UNITED STATES TAX COURT

Washington, D.C. 20217

March 23, 2022

PRESS RELEASE

Chief Judge Maurice B. Foley announced today that the United States Tax Court has proposed amendments to its Rules of Practice and Procedure. Some of the proposed amendments respond to suggestions and comments received from the Court's Judges and Special Trial Judges, Court staff, IRS Chief Counsel's Office, and the Tax Court bar, accumulated over the last few years. In some instances the Court has proposed new Rules to fill gaps in the Court's existing procedures. All of the proposed amendments reflect the Court's ongoing commitment to simplify and modernize the Rules, to make the Court's Rules more easily understood, and to conform the Rules more closely to the Federal Rules of Civil Procedure where appropriate.

The Court proposes three new Rules: Rule 63, Intervention; Rule 92, Identification and Certification of Administrative Record In Certain Actions; and Rule 152, Brief Of An Amicus Curiae. These new rules are intended and designed to fill gaps in the Court's existing Rules of Practice and Procedure that have been identified by Judges of this Court and by various Courts of Appeals (e.g., proposed Rules 63 and 152) or reflect important developments in the Court's jurisprudence (proposed Rule 92).

Some of the proposed amendments to existing rules are extensive. These include the proposed amendments to Rule 21 (Service of Papers), Rule 25 (Computation of Time), Rule 34 (Petition), Rule 121 (Summary Judgment), and Rule 147 (Subpoenas). For comparison purposes, the Notice of Proposed Amendments attached to this press release sets forth Rules 21, 25, 34, 121, and 147 in their current form (with strikeout) followed by the Rule as it is proposed to be amended (underlined).

Finally, the Court proposes conforming amendments to existing Rules and to Form 6, Ownership Disclosure Statement, and Form 10, Notice of Change of Address.

The Tax Court invites public comment on the proposed amendments. Comments must be received by May 25, 2022, and may be emailed to Stephanie A. Servoss, Clerk of the Court, at Rules@ustaxcourt.gov, or addressed to the Clerk of the Court at United States Tax Court, 400 Second Street, N.W., Room 111, Washington, D.C. 20217.

If you have any questions, contact the Public Affairs Office at (202) 521-3355.

NOTICE OF PROPOSED AMENDMENTS TO THE TAX COURT RULES OF PRACTICE AND PROCEDURE AND CONFORMING AMENDMENTS

March 23, 2022

Proposed Amendment to Rule 1

RULE 1. RULEMAKING AUTHORITY, SCOPE OF RULES, PUBLICATION OF RULES AND AMENDMENTS, CONSTRUCTION

(a) Rulemaking Authority: The United States Tax Court, after giving appropriate public notice and an opportunity for comment, may make and amend rules governing its practice and procedure.

(b) Scope of Rules: These Rules govern the practice and procedure in all cases and proceedings before the Court. ~~Where in any instance there is~~ If the Rules provide no ~~applicable rule of~~ governing procedure, the Court or the Judge before whom the matter is pending may prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand.

(c) Publication of Rules and Amendments: When the Court proposes new rules or amendments to these Rules ~~are proposed by the Court~~, the Court will provide notice of ~~such~~ those proposals on its website and provide ~~the ability of the public to comment shall be provided to~~ the Bar ~~to~~ and the general public an opportunity for comment ~~and shall be posted on the Court's Internet Web site~~. If the Court determines that there is an immediate need for a particular rule or amendment to an existing rule, ~~it may proceed without public notice and opportunity for comment, but~~ the Court may proceed without providing a prior opportunity for comment, but ~~shall~~ will promptly ~~thereafter afford~~ provide ~~such~~ public notice and opportunity for comment after the adoption of the rule or amendment.

(d) Construction: The Court's Rules ~~shall~~ should be construed, administered, and employed by the Court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding ~~case~~.

Explanation

It is proposed that Rule 1 be amended stylistically and that paragraph (d) of Rule 1 be amended to conform to Rule 1 of the Federal Rules of Civil Procedure. No substantive change is intended.

Proposed Amendment to Rule 3

RULE 3. TERMS AND DEFINITIONS

(a) Clerk: Reference to the Clerk ~~in these Rules means~~ is to the Clerk of the United States Tax Court.

(b) Code: Any reference or citation to the Code relates to the Internal Revenue Code of 1986, as in effect for the relevant period or the relevant time.

(c) Commissioner: Reference to the Commissioner ~~in these Rules means~~ is to the Commissioner of Internal Revenue.

(d) Dispositive Motion: The term "dispositive motion" encompasses any motion that, if granted, would result either in the determination of a particular claim on the merits or the elimination of a claim from the case. Dispositive motions include, but are not limited to, a motion (1) for judgment on the pleadings; (2) to dismiss (e.g., for lack of jurisdiction, for failure to state a claim upon which relief can be granted, or failure to properly prosecute); (3) for summary judgment or partial summary judgment; (4) for default judgment; and (5) to restrain assessment or collection or to review a proposed sale of seized property.

