UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

May 5, 2011

PRESS RELEASE

Chief Judge John O. Colvin announced today that the United States Tax Court has adopted amendments to its Rules of Practice and Procedure. On December 20, 2010, the Court published proposed amendments to its Rules of Practice and Procedure and invited public comments thereon. After considering the comments received, the Court has made several revisions to the proposed amendments and has not included in the amendments as adopted the proposed amendments regarding answers in lien and levy cases.

The amendments as adopted include amended time periods for filing summary judgment motions, Rule 155 computations, and motions regarding elections to proceed under the small tax case procedure. The Court has also amended Rule 24 to recognize the role of law students who assist in cases under direct supervision of counsel, and Rule 124 to recognize more clearly voluntary nonbinding mediation as a form of dispute resolution. In addition, the Court has adopted various technical, clarifying, and conforming amendments to its Rules and forms. The appendix to this press release includes the amendments and an explanation of each amendment.

The Rules amendments generally are effective as of May 5, 2011. However, the amendments to Rule 121 are effective with respect to cases in which the Notices of Trial are issued after May 5, 2011; the amendments to Rule 155 are effective with respect to cases in which entry of decision is withheld pending the filing of computations pursuant to opinions filed or orders issued after May 5, 2011; and new Rule 171(b) is effective with respect to petitions filed after May 5, 2011. The amendments to Forms 1, 2, 6, 14, and 15 are effective May 5, 2011.

Chief Judge Colvin announced that the Rules of Practice and Procedure, as amended, are available on the Court's Internet Web site, www.ustaxcourt.gov. Also available now on the Court's Web site is a Guide to Rules Amendments and Notes, which provides a means to find historical explanations of the Rules published in volumes of the Tax Court Reports. A copy of the amendments announced today may be obtained by writing to the Clerk's Office at 400 Second Street, N.W., Washington, D.C. 20217.

1. Business Hours of the Office of the Clerk

Paragraph (d) of Rule 10 is deleted and replaced with the following. [Paragraphs (a) through (c) and (e) remain unchanged and are omitted here.]

RULE 10. NAME, OFFICE, AND SESSIONS

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(d) Business Hours: The office of the Clerk at Washington, D.C., shall be open during business hours on all days, except Saturdays, Sundays, and Federal holidays, for the purpose of receiving petitions, pleadings, motions, and other papers. Business hours are from 8 a.m. to 4:30 p.m.

Explanation

Rule 10(d) is amended to bring the Court into substantial conformity with other Federal courts' rules for business hours. See, e.g., U.S. Ct. Fed. Cl. R. 6(a)(6).[1] The amendments delete the references to legal holidays in the District of Columbia, and the Rule as amended would instead refer to Federal holidays.

2. References to Special Trial Judges

Paragraph (a) of Rule 12 is deleted and replaced with the following. [Paragraphs (b) and (c) remain unchanged and are omitted here.]

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[1]U.S. Ct. Fed. Cl. R. 6(a)(6) states:

> **Rule 6. Computation and Extending Time; Time for Motion Papers**
>
> **(a) Computing Time.** * * *
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> **(6) "Legal Holiday" Defined.** "Legal holiday" means:
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> **(A)** the day set aside by statute for observing New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and
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> **(B)** any other day declared a holiday by the President or Congress.

RULE 12. COURT RECORDS

(a) Removal of Records: No original record, paper, document, or exhibit filed with the Court shall be taken from the courtroom, from the offices of the Court, or from the custody of a Judge, a Special Trial Judge, or an employee of the Court, except as authorized by a Judge or Special Trial Judge of the Court or except as may be necessary for the Clerk to furnish copies or to transmit the same to other courts for appeal or other official purposes. With respect to return of exhibits after a decision of the Court becomes final, see Rule 143(e)(2).

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Explanation

Rule 12(a) does not include a Special Trial Judge as an individual who can authorize the removal of records from the courtroom. The lack of any reference in Rule 12(a) to a Special Trial Judge reflects the inconsistent use of terms in other Rules; e.g., Rules 22, 150(a), and 151(a) and (b) also do not refer to a Special Trial Judge, while Rules 70(a)(2) and (b), 74, 124, 143, and 152 refer to both a Judge and a Special Trial Judge. The amendments to Rule 12(a) insert references to a Special Trial Judge.

Rule 22 is deleted and replaced with the following.

RULE 22. FILING

Any pleadings or other papers to be filed with the Court must be filed with the Clerk in Washington, D.C., during business hours, except that the Judge or Special Trial Judge presiding at any trial or hearing may permit or require documents pertaining thereto to be filed at that particular session of the Court, or except as otherwise directed by the Court. For the circumstances under which timely mailed papers will be treated as having been timely filed, see Code section 7502.

Explanation

Rule 22 does not include a Special Trial Judge as an individual who can permit or require the filing of documents at a trial session. The lack of a reference in Rule 22 to a Special Trial Judge reflects the inconsistent use of terms in other Rules; e.g., Rules 12(a), 150(a), and 151(a) and (b) also do not refer to Special Trial Judges, while Rules 70(a)(2) and (b), 74, 124, 143, and 152 refer to both a Judge and a Special Trial

Judge. The amendment to Rule 22 inserts a reference to a Special Trial Judge.

