that a taxpayer who is considering whether to request judicial review of an administrative finding has an opportunity to weigh the advantages of judicial review against any disadvantages associated with the public disclosure of information that ordinarily becomes part of the case file and public record in a Tax Court case. The taxpayer in a whistleblower case, however, is not a party and has no control over what information is presented by the whistleblower or included in the case file or opinion. She observed that in Cooper v. Commissioner, 135 T.C. 70 (2010), for example, the Court published the name, the amount of the alleged underpayment, and other identifying information of the taxpayer to whom the whistleblower claim related, who was neither a party to the case nor subject to any deficiency determined by the IRS. She recommended in her 2010 Annual Report to Congress that it amend section 7623 or other applicable provisions to require redaction of nonparty taxpayers' return information in administrative and judicial proceedings relating to whistleblower claims, with an opportunity for a nonparty taxpayer to request additional redactions before disclosure, and to provide a nonparty taxpayer a subsequent right of action for civil damages for unauthorized disclosure by the whistleblower.

She recommended the administrative and judicial process be commenced with a "notice of intention to disclose" to the nonparty taxpayer, legislatively designated as a party, concerning redaction, but not regarding the merits of the whistleblower claim.

Ms. Butler and Ms. Olson both suggested that section 7461(b)(1) currently provides the Court with authority to amend its Rules to provide for appropriate redaction of nonparty taxpayers' taxpayer information, similar to that allowed by Rules 27 and 103.

Policy Considerations

The Tax Court, like other courts, has broad discretionary authority to control and seal, if necessary, records and files in its possession. See Willie Nelson Music Co. v. Commissioner, 85 T.C. 914, 920 (1985). Section 7461(b)(1) authorizes the Court to "make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information". This provision provides ample authority for the Court to protect confidential information about nonparty taxpayers in whistleblower cases, including return information, confidential business information, trade secrets, etc.

Under Whistleblower 14106-10W v. Commissioner, 137 T.C. 183 (2011), a whistleblower's identity, although kept confidential by the IRS Whistleblower Office, is entitled to protection in the Tax Court upon a sufficient showing of harm that outweighs counterbalancing societal interests in knowing the whistleblower's identity. The balancing test is driven largely by notions of the common law right of public access to court proceedings.

Arguably, protecting a nonparty taxpayer's identity is justified in furtherance of protecting the nonparty taxpayer's tax return information, trade secrets, and other confidential information, which the Court is clearly authorized to protect under section 7461(b)(1). Anonymous v. Commissioner, 127 T.C. 89 (2006). Because the taxpayer is not a party to the case, and might not even know about the case, it may be impracticable for the Court adequately to police the redaction of all confidential information about the nonparty taxpayer that might warrant protection. By concealing the name of the nonparty taxpayer, at least in the early stages of litigation, the consequences of inadvertent disclosure of such

information are greatly mitigated, since the information could not be readily linked to the nonparty taxpayer. At some point in the litigation, if for instance the Court decided that the whistleblower was entitled to a large award, the Court might conclude that the public's interest in knowing the nonparty taxpayer's identity was sufficiently great that the nonparty taxpayer's name should no longer be protected.

New Rule 345

The Court adopts new Rule 345. The Rule formalizes the existing procedure whereby whistleblowers may seek anonymity in their cases. See Whistleblower 14106-10W v. Commissioner, supra. Additionally, the Rule provides that the parties shall refrain from including or shall redact the nonparty taxpayer's name, address, and other identifying information. Redacted information will be sealed in a reference list, which the Court can unseal, in whole or in part, after a determination as to whether the nonparty taxpayer's identity should remain protected. In making that determination, it is contemplated that the trial judge will have discretion to direct that prior notice be provided to the nonparty taxpayer. Cf. Nordstrom v. Commissioner, 50 T.C. 30, 32-33 (1968) (establishing a procedure for notification to the heirs at law before dismissing for lack of prosecution the case of a deceased petitioner). However, the Rule does not require notice to the nonparty taxpayer of the commencement of the case or provide a formal means of intervention. The need for and the type of notice will be decided on a case-by-case basis, taking into account the competing privacy interests of the whistleblower and the nonparty taxpayer. Further, absent either legislation specifically authorizing an individual to intervene[1] or a Federal rule