(e) Division: The Chief Judge may from time to time divide the Court into Divisions of one or more Judges and, in case of a Division of more than one Judge, designate the chief thereof.

~~**(f) Business Hours:** As to the Court's business hours, see Rule 10(d).~~
~~**(g) Filing:** For requirements as to filing with the Court, see Rule 22.~~

(f) Paper: Unless the context otherwise indicates, the term "paper" means a pleading, motion, brief, entry of appearance, or any other document that these Rules require or permit to be filed. A paper filed electronically in compliance with the Court's electronic filing procedures is a written paper for purposes of these Rules.

(g) Party: With respect to a common matter in cases consolidated for trial, the references to a "party" in Titles VII, VIII, IX, and X mean any party to any of the consolidated cases involving the common matter.

(h) Special Trial Judge: ~~The term~~ Reference to a Special Trial Judge ~~as used in these Rules refers~~ is to a judicial officer appointed pursuant to Code section 7443A(a). See Rule 180.

(i) Time: As provided in these Rules and in orders and notices of the Court, time means standard time in the location mentioned except when advanced time is substituted therefor by law. For computation of time, see Rule 25.

(j) Website: Any reference to the Court's website is to the website at www.ustaxcourt.gov.

Explanation

It is proposed that the title of Rule 3 be amended to clarify that the Rule sets forth commonly used terms and definitions and that Rule 3 be amended stylistically. It is also proposed that the text of current paragraphs (f) and (g) of Rule 3 be deleted as unnecessary, that new paragraphs be added to Rule 3 to define the terms "dispositive motion" and "website," that language in current Rule 70(a)(3) and Rule 92 be combined and added to Rule 3 as a new paragraph defining the term "party" in the context of consolidated cases, and that the terms be organized in alphabetical order.

Proposed Amendment to Rule 10

RULE 10. NAME, OFFICE, AND SESSIONS

(a) Name: The Court's name ~~of the Court~~ is the United States Tax Court.

(b) Office of the Court: The Court's principal office ~~of the Court shall be~~ is in the District of Columbia, but the Court or any of its Divisions may sit at any place within the United States. See Code secs. 7445, 7701(a)(9).

(c) Sessions: The Chief Judge prescribes the times and places of the Court's sessions ~~of the Court shall be prescribed by the Chief Judge~~.

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

(e) Mailing Address: Mail to the Court ~~should~~ must be addressed to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. Other addresses, such as locations at which the Court may be in session, ~~should~~ must not be used, unless the Court ~~directs~~ orders otherwise.

Explanation

It is proposed that Rule 10 be amended stylistically. No substantive change is intended.

Proposed Amendment to Rule 20

RULE 20. COMMENCEMENT OF CASE

(a) General: A case is commenced ~~in the Court~~ by filing a petition with the Court. See Rule 13.

(b) Statement of Taxpayer Identification Number: The petitioner ~~shall~~ must submit with the petition a statement of the petitioner's taxpayer identification number (e.g., Social Security number or employer identification number), or lack thereof. The statement ~~shall~~ must be substantially in accordance with Form 4 (Statement of Taxpayer Identification Number) shown in the Appendix ~~I~~.

(c) Disclosure Statement: ~~A petitioner, other than an individual or a governmental corporation or a governmental partnership, 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 If the petitioner is 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, partner other than a tax matters partner, or partnership representative of a nongovernmental partnership, If the petitioner is the disclosure statement shall identify any publicly held entity owning an interest in the large partnership, the limited liability company, or the partnership petitioner and in the corporation, partnership, or limited liability company on whose behalf the petition is filed, 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 Rules 240(b)(1), (4) and 255.1(b)(1). 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). For the definition of a partnership representative, see Rule 255.1(b)(3).~~

(1) *Who Must File; Contents.* A nongovernmental corporate party must file a disclosure statement that:

(A) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock, or

(B) states that there is no such corporation.

(2) *Time to File; Supplemental Filing.* A party must:

(A) file the disclosure statement with its first appearance, pleading, motion, response, or other request addressed to the Court; and

(B) promptly file a supplemental statement if any required information changes.

For the form of a disclosure statement, see Form 6 (Corporate Disclosure Statement) shown in the Appendix.

(d) Filing Fee: A fee of $60 must be paid ~~A~~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~~ the payment.