Paragraph (a) of Rule 150 is deleted and replaced with the following. [Paragraph (b) remains unchanged and is omitted here.]

RULE 150. RECORD OF PROCEEDINGS

(a) General: Hearings and trials before the Court shall be recorded or otherwise reported, and a transcript thereof shall be made if, in the opinion of the Court or the Judge or Special Trial Judge presiding at a hearing or trial, a permanent record is deemed appropriate. Transcripts shall be supplied to the parties and other persons at such charges as may be fixed or approved by the Court.

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Explanation

Rule 150(a) does not include a Special Trial Judge as an individual who can direct the making of a transcript. The lack of a reference in Rule 150(a) to a Special Trial Judge reflects the inconsistent use of terms in other Rules; e.g., Rules 12(a), 22, and 151(a) and (b) also do not refer to Special Trial Judges, while Rules 70(a)(2) and (b), 74, 124, 143, and 152 refer to both a Judge and a Special Trial Judge. The amendment to Rule 150(a) inserts a reference to a Special Trial Judge.

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

RULE 151. BRIEFS

(a) General: Briefs shall be filed after trial or submission of a case, except as otherwise directed by the presiding Judge or Special Trial Judge. In addition to or in lieu of briefs, the presiding Judge or Special Trial Judge may permit or direct the parties to make oral argument or file memoranda or statements of authorities. The Court may return without filing any brief that does not conform to the requirements of this Rule.

(b) Time for Filing Briefs: Briefs may be filed simultaneously or seriatim, as the presiding Judge or Special Trial Judge directs. The following times for filing briefs shall

prevail in the absence of any different direction by the presiding Judge or Special Trial Judge:

(1) *Simultaneous Briefs:* Opening briefs within 75 days after the conclusion of the trial, and answering briefs 45 days thereafter.

(2) *Seriatim Briefs:* Opening brief within 75 days after the conclusion of the trial, answering brief within 45 days thereafter, and reply brief within 30 days after the due date of the answering brief.

A party who fails to file an opening brief is not permitted to file an answering or reply brief except on leave granted by the Court. A motion for extension of time for filing any brief shall be made prior to the due date and shall recite that the moving party has advised such party's adversary and whether or not such adversary objects to the motion. As to the effect of extensions of time, see Rule 25(c).

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Explanation

Rule 151(a) and (b) does not include a Special Trial Judge as an individual who can direct the filing of briefs or memoranda. The lack of any reference in Rule 151(a) and (b) to a Special Trial Judge reflects the inconsistent use of terms in other Rules; e.g., Rules 12(a), 22, and 150(a) also do not refer to Special Trial Judges, while Rules 70(a)(2) and (b), 74, 124, 143, and 152 refer to both a Judge and a Special Trial Judge. The amendments to paragraphs (a) and (b) of Rule 151 insert references to a Special Trial Judge.

3. Ownership Disclosure Statement

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

RULE 20. COMMENCEMENT OF CASE

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(c) Disclosure Statement: A nongovernmental corporation, large partnership, or limited liability company, or a tax matters partner or partner other than the tax matters partner of a nongovernmental partnership filing a petition with the Court shall file with the 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 nongovernmental large partnership or limited liability company, or a tax matters partner or partner other than a tax matters partner of a nongovernmental partnership, the disclosure statement shall identify any publicly held entity owning an interest in the large partnership, the limited liability company, or the partnership, or state that there is no such entity. A petitioner shall promptly file a supplemental statement if there is any change in the information required under this rule. For the form of such disclosure statement, see Form 6, Appendix I. For the definition of a large partnership, see Rule 300(b)(1). For the definitions of a partnership and a tax matters partner, see Rule 240(b)(1), (4). A partner other than a tax matters partner is a notice partner or a 5-percent group as defined in Rule 240(b)(8) and (9).

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Explanation

New Rule 20(c), effective January 1, 2010, requires a nongovernmental entity to submit with its petition a separate ownership disclosure statement in the form provided by Form 6 and to submit a supplemental statement if there is any change in the information required under the Rule. Rule 20(c) is patterned after Fed. R. Civ. P. 7.1, which requires the disclosure statement and any supplemental statement to be filed, and the Court, as a matter of practice, routinely files the statements it receives from petitioners. The amendments reflect technical corrections to conform the substance of Rule 20(c) with Fed. R. Civ. P. 7.1 and with the Court's practice. They also include references to petitions filed pursuant to TEFRA procedures, in which the petitioner is a tax matters partner, a notice partner, or a 5-percent group rather than a partnership (or a limited liability company treated as a partnership) with respect to which adjustments were determined. Separate amendments are made with respect to Form 6, infra part 13, regarding the instructions for partnerships.

4. Recognition of Law Student Assistance; Withdrawal of Counsel Due to a Change or Substitution in Party

New paragraph (a)(5) of Rule 24 is added and paragraph (f) is deleted and replaced with the following. [Paragraphs (a)(1) through (4), (b) through (e), and (g) remain unchanged and are omitted here.]