[1]In 2007, the Senate-passed versions of both the Fair Minimum Wage Act of 2007, H.R. 2, 110th Cong., 1st Sess., sec. 233(c), and the U.S. Troop Readiness, Veterans' Health, and Iraq Accountability Act, 2007, H.R. 1591, 110th Cong., 1st sess., sec. 543(c), contained proposed amendments to modify section 7623. Those amendments would have authorized the Court in new section 7623(b)(4)(B) to seal portions of the record in whistleblower cases. The amendments were substantially identical to section 6110(f)(6), which addresses publicity of Tax Court proceedings in disclosure cases, but did not include language comparable to section 6110(f)(1), requiring a notice of intent to disclose, and section 6110(f)(3)(B) and (4)(B), requiring a notice of the filing of a petition to restrain disclosure or obtain additional disclosure and a corresponding right to intervene

permitting such intervention[2], and given the potential difficulties presented by treating the nonparty taxpayer as a party if the whistleblower were proceeding anonymously, the issue of intervention may not be appropriate to resolve by rule. Compare sec. 7623(b)(4) (whistleblower appeals) with secs. 6110(f)(3)(B) and (4)(B) (disclosure actions, Rule 225), 6015(e)(4) (relief from joint liability, Rule 325(b)), 6226(b)(6) (partnership actions, Rule 245), and 7476(d) (declaratory judgment actions, Rule 216). Finally, the new Rule cross-references Rule 27, which requires a party or nonparty filing a document to redact all taxpayer identification numbers, dates of birth, names of minor children, and financial account numbers.

9. Conforming Amendments

A. Number of Copies

Paragraph (a) of Rule 241 is deleted and replaced with the following. [Paragraphs (b) through (h) remain unchanged and are omitted here.]

RULE 241. COMMENCEMENT OF PARTNERSHIP ACTION

(a) Commencement of Action: A partnership action shall be commenced by filing a petition with the Court. See Rule 20, relating to the commencement of case; the taxpayer identification number to be provided under paragraph (b) of that Rule shall be the employer identification number of the partnership. See also Rule 22, relating to the place and manner of filing the petition; Rule 32, relating to form of pleadings; Rule 34(e), relating to number of copies to be filed; and Rule 240(d), relating to caption of papers.

* * * * * * *

Explanation

---

by the person noticed.

[2]Cf. Fed. R. Civ. P. 24.

In 2008, the Court amended Rule 34 by adding new paragraph (d) and relettering former paragraph (d) as current paragraph (e). The amendment to Rule 241 is a conforming change to reflect the current designation of Rule 34(e).

Rule 274 is deleted and replaced with the following.

RULE 274. APPLICABLE SMALL TAX CASE RULES

Proceedings in an action for administrative costs shall be governed by the provisions of the following Small Tax Case Rules (see Rule 170) with respect to the matters to which they apply: Rule 172 (representation) and Rule 174 (trial).

Explanation

The Court has deleted Rule 175. Supra part 2. Accordingly, Rule 274 is amended by deleting the reference to Rule 175.

Paragraph (a) of Rule 301 is deleted and replaced with the following. [Paragraphs (b) through (f) remain unchanged and are omitted here.]

RULE 301. COMMENCEMENT OF LARGE PARTNERSHIP ACTION

(a) Commencement of Action: A large partnership action shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule 22, relating to the place and manner of filing the petition; Rule 32, relating to form of pleadings; Rule 34(e), relating to number of copies to be filed; and Rule 300(d), relating to caption of papers.

* * * * * * *

Explanation

In 2008, the Court amended Rule 34 by adding new paragraph (d) and relettering former paragraph (d) as current paragraph (e). The amendment to Rule 301 is a conforming change to reflect the current designation of Rule 34(e).

B. Redesignation of Rule 70(b)(2)

Paragraph (a) of Rule 71 is deleted and replaced with the following. [Paragraphs (b) through (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 but excluding interrogatories described in paragraph (d) of this Rule, 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(c)(1).

* * * * * * *

Explanation

The Court has adopted amendments to Rule 70, which amendments include a restructuring and consequent redesignation of the subparagraphs of Rule 70(b). Supra part 4. The amendment to Rule 71(a) is a conforming change to reflect the redesignation of Rule 70(b)(2).

Paragraph (e)(3) of Rule 74 is deleted and replaced with the following. [Paragraphs (a) through (d), (e)(1) through (2) and (4) through (5), and (f) remain unchanged and are omitted here.]