Explanation

It is proposed that Rule 20 be amended stylistically. It is also proposed that paragraph (c) of Rule 20 be amended to conform to Rule 7.1 of the Federal Rules of Civil Procedure. The broad scope of paragraph (c) of Rule 20 in its current form has been confusing to petitioners and cumbersome in application. In this regard, the Advisory Committee Notes to Fed. R. Civ. P. 7.1 explain that, while the scope of the disclosures required by that rule may seem limited, "they are calculated to reach a majority of circumstances that are likely to call for [a judge's] disqualification on the basis of financial information that a judge may not know or recollect." The proposed amendment is intended to eliminate unnecessary burdens on the parties and on the Court, while supporting properly informed disqualification decisions. Conforming changes are proposed to be made to Form 6 (Ownership Disclosure Statement).

Proposed Amendment to Rule 21

RULE 21. SERVICE OF PAPERS

(a) When Required: Except as otherwise required by these Rules or directed by the Court, all pleadings, motions, orders, decisions, notices, demands, briefs, appearances, or other similar documents or papers relating to a case, including a disciplinary matter under Rule 202, also referred to as the papers in a case, shall be served on each of the parties or other persons involved in the matter to which the paper relates other than the party who filed the paper.

(b) Manner of Service: (1) *General:* All petitions shall be served by the Clerk. Unless otherwise provided in these Rules or directed by the Court, all other papers required to be served on a party shall be served by the party filing the paper, and the original paper shall be filed with a certificate by a party or a party's counsel that service of that paper has been made on the party to be served or such party's counsel. For the form of such certificate of service, see the Appendix, Form 9. Such service may be made by:

(A) Mail directed to the party or the party's counsel at such person's last known address. Service by mail is complete upon mailing, and the date of such mailing shall be the date of such service.

(B) Delivery to a party, or a party's counsel or authorized representative in the case of a party other than an individual (see Rule 24(b)).

(C) Mail directed or delivery to the Commissioner's counsel at the office address shown in the Commissioner's answer filed in the case or a motion filed in lieu of an answer. If no answer or motion in lieu of an answer has been filed, then mail shall be directed or delivered to the Chief Counsel, Internal Revenue Service, Washington, D.C. 20224.

(D) Electronic means if the person served consented in writing, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served.

Service on a person other than a party shall be made in the same manner as service on a party, except as otherwise provided in these Rules or directed by the Court. In cases consolidated pursuant to Rule 141, a party making service of a paper shall serve each of the other parties or counsel for each of the other parties, and the original and copies thereof required to be filed with the Court shall each have a certificate of service attached.

(2) *Counsel of Record:* Whenever under these Rules service is required or permitted to be made upon a party represented by counsel who has entered an appearance, service shall be made upon such counsel unless service upon the party is directed by the Court. Where more than one counsel appear for a party, service is required to be made

~~only on that counsel whose appearance was first entered of record, unless that counsel notifies the Court, by a designation of counsel to receive service filed with the Court, that other counsel of record is to receive service, in which event service is required to be made only on the person so designated.~~

~~(3) *Writs and Process:* Service and execution of writs, process, or similar directives of the Court may be made by a United States marshal, by a deputy marshal, or by a person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 147(c). The person making service shall make proof thereof to the Court promptly and in any event within the time in which the person served must respond. Failure to make proof of service does not affect the validity of the service.~~

~~(4) *Change of Address:* The Court shall be promptly notified, by a notice of change of address filed with the Court, of the change of mailing address of any party, any party's counsel, or any party's duly authorized representative in the case of a party other than an individual (see Rule 24(e)). A separate notice of change of address shall be filed for each docket number. For the form of such notice of change of address, see the Appendix, Form 10.~~

~~(5) *Using Court Transmission Facilities:* A party may make service under Rule 21(b)(1)(D) through the Court's transmission facilities pursuant to electronic service procedures prescribed by the Court.~~

(a) When Required: Unless the Court orders otherwise, any paper relating to a case, including a disciplinary matter under Rule 202, must be served on every party or other person involved in the matter to which the paper relates.

(b) Manner of Service:

(1) *General:*

(A) *Service by the Clerk:* The Clerk will serve all petitions. Unless a paper is served through the Court's electronic filing and case management system as provided in paragraph (b)(2)(A) of this Rule, the Clerk will serve any paper on a person whose address is sealed or protected due to privacy or security reasons.

(B) *Service by a Party:* Unless these Rules provide otherwise or the Court orders otherwise, all other papers required to be served on a party must be served by the party filing the paper. Unless a paper is served through the Court's electronic filing hand case management system, the original paper must be filed with a certificate by a party or a party's counsel that service of that paper has been

made on the party to be served or the party's counsel. See Form 9 (Certificate of Service) shown in the Appendix.

(2) *Service Methods:* A paper is served under this Rule by:

(A) Sending it to a registered user by filing it with the Court's electronic filing and case management system or sending it by other electronic means that the person consented to in writing--in either of which events service is complete upon filing or sending, but is not effective if the serving party learns that it did not reach the person to be served;

(B) Mailing it to a party or a party's counsel at the person's last known address. Service by mail is complete when the paper is mailed, and the date of mailing will be the date of service;

(C) Delivering it to a party, or a party's counsel or authorized representative in the case of a party other than an individual (see Rule 24(b)); or

(D) Mailing or delivering it to the Commissioner's counsel at the office address shown in the Commissioner's answer filed in the case or a motion filed in lieu of an answer. If no answer or motion in lieu of an answer has been filed, mail must be directed or delivered to the Chief Counsel, Internal Revenue Service, Washington, D.C. 20224.