RULE 24. APPEARANCE AND REPRESENTATION

(a) Appearance: (1) *General:* * * *

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(5) *Law Student Assistance:* With the permission of the presiding Judge or Special Trial Judge, and under the direct supervision of counsel in a case, a law student may assist such counsel by presenting all or any part of the party's case at a hearing or trial. In addition, a law student may assist counsel in a case in drafting a pleading or other document to be filed with the Court. A law student may not, however, enter an appearance in any case, be recognized as counsel in a case, or sign a pleading or other document filed with the Court. The Court may acknowledge the law student assistance.

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(f) Change in Party or Authorized Representative or Fiduciary: Where (1) a party other than an individual participates in a case through an authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in such representative or fiduciary, or (2) there is a substitution of parties in a pending case, counsel subscribing the motion resulting in the Court's approval of the change or substitution shall thereafter be deemed first counsel of record for the representative, fiduciary, or party. Counsel of record for the former representative, fiduciary, or party, desiring to withdraw such counsel's appearance shall file a motion in accordance with paragraph (c).

Explanation

The Court's Internet Web site provides requirements for participation in the Court's Clinical, Student Practice, and Bar-Related Pro Bono Program, including procedures for assistance by law students, and the Court in its opinions routinely recognizes law students who assist in the presentation of cases. New Rule 24(a)(5) conforms the Court's Rules with its practice and provides a description of the traditional role of law students under the direct supervision of attorneys in academic clinics and in the student practice program sponsored by the Office of Chief Counsel of the Internal Revenue Service.

Current Rule 24(f) does not specify the treatment of any counsel of the representative, fiduciary, or party for whom a change or substitution has been made. The amendment uses phrasing similar to that in Rule 24(c), Withdrawal of Counsel, and requires counsel for the former representative, fiduciary, or party to file a motion to withdraw when appropriate.

5. Motions and Motions Calendars

Paragraph (b) of Rule 50 is deleted and replaced with the following. [Paragraphs (a) and (c) through (f) remain unchanged and are omitted here.]

RULE 50. GENERAL REQUIREMENTS

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(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.

(2) The Court may take action after directing a hearing, which may be held in Washington, D.C. The Court may, on its own motion or upon the written request of any party to the motion, direct that the hearing be held at some other location which serves the convenience of the parties and the Court.

(3) The Court may take such action as the Court in its discretion deems appropriate, on such prior notice, if any, which the Court may consider reasonable. The action of the Court may be taken with or without written response, hearing, or attendance of a party to the motion at the hearing.

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Explanation

While historically motions generally were heard in Washington, D.C., in recent years Judges and Special Trial Judges frequently have held hearings on motions at trial sessions in all of the Court's places of trial, and they often act on motions on the basis of the file. Rule 50(b)(2) is amended by modifying the

phrase that hearings on motions (if held) "normally will be held in Washington, D.C." to read that hearings "may be held in Washington, D.C."

Paragraph (a) of Rule 130 is deleted and replaced with the following. [Paragraph (b) remains unchanged and is omitted here.]

RULE 130. MOTIONS AND OTHER MATTERS

(a) Calendars: If a hearing is to be held on a motion or other matter, apart from a trial on the merits, then such hearing may be held on a motion calendar in Washington, D.C., unless the Court, on its own motion or on the motion of a party, shall direct otherwise. As to hearings at other places, see Rule 50(b)(2). The parties will be given notice of the place and time of hearing.

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Explanation

The amendments to Rule 130(a) are conforming changes resulting from the amendment to Rule 50(b)(2).

6. Completion of Discovery

Paragraph (a)(2) of Rule 70 is deleted and replaced with the following. [Subparagraphs (1) and (3) of Rule 70(a) and paragraphs (b) through (f) remain unchanged and are omitted here.]

RULE 70. GENERAL PROVISIONS

(a) General: (1) *Methods and Limitations of Discovery:*

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(2) *Time for Discovery:* Discovery shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Discovery shall be completed and any motion to compel or any other motion with respect to such discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for call of the case from a trial calendar. Discovery by a deposition under Rule 74(c) may not be commenced before a notice of trial has been issued or the case has been assigned to a Judge or Special Trial Judge

and any motion to compel or any other motion with respect to such discovery shall be filed within the time provided by the preceding sentence. Discovery of matters which are relevant only to the issue of a party's entitlement to reasonable litigation or administrative costs shall not be commenced, without leave of Court, before a motion for reasonable litigation or administrative costs has been noticed for a hearing, and discovery shall be completed and any motion to compel or any other motion with respect to such discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for hearing.

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Explanation

Rule 70(a)(2) provides that discovery shall be completed and any motion to compel such discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days before the start of the trial session. Because Rule 70(a)(2) refers only to a motion to compel, it is unclear whether the general 45-day limit applies to discovery-related motions other than motions to compel. Accordingly, Rule 70(a)(2) is amended to clarify that the 45-day limit applies not only to motions to compel discovery but also to any motion with respect to discovery. The amendments add phrasing similar to that of Rule 71(c), which permits a party submitting interrogatories to move for an order "with respect to" any objection.

7. Depositions

Paragraph (a) of Rule 74 is deleted and replaced with the following. [Paragraphs (b) though (f) remain unchanged and are omitted here.]