RULE 74. DEPOSITIONS FOR DISCOVERY PURPOSES

* * * * * * *

(e) General Provisions:

* * * * * * *

(3) *Hearing:* A hearing on a motion for an order regarding a deposition under this Rule will be held only if directed by the Court. A motion for an order regarding a deposition may be granted by the Court to the extent consistent with Rule 70(c)(1).

* * * * * * *

Explanation

The Court has adopted amendments to Rule 70, which amendments include a restructuring and consequent redesignation of the subparagraphs of Rule 70(b). Supra part 4. The amendment to Rule 74(e)(3) is a conforming change to reflect the redesignation of Rule 70(b)(2).

C. Recognition of Unsworn Written Declarations

Paragraph (d) of Rule 20 is deleted and replaced with the following. [Paragraphs (a) through (c) remain unchanged and are omitted here.]

RULE 20. COMMENCEMENT OF CASE

* * * * * * *

(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 or a declaration containing specific financial information the inability to make such payment.

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. Supra part 5. Rule 20(d) is likewise amended to refer to a declaration in addition to an affidavit.

Paragraph (a) of Rule 33 is deleted and replaced with the following. [Paragraph (b) remains unchanged and is omitted here.]

RULE 33. SIGNING OF PLEADINGS

(a) Signature: Each pleading shall be signed in the manner provided in Rule 23. Where there is more than one attorney of record, the signature of only one is required. Except when otherwise specifically directed by the Court, pleadings need not be verified or accompanied by affidavit or declaration.

* * * * * * *

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. Supra part 5. Rule 33(a) is amended to refer to a declaration in addition to an affidavit.

Paragraphs (c)(6), (d)(1)(D), and (g)(2) of Rule 57 are deleted and replaced with the following. [Paragraphs (a) through (b), (c)(1) through (5), (7) and (8), (d)(1)((A) through (C) and (E)), (e) through (f), (g)(1), (3), and (4) remain unchanged and are omitted here.]

RULE 57. MOTION FOR REVIEW OF PROPOSED SALE OF SEIZED PROPERTY

* * * * * * *

(c) Content of Motion: A motion filed pursuant to this Rule shall contain the following:

* * * * * * *

(6) The movant's basis for each statement in subparagraph (5) that the movant expressed in the affirmative, together with any appraisal, affidavit or declaration, valuation report, or other document relied on by the movant to support each statement.

* * * * * * *

(d) Response to Motion: (1) *Content:* The petitioner or the Commissioner, as the case may be, shall file a written response to a motion filed pursuant to this Rule. The response shall contain the following:

* * * * * * *

(D) A copy of:

(i) Any appraisal, affidavit or declaration, valuation report, or other document relied on by the responding party; and

* * * * * * *

(g) Disposition of Motion:

* * * * * * *

(2) *Evidence:* In disposing of a motion filed pursuant to this Rule, the Court may consider such appraisals, affidavits or declarations, valuation reports, and other evidence as may be appropriate, giving due regard to the necessity of acting on the motion within a brief period of time.

* * * * * * *

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute

for an affidavit. Supra part 5. Rule 57 is amended to refer to a declaration in addition to an affidavit.

Paragraph (c) of Rule 143 is deleted and replaced with the following. [Paragraphs (a) through (b) and (d) through (g) remain unchanged and are omitted here.]

RULE 143. EVIDENCE

* * * * * * *

(c) Ex Parte Statements: Ex parte affidavits or declarations, 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).

* * * * * * *

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. Supra part 5. Rule 143(c) is amended to refer to a declaration in addition to an affidavit.

Paragraph (a)(2) of Rule 173 is deleted and replaced with the following. [Paragraphs (a)(1), (b), and (c) remain unchanged and are omitted here.]

RULE 173. PLEADINGS

(a) Petition:

* * * * * * *

(2) *Filing Fee:* The fee for filing a petition shall be $60, payable at the time of filing. The payment of any fee under this paragraph may be

waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information the inability to make such payment.

* * * * * * *

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. Supra part 5. Rule 173(a)(2) is amended to refer to a declaration in addition to an affidavit.

Paragraphs (b)(4), (7) and (d) of Rule 231 are deleted and replaced with the following. [Paragraphs (a), (b)(1) through (3), (5), (6), (8), and (9), (c), and (e) remain unchanged and are omitted here.]