(3) *Service on Nonparty; Consolidated Cases:* The rules for service on a party also apply to service on a person who is not a party, unless these Rules provide or the Court orders otherwise. In cases consolidated pursuant to Rule 141, unless a paper is served through the Court's electronic filing and case management system, a party making service of a paper must serve each of the other parties or counsel for each of the other parties, and the original of each paper required to be filed with the Court must have a certificate of service attached.

(4) *Counsel of Record:* Whenever these Rules require or permit service to be made on a party represented by counsel who has entered an appearance, service must be made on that counsel unless the Court orders service on the party. In the case of paper service, if more than one counsel appear for a party, service is required to be made only on that counsel whose appearance was first entered of record, unless that counsel notifies the Court, by a designation of counsel to receive service filed with the Court, that other counsel of record is to receive service, in which event service is required to be made only on the person so designated.

(5) *Writs and Process:* Service and execution of writs, process, or similar directives of the Court may be made by a United States marshal, by a deputy marshal, or

by a person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 147(b). The person making service must make proof thereof to the Court promptly and in any event within the time in which the person served must respond. Failure to make proof of service does not affect the validity of the service.

(c) Change of Mailing Address or Email Address. A party, party's counsel, or party's duly authorized representative in the case of a party other than an individual (see Rule 24(e)) whose mailing address or email address has changed must promptly notify the Court by a notice of change of address. A separate notice of change of address must be filed for each docket number. For the form of such notice, see Form 10 (Notice of Change of Address) shown in the Appendix.

Explanation

It is proposed that Rule 21 be amended stylistically, reorganized, and amended to conform more closely to Rule 5(b) of the Federal Rules of Civil Procedure.

It is also proposed that Rule 21 be amended by adding new language clarifying and expanding on the procedures governing service of papers through the Court's electronic filing and case management system and through other means. It is proposed to amend paragraph (b) of Rule 21 to provide that, unless the serving party sends a paper to a registered user by filing it through the Court's electronic filing and case management system, the Clerk will make service on a person whose address is sealed or protected. It is further proposed to amend paragraph (b) of Rule 21 to provide that service of a paper may be made by sending it to a registered user by filing it with the Court's electronic filing and case management system or by sending it through other electronic means that the person consented to in writing. Any paper that is served through any means other than sending it to a registered user by filing it with the Court's electronic filing and case management system must be accompanied by a certificate of service. Finally, it is proposed that the term "transmission facilities" appearing in Rule 21 in its current form be replaced with a reference to the Court's "electronic filing and case management system".

It is further proposed that paragraph (c) of Rule 21 include new language requiring a party, party's counsel, or a party's duly authorized representative to inform the Court if the person's email address has changed. Form 10 (Notice of Change of Address) is proposed to be amended to provide a new line for reporting a change in email address.

Proposed Amendment to Rule 23

RULE 23. FORM AND STYLE OF PAPERS

(a) Caption, Date, ~~and~~ Signature, and Contact Information Required: Any paper filed with the Court ~~shall have a caption, shall be dated, and shall be signed as follows~~ must include the following:

(1) *Caption:* All papers filed with the Court must include a proper caption ~~shall be placed on all papers filed with the Court,~~ and must comply with the requirements ~~provided in~~ of Rule 32(a) ~~shall be satisfied with respect to all such papers~~. ~~All prefixes and titles, such as "Mr.", "Ms.", or "Dr.", shall be omitted from the caption.~~ The caption must include the full name and surname of each individual petitioner ~~shall be set forth in the caption~~, omitting all prefixes and titles such as "Mr.", "Ms.", or "Dr.". The name of an estate or trust or other person for whom a fiduciary acts ~~shall~~ must precede the fiduciary's name and title, as for example "Estate of Mary Doe, Deceased, Richard Roe, Executor."

(2) *Date:* The date of signature ~~shall~~ must be placed on all papers filed with the Court.

(3) *Signature and Contact Information:* A person's name entered by that person on a signature block on a paper that the person authorized to be filed electronically, and that is so filed, constitutes the person's signature. ~~An electronically filed paper shall be signed in accordance with electronic filing procedures established by the Court.~~ Any other paper to be filed with the Court ~~shall~~ must bear the ~~original~~ signature of the party's counsel, or of the party personally if the party is self-represented, ~~except as otherwise provided by~~ unless these Rules provide otherwise. An individual rather than a firm name ~~shall~~ must be used, except that the signature of a petitioner corporation or unincorporated association ~~shall~~ must be in the name of the corporation or association by one of its active and authorized officers or members, as for example "Mary Doe, Inc., by Richard Roe, President." Except as Rule 23(a)(4) provides, ~~T~~the name, mailing address, email address ~~(if any)~~, and telephone number of the party or the party's counsel, as well as counsel's Tax Court bar number, ~~shall~~ must be typed or printed immediately beneath the signature. The mailing address of a signatory ~~shall~~ must include a firm name if it is an essential part of the accurate mailing address.