RULE 74. DEPOSITIONS FOR DISCOVERY PURPOSES

(a) General: In conformity with this Rule, a party may obtain discovery by depositions with the consent of the parties under paragraph (b) and without the consent of the parties under paragraph (c). Paragraph (d) describes additional uses for depositions of expert witnesses, and paragraphs (e) and (f) set forth general provisions governing the taking of all depositions for discovery purposes. An application for an order to take a deposition is required only with respect to depositions to perpetuate evidence. See Rules 80 through 84.

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Explanation

Questions have arisen whether Rule 74(a) adequately advises parties that the procedures applicable to discovery depositions are different from those applicable to depositions to perpetuate evidence and that Form 15, Application for Order To Take Deposition, is not available for discovery depositions. The amendments to Rule 74(a), to the heading of Title VIII, and to Form 15, infra part 13, clarify the differences between the Court's procedures regarding depositions for discovery purposes and those for depositions to perpetuate evidence and that Form 15 is not appropriately used to obtain a deposition for discovery purposes.

The title of Title VIII is deleted and replaced with the following. [All Rules in Title VIII remain unchanged and are omitted here.]

TITLE VIII

DEPOSITIONS TO PERPETUATE EVIDENCE

Explanation

The title of Title VIII is changed from "Depositions" to "Depositions To Perpetuate Evidence" to clarify the differences between the Court's procedures regarding depositions for discovery purposes and those for depositions to perpetuate evidence.

8. Stipulations for Trial

Paragraph (a)(2) of Rule 91 is deleted and replaced with the following. [Paragraphs (a)(1) and (b) through (f) remain unchanged and are omitted here.]

RULE 91. STIPULATIONS FOR TRIAL

(a) Stipulations Required: (1) *General:* * * *

(2) *Stipulations To Be Comprehensive:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not grounds for omitting such matter from the stipulation. Such procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of subparagraph (1) must be set forth

comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation. A failure to include in the stipulation a matter admitted under Rule 90(f) does not affect the Court's ability to consider such admitted matter.

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Explanation

Rule 91(a)(2) requires previously admitted facts to be included in a stipulation in order for the facts to be considered by the Court, in contrast to Rule 90(f), which states that any matter admitted under that Rule is conclusively established unless it is formally withdrawn or modified. Rule 91(a)(2) is amended by adding a new sentence to clarify that omission of an admitted fact from the stipulation does not impair the Court's ability to consider the fact.

9. Deadline for Summary Judgment Motions

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

RULE 121. SUMMARY JUDGMENT

(a) General: Either party may move, with or without supporting affidavits, 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.

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Explanation

The amendment to Rule 121(a) better defines the pretrial deadline for filing a motion for summary judgment. The 60-day limit for filing a motion for summary judgment will allow time for the Court to issue any orders with respect to the motion, for the parties to file any responses, and for the Court to consider action on the motion before trial.

10. Mediation

Rule 124 is deleted and replaced with the following.

RULE 124. ALTERNATIVE DISPUTE RESOLUTION

(a) Voluntary Binding Arbitration: The parties may move that any factual issue in controversy be resolved through voluntary binding arbitration. Such a motion may be made at any time after a case is at issue and before trial. Upon the filing of such a motion, the Chief Judge will assign the case to a Judge or Special Trial Judge for disposition of the motion and supervision of any subsequent arbitration.

(1) *Stipulation Required:* The parties shall attach to any motion filed under paragraph (a) a stipulation executed by each party or counsel for each party. Such stipulation shall include the matters specified in subparagraph (2).

(2) *Content of Stipulation:* The stipulation required by subparagraph (1) shall include the following:

(A) A statement of the issues to be resolved by the arbitrator;

(B) an agreement by the parties to be bound by the findings of the arbitrator in respect of the issues to be resolved;

(C) the identity of the arbitrator or the procedure to be used to select the arbitrator;

(D) the manner in which payment of the arbitrator's compensation and expenses, as well as any related fees and costs, is to be allocated among the parties;

(E) a prohibition against ex parte communication with the arbitrator; and

(F) such other matters as the parties deem to be appropriate.

(3) *Order by Court:* The arbitrator will be appointed by order of the Court, which order may contain such directions to the arbitrator and to the parties as the Judge or Special Trial Judge considers to be appropriate.

(4) *Report by Parties:* The parties shall promptly report to the Court the findings made by the arbitrator and shall attach to their report any written report or summary that the arbitrator may have prepared.

(b) Voluntary Nonbinding Mediation: The parties may move by joint or unopposed motion that any issue in controversy be resolved through voluntary nonbinding mediation. Such a motion may be made at any time after a case is at issue and before the decision in the case is final.

(1) *Order by Court:* The mediation shall proceed in accordance with an order of the Court setting forth such directions to the parties as the Court considers to be appropriate.

(2) *Tax Court Judge or Special Trial Judge as Mediator:* A Judge or Special Trial Judge of the Court may act as mediator in any case pending before the Court if:

(A) the motion makes a specific request that a Judge or Special Trial Judge be designated as such, and

(B) a Judge or Special Trial Judge is so designated by order of the Chief Judge.

(c) Other Methods of Dispute Resolution: Nothing contained in this Rule shall be construed to exclude use by the parties of other forms of voluntary disposition of cases.