RULE 231. CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS

* * * * * * *

(b) Content of Motion: A motion for an award of reasonable litigation or administrative costs shall be in writing and shall contain the following:

* * * * * * *

(4) a statement that the moving party meets the net worth requirements, if applicable, of section 2412(d)(2)(B) of title 28, United States Code (as in effect on October 22, 1986), which statement shall be supported by an affidavit or a declaration executed by the moving party and not by counsel for the moving party;

* * * * * * *

(7) a statement of the specific litigation and administrative costs for which the moving party claims an award, supported by an affidavit or a declaration in the form prescribed in paragraph (d) of this Rule;

* * * * * * *

(d) Affidavit or Declaration in Support of Costs Claimed: A motion for an award of reasonable litigation or administrative costs shall be accompanied by a detailed affidavit or declaration by the moving party or counsel for the moving party which sets forth distinctly the nature and amount of each item of costs for which an award is claimed.

* * * * * * *

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. Supra part 5. Rule 231 is amended to refer to a declaration in addition to an affidavit.

Paragraphs (d), (d)(2), and (d)(flush language) of Rule 232 are deleted and replaced with the following. [Paragraphs (a) through (c), (d)(1), and (d)(3) through (6) remain unchanged and are omitted here.]

RULE 232. DISPOSITION OF CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS

* * * * * * *

(d) Additional Affidavit or Declaration: Where the Commissioner's response indicates that the Commissioner and the moving party are unable to agree as to the amount of attorney's fees that is reasonable, counsel for the moving party shall, within 30 days after service of the Commissioner's response, file an additional affidavit or declaration which shall include:

* * * * * * *

(2) The customary fee for the type of work involved. Counsel shall provide specific evidence of the prevailing community rate for the type of work involved as well as specific evidence of counsel's actual billing practice during the time period involved. Counsel may establish the prevailing community rate by affidavits or declarations of other counsel with similar qualifications reciting the precise fees they have received from clients in comparable cases, by evidence of recent fees awarded by the courts or through settlement to counsel of comparable reputation and experience performing similar work, or by reliable legal publications.

* * * * * * *

Where there are several counsel of record, all of whom are members of or associated with the same firm, an affidavit or a declaration filed by first counsel of record or that counsel's designee (see Rule 21(b)(2)) shall satisfy the requirements of this paragraph, and an affidavit or a declaration by each counsel of record shall not be required.

* * * * * * *

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. Supra part 5. Rule 232 is amended to refer to a declaration in addition to an affidavit.

Paragraph (c) of Rule 271 is deleted and replaced with the following. [Paragraphs (a) and (b) remain unchanged and are omitted here.]

RULE 271. COMMENCEMENT OF ACTION FOR ADMINISTRATIVE COSTS

* * * * * * *

(c) Filing Fee: The fee for filing a petition for administrative costs shall be $60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information that the petitioner is unable to make such payment.

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. Supra part 5. Rule 271 is amended to refer to a declaration in addition to an affidavit.

Paragraph (c) of Rule 281 is deleted and replaced with the following. [Paragraphs (a) and (b) remain unchanged and are omitted here.]

RULE 281. COMMENCEMENT OF ACTION FOR REVIEW OF FAILURE TO ABATE INTEREST

* * * * * * *

(c) Filing Fee: The fee for filing a petition for review of failure to abate interest shall be $60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information that the petitioner is unable to make such payment.

Explanation

Rule 121 is amended, in part, to conform it with rule 56(c)(4) of the Federal Rules of Civil Procedure, which was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. Supra part 5. Rule 281 is amended to refer to a declaration in addition to an affidavit.

10. New Form 18 for Unsworn Declarations Under Penalty of Perjury

New Form 18 is added.

FORM 18

UNSWORN DECLARATION UNDER PENALTY OF PERJURY
(See 28 U.S.C. sec. 1746.)
www.ustaxcourt.gov

UNITED STATES TAX COURT

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

UNSWORN DECLARATION UNDER PENALTY OF PERJURY

I, _____, declare from my personal knowledge that the following facts are true:
[name]

[State the facts in as many numbered paragraphs as are needed. Attach additional pages if necessary.]

1. _____
_____
_____
2. _____
_____
_____
3. _____
_____
_____
4. _____
_____
_____
5. _____
_____
_____

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____.
[date]

_____
[Signature]

OR

[If the declaration is executed outside of the United States:]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on _____.
[date]

_____
[Signature]

Explanation

Form 18 is a new fillable form that can be used as a substitute for an affidavit pursuant to 28 U.S.C. sec. 1746.