(4) *Decision Documents:* A decision document, including a proposed decision document, must omit a party's mailing address, email address, and telephone number.

(b) Number Filed: Unless these Rules provide otherwise, a party filing a document in paper form ~~there shall be filed~~ must file a signed original ~~and one conformed copy~~ with any

attachments ~~except as otherwise provided in~~. Only one transmission of an electronically filed document is required. ~~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).

(c) Legible Papers Required: A paper ~~Papers~~ filed with the Court may be prepared by any process, as long as the paper is ~~but only if all papers, including copies, filed with the Court are~~ clear and legible.

(d) Size and Style:

(1) *Papers:* ~~Typewritten or printed papers shall~~ A paper must be typed or printed only on one side, on opaque, unglazed paper, 8 ½ inches wide by 11 inches long. ~~All such~~ The papers ~~shall~~ must 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.

(2) *Text, footnotes, and quotations:* Text and footnotes ~~shall~~ must 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 or Century Schoolbook), 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~~ must be set off from the surrounding text and indented.

(3) *Lines*: Double-spaced lines ~~shall~~ must be no more than three lines to the vertical inch, and single-spaced lines ~~shall~~ must be no more than six lines to the vertical inch.

(e) Binding and Covers: ~~All papers shall~~ A paper filed with the Court in paper form ~~shall~~ should not have a back or cover and may only be bound ~~together on the upper left-hand side only,~~ using a removable fastener~~, and shall have no backs or covers~~.

(f) Citations: All citations of case names ~~shall~~ must be underscored ~~when typewritten, and shall be~~ or in italics ~~when printed~~.

(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

It is proposed that Rule 23 be amended stylistically and to address certain procedural matters as to the form and style of papers and the transmission of papers to the Court. It is proposed that paragraph (a)(3) of Rule 23 be amended to (1) state that a person's name entered by that person on a signature block on a paper that the person authorized to be filed electronically, and that is so filed, constitutes the person's signature, and (2) to eliminate the requirement that a paper filed with the Court include the original signature of the party or the party's counsel. These proposed amendments conform Rule 23 more closely to Rules 5(d)(3) and 11(a) of the Federal Rules of Civil Procedure, which address signature requirements for papers filed with a court. It is further proposed that new paragraph (a)(4) be added to Rule 23 to provide that a party's mailing address, email address, and telephone number must be omitted from a decision document or a proposed decision document to facilitate remote electronic access to the Court's decisions. It is further proposed that paragraph (b) of Rule 23 be amended to provide that (1) if a paper is filed with the Court in paper form, only a single copy with any attachments should be filed, and (2) only a single transmission is required when a paper is filed electronically. It is proposed that paragraph (d) of Rule 23 be reorganized and that Century Schoolbook be added as an acceptable font for papers filed with the Court. Finally, it is proposed that paragraph (e) of Rule 23 be amended to provide that papers filed with the Court in paper form may only be bound using a removable fastener.

Proposed Amendment to Rule 25

RULE 25. COMPUTATION OF TIME

(a) Computation: (1) *General:* In computing any period of time prescribed or allowed by these Rules or by direction of the Court or by any applicable statute which does not provide otherwise, the day of the act, event, or default from which a designated period of time begins to run shall not be included, and (except as provided in subparagraph (2)) the last day of the period so computed shall be included. If service is made by mail or electronically, then a period of time computed with respect to the service shall begin on the day after the date of mailing or electronic service.

(2) *Saturdays, Sundays, and Holidays:* Saturdays, Sundays, and all legal holidays shall be counted, except that, (A) if the period prescribed or allowed is less than 7 days, then intermediate Saturdays, Sundays, and legal holidays in the District of Columbia shall be excluded in the computation; (B) if the last day of the period so computed is a Saturday, Sunday, or a legal holiday in the District of Columbia, then that day shall not be included and the period shall run until the end of the next day which is not a Saturday, Sunday, or such a legal holiday; and (C) if any act is required to be taken or completed no later than (or at least) a specified number of days before a date certain, then the earliest day of the period so specified shall not be included if it is a Saturday, Sunday, or a legal holiday in the District of Columbia, and the earliest such day shall be the next preceding day which is not a Saturday, Sunday, or such a legal holiday. When such a legal holiday falls on a Sunday, the next day shall be considered a holiday; and, when such a legal holiday falls on a Saturday, the preceding day shall be considered a holiday.