Explanation

Rule 124 is titled "Voluntary Binding Arbitration", and mediation is referenced only as an optional form of dispute resolution in Rule 124(b)(5). In the Court's experience, only a few arbitrations were conducted during the past 20 years, as opposed to a more substantial number of mediations. Accordingly, Rule 124 is amended to remove arbitration as the focus of the Rule. The amendments to Rule 124 change the title to "Alternative Dispute Resolution" and more clearly state that the Rule is applicable to both arbitration and mediation by, inter alia, inserting new paragraph (b) providing for the filing of a motion to proceed with mediation. Because a motion for mediation may be an agreed motion or simply unopposed, a joint motion is not required by the amendments. As contrasted with voluntary binding arbitration under what is now Rule 124(a), the issues susceptible of resolution through mediation are not limited to factual ones, and the mediation is nonbinding. Consequently, the amendments require no stipulation by the parties. The amendments to Rule 124 are not intended to prevent the parties from engaging in informal mediation or other forms of dispute resolution, with or without involvement by the Court.

11. Deadlines for Rule 155 Computations

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 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 an original and two copies 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, 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.

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Explanation

Rule 155 is amended to provide deadlines for filing computations for entry of decision in accordance with an opinion of the Court. It has been the Court's experience that there may be inordinate delay in the parties' filing their computations for

decision unless the Judge or Special Trial Judge issues an order directing when the computations shall be filed. The amendments require the parties to submit computations within 90 days after service of the opinion unless otherwise directed by the Court. The amendments also clarify that if a party files an alternative computation, then a separate objection to the other party's computation is not required.

12. Removal of Small Tax Case Designation

Rule 171 is deleted and replaced with the following.

RULE 171. ELECTION OF SMALL TAX CASE PROCEDURE

With respect to classification of a case as a small tax case, the following shall apply:

(a) A petitioner who wishes to have the proceedings in the case conducted as a small tax case may so request at the time the petition is filed. See Rule 173.

(b) If the Commissioner opposes the petitioner's request to have the proceedings conducted as a small tax case, then the Commissioner shall file with the answer a motion that the proceedings not be conducted as a small tax case.

(c) A petitioner may, at any time after the petition is filed and before the trial commences, request that the proceedings be conducted as a small tax case. If such request is made after the answer is filed, then the Commissioner may move without leave of the Court that the proceedings not be conducted as a small tax case.

(d) If such request is made in accordance with the provisions of this Rule 171, then the case will be docketed as a small tax case. The Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, issue an order directing that the small tax case designation be removed and that the proceedings not be conducted as a small tax case. If no such order is issued, then the petitioner will be considered to have exercised the petitioner's option and the Court shall be deemed to have concurred therein.

Explanation

Between 1970 and 1983, former Rule 172(b)[2] (and its predecessor Rule 36(c)) required the Commissioner to file any

[2]Former Rule 172 was renumbered Rule 171 in 2003. 120 T.C. 605.

motion opposing the taxpayer's request to elect small tax case status at the time the Commissioner filed the answer in the case.[3] 60 T.C. 1145-1146. As a result of this procedure, soon after the petition was filed the Commissioner filed any motions relating to matters such as whether a case qualified for the small tax case procedure and whether other considerations were present regarding the election, such as whether the case presented novel issues and should be subject to appeal. See S. Rept. 91-552 (1969), 1969-3 C.B. 423, 615 (use of the small tax case procedure is at the option of the taxpayer unless the Court, presumably upon the request of the Internal Revenue Service, decides before the hearing that the case involves an important tax issue which should be heard under normal procedures and subject to appeal).

Former Rule 172(b) was eliminated in 1983, 81 T.C. 1067, apparently as a result of the Court's elimination of required answers in small tax cases in 1979. 71 T.C. 1212. In amending section 7463 in 1998 and in 2000, Congress explained that the Court should give careful consideration to motions by the Internal Revenue Service to remove the small tax case designation based upon the potential precedential implications of the case. H. Conf. Rept. 106-1004, at 388 (2000), 2000-3 C.B. 390, 443; H. Conf. Rept. 105-599, at 245 (1998), 1998-3 C.B. 747, 999. Because the Court in 2007 reinstated the requirement of answers in small tax cases, 130 T.C. 486-487, it is appropriate to reinstate former Rule 172(b).

Rule 171 is amended by adding new paragraph (b), which is substantially identical to former Rule 172(b).

There are reasons for reinstating former Rule 172(b) in addition to the original reasons for providing that Rule. The number of jurisdictional dollar limits provided by section 7463 for small tax case eligibility increased in 1998 with the enlargement of the Court's jurisdiction to decide appeals in lien and levy cases and requests for relief from joint liability. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, secs. 3201, 3401, 112 Stat. 734, 746. These additional and somewhat varied jurisdictional limits have added to the taxpayers' task in understanding whether they are entitled to elect the small tax case procedures in lien and levy actions

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[3]Former Rule 172(d) (current Rule 171(c)) also allowed the Court, on its own motion or on the motion of a party to the case, to order at any time before commencement of the trial that a case be tried as a regular case.

and actions for determination of relief from joint liability.[4] Because notices of determination issued by the Internal Revenue Service in lien and levy and relief from joint liability proceedings often do not state the dollar amounts in dispute, taxpayers may have additional difficulty in applying the statutory rules.[5] If a taxpayer has incorrectly applied the jurisdictional limits in electing the small tax case procedures, early action on the error is in the interests of the Court and the parties and would assist in the management and the calendaring of the case.

Conforming changes relettering current paragraphs (b) and (c) of Rule 171 are also made.[6] The amendments to relettered paragraph (c) clarify that a petitioner may elect to have the proceedings conducted as a small tax case at any time before the trial commences, even after the case has been calendared for trial, and that the Commissioner does not then need leave of the Court to move that the proceedings not be so conducted. The amendments to relettered paragraph (d) of Rule 171 are also intended to clarify that the closing of a small tax case by decision or dismissal prior to trial of the case does not invalidate the petitioner's small tax case election.

13. Forms

Form 1 is deleted and replaced with the following.

---

[4]Under sec. 7463(f)(1), the applicable dollar amount for sec. 6015 cases is the total relief sought on the date of the filing of the petition, including tax, additions to tax, penalties, interest, and accrued but unassessed interest. Petrane v. Commissioner, 129 T.C. 1 (2007). The applicable dollar amount under sec. 7463(f)(2) for lien and levy actions is the total amount of unpaid tax, calculated as of the date of the notice of determination, including tax, additions to tax, penalties, and interest. Leahy v. Commissioner, 129 T.C. 71 (2007); Schwartz v. Commissioner, 128 T.C. 6 (2007).

[5]In Leahy v. Commissioner, 129 T.C. at 76 n. 11, the Court noted that "the Commissioner could assist taxpayers and the Court if he were to calculate the total unpaid tax as of the date of the sec. 6330 notice of determination and include it in the notice."

[6]Current Rule 171(c) is substantially the same as former Rule 172(d) and allows the Court, on its own motion or on the motion of a party, to remove the small tax case designation at any time before trial.

FORM 1

PETITION (Sample Format)*
(See Rules 30 through 34)
www.ustaxcourt.gov

UNITED STATES TAX COURT

_____
Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

} Docket No.

PETITION

Petitioner hereby petitions for a redetermination of the deficiency (or liability) set forth by the Commissioner of Internal Revenue in the Commissioner's notice of deficiency (or liability) dated ....., and as the basis for petitioner's case alleges as follows:

1. Petitioner is [set forth whether an individual, corporation, etc., as provided in Rule 60] with mailing address now at

.....
Street (or P.O. Box) City State ZIP Code

and with the State of legal residence (or principal office) now in (if different from the mailing address)
.....

The return for the period here involved was filed with the Office of the Internal Revenue Service at
.....
City State

2. The notice of deficiency (or liability) was mailed to petitioner on ....., and was issued by the Office of the Internal Revenue Service at .....
City State

A copy of the notice of deficiency (or liability), including so much of the statement and schedules accompanying the notice as is material, should be redacted as provided by Rule 27 and attached to the petition as Exhibit A. Petitioner must submit with the petition a Form 4, Statement of Taxpayer Identification Number.

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*Form 1 provides a sample format that is especially appropriate for use by counsel in complex deficiency and liability cases. See Rule 34(a)(1), (b)(1). To adapt Form 1 for use in the following types of actions, see also the applicable Rules, as indicated: Declaratory judgment actions (Rule 211); disclosure actions (Rule 221); partnership actions (Rules 241, 301); interest abatement actions (Rule 281); employment status actions (Rule 291); actions for determination of relief from joint and several liability (Rule 321); lien and levy actions (Rule 331); and whistleblower actions (Rule 341). See Form 2 for a fillable form that may be useful for self-represented petitioners and may also be used by counsel in simple cases with limited issues. See Form 3 for a fillable form that may be used for administrative costs actions.

3. The deficiencies (or liabilities) as determined by the Commissioner are in income (estate, gift, or certain excise) taxes for the calendar (or fiscal) year ....., in the amount of $ ....., of which $ ..... is in dispute.

4. The determination of the tax set forth in the said notice of deficiency (or liability) is based upon the following errors: [Here set forth specifically in lettered subparagraphs the assignments of error in a concise manner. Do not plead facts, which properly belong in the succeeding paragraph.]

5. The facts upon which petitioner relies, as the basis of petitioner's case, are as follows: [Here set forth allegations of fact, but not the evidence, sufficient to inform the Court and the Commissioner of the positions taken and the bases therefor. Set forth the allegations in orderly and logical sequence, with subparagraphs lettered, so as to enable the Commissioner to admit or deny each allegation. See Rules 31(a) and 34(b)(5).]

WHEREFORE, petitioner prays that [here set forth the relief desired].

(Signed) .....
Petitioner or Counsel

.....
Present Address–City, State, ZIP Code

Dated: ....
(Area code) Telephone No.

.....
Counsel's Tax Court Bar Number

Explanation

The amendment to the footnote in Form 1 replaces the term "pro se" with the term "self-represented" to conform the language in Form 1 more closely to the language in the second sentence in Rule 24(b).

Form 2 and the sample information sheet are deleted and replaced with the following.

FORM 2
PETITION (Simplified Form)

UNITED STATES TAX COURT
www.ustaxcourt.gov

(FIRST) (MIDDLE) (LAST)

_____
(PLEASE TYPE OR PRINT) Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

} Docket No.