(b) District of Columbia Legal Holidays: The legal holidays within the District of Columbia, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows:

New Year's Day--January 1
Birthday of Martin Luther King, Jr.--Third Monday in January
Inauguration Day--Every fourth year
Washington's Birthday--Third Monday in February
District of Columbia Emancipation Day--April 16
Memorial Day--Last Monday in May
Independence Day--July 4
Labor Day--First Monday in September
Columbus Day--Second Monday in October
Veterans Day--November 11
Thanksgiving Day--Fourth Thursday in November
Christmas Day--December 25

~~**(c) Enlargement or Reduction of Time:** Unless precluded by statute, the Court in its discretion may make longer or shorter any period provided by these Rules. As to continuances, see Rule 133. Where a motion is made concerning jurisdiction or the sufficiency of a pleading, the time for filing a response to that pleading shall begin to run from the date of service of the order disposing of the motion by the Court, unless the Court shall direct otherwise. Where the dates for filing briefs are fixed, an extension of time for filing a brief or the granting of leave to file a brief after the due date shall correspondingly extend the time for filing any other brief due at the same time and for filing succeeding briefs, unless the Court shall order otherwise. The period fixed by statute, within which to file a petition with the Court, cannot be extended by the Court.~~

(a) Computing Time: The following Rules apply in computing any time period specified in these rules, in any Court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days:* If a period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Inaccessibility of the Clerk's Office:* Unless the Court orders otherwise, if the Clerk's Office is inaccessible on the last day of a filing period, the time for filing any paper other than a petition is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday. For the circumstances under which the period for filing a petition is tolled when a filing location is inaccessible, see Code section 7451(b).

(3) "Last Day" Defined. Unless a different time is set by a statute or Court order, the last day ends:

(A) for electronic filing, at 11:59 p.m. Eastern Time; and

(B) for filing by other means, when the Clerk's Office is scheduled to close.

(4) *"Next Day" Defined.* The "next day" is determined by continuing to count forward if the period is measured after an event and backward if the period is measured before an event.

(5) *"Legal Holiday" Defined*. "Legal holiday" means:

(A) the day set aside by statute for observation of New Year's Day, Martin Luther King Jr.'s Birthday, Inauguration Day, Washington's Birthday, Memorial Day, Juneteenth (National Independence Day), Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) any other day that the District of Columbia has declared a holiday, including District of Columbia Emancipation Day--April 16.

(b) Extending Time:

(1) In General. Unless precluded by statute, if an act may or must be done within a specified time, the Court may, for good cause, extend the time:

(A) with or without motion or notice if the Court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

As to continuances, see Rule 133.

(2) *Special Rules:*

(A) If a motion is made concerning jurisdiction or the sufficiency of a pleading, the time for filing a responsive pleading to that pleading begins to run from the date of service of the Court's order disposing of the motion, unless the Court orders otherwise.

(B) If the Court has issued an order directing the filing of an amendment, supplement, or ratification of any pleading, the time for filing a responsive pleading begins to run from the date of service of the amendment, supplement, or ratification, unless the Court orders otherwise.

(C) The period fixed by statute, within which to file a petition with the Court, cannot be extended by the Court.

(D) After the dates for filing briefs are fixed, an extension of time for filing a brief or the granting of leave to file a brief after the due date extends

the time for filing any other brief due at the same time and for filing succeeding briefs, unless the Court orders otherwise.

(c) Reducing Time: The Court in its discretion may shorten any period provided by these Rules.

Explanation

It is proposed that Rule 25 be amended stylistically and reorganized to conform more closely to Rule 6(a) and (b) of the Federal Rules of Civil Procedure. It is proposed that (1) new paragraph (a)(2) be added to Rule 25 to govern situations in which the Clerk's Office is inaccessible on the last day of a filing period, including a reference to Code section 7451(b), which tolls the period of filing a petition when a filing location is inaccessible, and (2) Juneteenth (National Independence Day) be added to the list of legal holidays. It is also proposed that new language be added to paragraph (b) of Rule 25 to address the time for filing a responsive pleading if the Court has directed the filing of an amendment, supplement, or ratification of a pleading, and that paragraph (c) be added to Rule 25 in connection with the reorganization of the Rule.

Proposed Amendment to Rule 26

RULE 26. ELECTRONIC FILING

(a) General: Unless the Court orders otherwise, the Court will accept for filing by a party 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~~. See Rule 23, Form and Style of Papers.

(b) Electronic Filing Requirement:

(1) *General Rule--Party Represented by Counsel:* Electronic filing is required for all papers filed by parties represented by counsel ~~in open cases~~, unless the Court orders otherwise.