PETITION

1. Please check the appropriate box(es) to show which IRS NOTICE(s) you dispute:

☐ Notice of Deficiency

☐ Notice of Determination Concerning Your Request for Relief From Joint and Several Liability. (If you requested relief from joint and several liability but the IRS has not made a determination, please see the Information for Persons Representing Themselves Before the U. S. Tax Court booklet or the Tax Court's Web site.)

☐ Notice of Determination Concerning Collection Action

☐ Notice of Determination of Worker Classification

2. Provide the date(s) the IRS issued the NOTICE(S) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): _____

3. Provide the year(s) or period(s) for which the NOTICE(S) was/were issued: _____

4. SELECT ONE OF THE FOLLOWING:

If you want your case conducted under small tax case procedures, check here: ☐ **(CHECK**
If you want your case conducted under regular tax case procedures, check here: ☐ **ONE BOX)**

NOTE: A decision in a "small tax case" cannot be appealed to a Court of Appeals by the taxpayer or the IRS. If you do not check either box, the Court will file your case as a regular tax case.

5. Explain why you disagree with the IRS determination in this case (please list each point separately):

_____

_____

_____

_____

_____

_____

_____

_____

6. State the facts upon which you rely (please list each point separately):

_____

_____

_____

_____

_____

_____

_____

You may use additional pages to explain why you disagree with the IRS determination or to state additional facts. Please do not submit tax forms, receipts, or other types of evidence with this petition.

ENCLOSURES:

Please check the appropriate boxes to show that you have enclosed the following items with this petition:

☐ A copy of the NOTICE(S) the IRS issued to you

☐ Statement of Taxpayer Identification Number (Form 4) (See PRIVACY NOTICE below)

☐ The Request for Place of Trial (Form 5) ☐ The filing fee

PRIVACY NOTICE: Form 4 (Statement of Taxpayer Identification Number) will not be part of the Court's public files. All other documents filed with the Court, including this Petition and any IRS Notice that you enclose with this Petition, will become part of the Court's public files. To protect your privacy, you are strongly encouraged to omit or remove from this Petition, from any enclosed IRS Notice, and from any other document (other than Form 4) your taxpayer identification number (e.g., your Social Security number) and certain other confidential information as specified in the Tax Court's "Notice Regarding Privacy and Public Access to Case Files", available at www.ustaxcourt.gov.

_____ _____

Signature of Petitioner Date (Area Code) Telephone No.

_____ _____

Mailing Address City, State, ZIP Code

State of legal residence (if different from the mailing address): _____

_____ _____

Signature of Additional Petitioner (e.g.,Spouse) Date (Area Code) Telephone No.

_____ _____

Mailing Address City, State, ZIP Code

State of legal residence (if different from the mailing address): _____

_____

Signature, Name, Address, Telephone No., and Tax Court Bar No. of Counsel, if retained by Petitioner(s)

SAMPLE

Information About Filing a Case in the United States Tax Court

Attached are the forms to use in filing your case in the United States Tax Court.

It is very important that you take time to carefully read the information on this page and that you properly complete and submit these forms to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

Small Tax Case or Regular Tax Case

If you seek review of one of the four types of IRS Notices listed in paragraph 1 of the petition form (Form 2), you may file your petition as a “small tax case” if your dispute meets certain dollar limits (described below). “Small tax cases” are handled under simpler, less formal procedures than regular cases. However, the Tax Court’s decision in a small tax case cannot be appealed to a Court of Appeals by the IRS or by the taxpayer(s).

You can choose to have your case conducted as either a small tax case or a regular case by checking the appropriate box in paragraph 4 of the petition form (Form 2). If you check neither box, the Court will file your case as a regular case.

Dollar Limits: Dollar limits for a small tax case vary slightly depending on the type of IRS action you seek to have the Tax Court review:

(1) If you seek review of an IRS Notice of Deficiency, the amount of the deficiency (including any additions to tax or penalties) that you dispute cannot exceed $50,000 for any year.

(2) If you seek review of an IRS Notice of Determination Concerning Collection Action, the total amount of unpaid tax cannot exceed $50,000 for all years combined.

(3) If you seek review of an IRS Notice of Determination Concerning Your Request for Relief From Joint and Several Liability (or if the IRS failed to send you any Notice of Determination with respect to a request for spousal relief that you submitted to the IRS at least 6 months ago), the amount of spousal relief sought cannot exceed $50,000 for all years combined.

(4) If you seek review of an IRS Notice of Determination of Worker Classification, the amount in dispute cannot exceed $50,000 for any calendar quarter.

Enclosures

To help ensure that your case is properly processed, please enclose the following items when you mail your petition to the Tax Court:

1. A copy of the Notice of Deficiency or Notice of Determination the IRS sent you;

2. Your Statement of Taxpayer Identification Number (Form 4);

3. The Request for Place of Trial (Form 5); and

4. The $60 filing fee, payable by check, money order, or other draft, to the "Clerk, United States Tax Court"; or, if applicable, the fee waiver form.

For further important information, see the Court's Web site at www.ustaxcourt.gov or the "Information for Persons Representing Themselves Before the U.S. Tax Court" booklet available from the Tax Court.

Explanation

The amendments to Form 2 and its sample information sheet provide for the current name of the notice of determination issued by the Commissioner in actions for redetermination of employment status and substitute the name of the referenced information booklet for the name of the booklet currently used by the Court.