(2) *Exceptions:* Mandatory electronic filing does not apply to:

(~~1~~ A) ~~petitions and other~~ any papers~~s~~ 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~~ website ~~at www.ustaxcourt.gov~~); and

(~~3~~ B) any counsel in a case who, ~~up~~on 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~~ must be accompanied by any document sought to be filed in paper form.

(~~2~~c) Self-Represented Petitioners: Self-represented petitioners, including petitioners assisted by low-income taxpayer clinics and Bar-sponsored pro bono programs, are not subject to mandatory electronic filing requirements.

Explanation

It is proposed that Rule 26 be amended stylistically, that paragraph (a) of Rule 26 be amended to eliminate a redundancy and to include a cross-reference to Rule 23, and that paragraph (b) of Rule 26 be reorganized into separate paragraphs (b) and (c). No substantive change is intended.

Proposed Amendment to Rule 27

RULE 27. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

(a) Redacted Filings: ~~Except as otherwise required by~~ Unless these Rules provide otherwise or ~~directed by~~ the Court orders otherwise, in an electronic or paper filing with the Court, a party or nonparty making the filing ~~should~~ must refrain from including or ~~should~~ must take appropriate steps to redact the following information:

(1) Taxpayer identification numbers (e.g., Social Security numbers or employer identification numbers).

(2) Dates of birth. If a date of birth is provided, only the year should appear.

(3) Names of minor children. If a minor child is identified, only the minor child's initials should appear.

(4) Financial account numbers. If a financial account number is provided, only the last four digits of the number should appear.

(b) Limitations on Remote Access to Electronic Files: ~~Except as~~ Unless the Court orders otherwise ~~directed by the Court~~, access to an electronic file is authorized as follows:

(1) The parties and their counsel may have remote electronic access to any part of the case file maintained by the Court in electronic form; and

(2) any other person may have electronic access at the courthouse to the public record maintained by the Court in electronic form, but may have remote electronic access only to:

(A) The docket record maintained by the Court; and

(B) any opinion, order, or decision of the Court, but not any other part of the case file.

(c) Filings Made Under Seal: The Court may order that a filing containing any of the information described in paragraph (a) of this Rule be made under seal without redaction. The Court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) Protective Orders: For good cause, the Court may by order in a case:

(1) Require redaction of additional information; or

(2) issue a protective order as provided by Rule 103(a).

(e) Option for Additional Unredacted Filing Under Seal: A person making a redacted filing may also file an unredacted copy under seal. The Court ~~must~~ will retain the unredacted copy as part of the record.

(f) Option for Filing a Reference List: A document that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed with a motion to seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) Waiver of Protection of Identifiers: A person waives the protection of this Rule as to the person's own information by filing it without redaction and not under seal. The Clerk ~~of the Court~~ is not required to review documents filed with the Court for compliance with this Rule. The responsibility to redact a filing rests with the ~~party or nonparty~~ person making the filing.

(h) Inadvertent ~~Waiver~~ Disclosure: A ~~party~~ person may correct an inadvertent disclosure of identifying information in a prior filing by submitting a properly redacted duplicate ~~substitute~~ filing (complete with attachments) within 60 days of the original filing without leave of Court, and thereafter only by leave of Court.

(i) Service on a Party Whose Address Is Subject to a Protective Order: For service of papers on a party whose address is sealed or protected due to privacy or security reasons, see Rule 21(b)(1).

Explanation

It is proposed that Rule 27 be amended stylistically, that paragraph (h) of Rule 27 be amended to more accurately describe the procedure to correct an inadvertent disclosure of identifying information, and that new paragraph (i) be added to Rule 27 to provide a cross-reference to Rule 21(b)(1), which concerns the Clerk's role in serving papers on a party whose address is sealed or protected. No substantive change is intended.

Proposed Amendment to Rule 31

RULE 31. GENERAL RULES OF PLEADING

(a) Purpose: The purpose of ~~the~~ a pleading~~s~~ is to give the parties and the Court fair notice of the matters in controversy and the basis for ~~their~~ the parties' respective positions.

(b) Pleading To Be Concise and Direct: Each ~~averment of~~ allegation in a pleading ~~shall~~ must be simple, concise, and direct. No technical form~~s of pleading are~~ is required.

(c) Consistency: A party may set forth two or more statements of a claim or defense alternatively or hypothetically. ~~When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.~~ If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. A party may state as many separate claims or defenses as the party has regardless of consistency or the grounds on which based. All statements ~~shall be made~~ are subject to the signature requirements of Rules 23(a)(3) and 33.

(d) Construction of Pleadings: A~~ll~~ pleading~~s shall be so~~ must be construed so as to do ~~substantial~~ justice.

Explanation

It is proposed that Rule 31 be amended stylistically, to conform more closely to Rule 10(b) of the Federal Rules of Civil Procedure, and that paragraph (c) of Rule 31 be amended to eliminate a redundancy. No substantive change is intended.