Form 6 is deleted and replaced with the following.

FORM 6

OWNERSHIP DISCLOSURE STATEMENT

(See Rule 20(c))
www.ustaxcourt.gov

UNITED STATES TAX COURT

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

OWNERSHIP DISCLOSURE STATEMENT

Pursuant to Rule 20(c), Tax Court Rules of Practice and Procedure, [Name of Petitioner], makes the following disclosure:

[If petitioner is a nongovernmental corporation, provide the following information:]

A. All parent corporations, if any, of petitioner, or state that there are no parent corporations:

B. All publicly held entities owning 10 percent or more of petitioner's stock, or state that there is no such entity:

OR

[If petitioner is a nongovernmental large partnership or limited liability company, or a tax matters partner or a partner other than a tax matters partner of a nongovernmental partnership, provide the following information:]

All publicly held entities owning an interest in the large partnership, the limited liability company, or the partnership, or state that there is no such entity:

....
Signature of Counsel or Petitioner's Duly Authorized Representative

Date

Explanation

The amendments to Form 6 are technical corrections to include references to a petition filed on behalf of a TEFRA partnership by a tax matters partner, a notice partner, or a 5-percent group, as a partner rather than a partnership is the petitioner in those cases.

Form 14 is deleted and replaced with the following.

FORM 14

SUBPOENA

(See Rule 147)
www.ustaxcourt.gov

UNITED STATES TAX COURT

_____
Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

} Docket No.

SUBPOENA

To .....
.....
YOU ARE HEREBY COMMANDED to appear before the United States Tax Court
.....
(or the name and official title of a person authorized to take depositions)
at ..... on the ..... day of ....., ... at .....
Time Date Month Year
.....
Place
then and there to testify on behalf of .....
Petitioner or Respondent
in the above-entitled case, and to bring with you .....
.....
.....
Use reverse if necessary

and not to depart without leave of the Court.

Date: .....

.....
Counsel for (Petitioner)(Respondent)

/s/ Robert R. Di Trolio
Clerk of the Court

_____
_____

Return on Service

The above-named witness was summoned on ..... at ..... by
Date Time
delivering a copy of this subpoena to (him)(her), and, if a witness for the petitioner, by tendering fees and mileage to (him)(her) pursuant to Rule 148 of the Rules of Practice and Procedure of the Tax Court.
Dated ..... Signed .....
Subscribed and sworn to before me this ..... day of ....., ...
.....[Seal]
Name Title

Explanation

The amendment to Form 14 revises the signature line to refer to the "counsel" for the party rather than the "attorney", in recognition of the fact that not all individuals admitted to practice before the Tax Court are attorneys.

Form 15 is deleted and replaced with the following.

FORM 15

APPLICATION FOR ORDER TO TAKE DEPOSITION TO PERPETUATE EVIDENCE

(See Rules 81 through 84)
www.ustaxcourt.gov

UNITED STATES TAX COURT

_____
Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

} Docket No.

APPLICATION FOR ORDER TO TAKE DEPOSITION TO PERPETUATE EVIDENCE*

To the United States Tax Court:

1. Application is hereby made by the above-named .....
Petitioner or Respondent
for an order to take the deposition(s) of the following-named person(s) who has (have) been served with a copy of this application, as evidenced by the attached certificate of service:

Name of witness	Post office address
(a)	.....
(b)	.....
(c)	.....
(d)	.....

2. It is desired to take the deposition(s) of the above-named person(s) for the following reasons [With respect to each of the above-named persons, set forth the reasons for taking the depositions rather than waiting until trial to introduce the testimony or other evidence.]:

3. The substance of the testimony, to be obtained through the deposition(s), is as follows [With respect to each of the above-named persons, set forth briefly the substance of the expected testimony or other evidence.]:

4. The books, papers, documents, electronically stored information, or other tangible things to be produced at the deposition, are as follows [With respect to each of the above-named persons, describe briefly all things which the applicant desires to have produced at the deposition.]:

5. The expected testimony or other evidence is material to one or more matters in controversy, in the following respects:

6. (a) This deposition (will) (will not) be taken on written questions (see Rule 84).
(b) All such written questions are annexed to this application [attach such questions pursuant to Rule 84].

7. The petition in this case was filed with the Court on .....
Date

The pleadings in this case (are) (are not) closed. This case (has) (has not) been placed on a trial calendar.

_____

*An application for an order to take a deposition to perpetuate evidence must be filed at least 45 days prior to the date set for the trial. When the applicant seeks to take depositions upon written questions, the title of the application shall so indicate and the application shall be accompanied by an original and five copies of the proposed questions. The taking of depositions upon written questions is not favored, except when the depositions are to be taken in foreign countries, in which case any depositions taken *must* be upon written questions, except as otherwise directed by the Court for cause shown. (See Rule 84(a).) If the parties so stipulate, depositions may be taken without application to the Court. (See Rule 81(d).) This form may not be used for depositions for discovery purposes, which may be taken only in accordance with Rule 74.

Explanation

The amendments to the title and footnote of Form 15 clarify that the form is not appropriately used for discovery depositions. The amendment to paragraph 4 of Form 15 is a technical correction to refer to electronically stored information, occasioned by amendments to Rule 72 et al., effective January 1, 2010.