Proposed Amendment to Rule 32

RULE 32. FORM OF PLEADINGS

(a) Caption; Names of Parties: Every pleading ~~shall contain~~ must have a caption that includes ~~setting forth the name of~~ the Court's name (United States Tax Court), the names of the parties (the title of the case), and the docket number (after it becomes available, ~~(~~see Rule 35), and must designate the type of pleading ~~a designation~~ under Rule 30 ~~to show the nature of the pleading~~. ~~In the petition,~~ tThe title of a petition ~~the case shall~~ must ~~include the~~ name~~s of~~ all the parties~~, but shall not include as a party-petitioner~~ and ~~the name of any person other than the person or~~ persons ~~by or~~ on whose behalf the petition is filed. ~~In~~ The title of other pleadings, after naming the first party on each side, ~~it is sufficient in other pleadings to state the name of the first party with an appropriate indication of~~ may refer generally to other parties.

(b) Paragraphs; Separate Statements: ~~All averments of claim or defense, and all statements in support thereof, shall be made in separately designated paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single item or a single set of circumstances. Such paragraph may be referred to by that designation in all succeeding pleadings.~~ A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. Each claim and defense ~~shall~~ must be stated separately whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits: A ~~S~~statement~~s~~ in a pleading may be adopted by reference elsewhere in ~~a different part of~~ the same pleading or in ~~another~~ any other pleading or ~~in any~~ motion. A copy of any ~~written instrument~~ notice ~~which~~ that is an exhibit to a pleading is a part ~~there~~of the pleading for all purposes. No other exhibit may be attached to a pleading.

(d) Other Provisions: With respect to other provisions relating to the form and style of papers filed with the Court, see Rules 23, 56(a), 57(a), 210(d), 220(d), 240(d), 300(d), and 320(c).

Explanation

It is proposed that Rule 32 be amended stylistically, that paragraph (b) of Rule 32 be amended to conform more closely to Rule 10(b) of the Federal Rules of Civil Procedure, and that paragraph (c) of Rule 32 be amended to clarify that, excepting a notice (e.g., a notice of deficiency or notice of determination), no other exhibit may be attached to a pleading.

Proposed Amendment to Rule 33

RULE 33. SIGNING OF PLEADINGS

(a) Signature: Each pleading ~~shall~~ must be signed in the manner provided in Rule 23. ~~Where~~ If there is more than one ~~attorney~~ counsel 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.~~

(b) Effect of Signature: ~~The signature of~~ Counsel or a party ~~constitutes a certificate by the~~ signing ~~signer of~~ a pleading certifies that the signer has read the pleading; that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or by a ~~good faith~~ nonfrivolous argument for ~~the extension, modification, or reversal of~~ extending, modifying, or reversing existing law or for establishing new law; and that it is not ~~interposed~~ presented for any improper purpose, such as to harass, ~~or to~~ cause unnecessary delay, or needlessly increase ~~in~~ the cost of litigation. ~~The~~ Counsel's signature ~~of counsel~~ also serves as ~~constitutes~~ a representation ~~by counsel~~ that counsel is authorized to represent the party or parties on whose behalf the pleading is filed. ~~If a pleading is not signed, it~~ The Court may strike an unsigned pleading ~~shall be stricken~~, unless it is signed promptly after the omission is called to the counsel's or party's attention ~~of the pleader~~. If, after notice and a reasonable opportunity to respond, the Court determines that a pleading ~~is~~ has been signed in violation of this Rule, the Court~~, upon motion or upon its own initiative,~~ may impose ~~up~~on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the ~~amount of the~~ reasonable expenses incurred because of the filing of the pleading, including reasonable counsel's fees.

Explanation

It is proposed that Rule 33 be amended stylistically and to conform more closely to paragraphs (a) and (b) of Rule 11 of the Federal Rules of Civil Procedure. No substantive change is intended.

Proposed Amendment to Rule 34

RULE 34. PETITION

(a) General: (1) *Deficiency or Liability Action:* The petition with respect to a notice of deficiency or a notice of liability shall be substantially in accordance with Form 1 shown in Appendix I, and shall comply with the requirements of these Rules relating to pleadings. Ordinarily, a separate petition shall be filed with respect to each notice of deficiency or each notice of liability. However, a single petition may be filed seeking a redetermination with respect to all notices of deficiency or liability directed to one person alone or to such person and one or more other persons or to a husband and a wife individually, except that the Court may order a severance and a separate case to be maintained with respect to one or more of such notices. Where the notice of deficiency or liability is directed to more than one person, each such person desiring to contest it shall file a petition, either separately or jointly with any such other person, and each such person must satisfy all the requirements of this Rule in order for the petition to be treated as filed by or for such person. The petition shall be complete, so as to enable ascertainment of the issues intended to be presented. A petition may be filed electronically under the electronic filing procedures established by the Court, or a petition may be filed by properly mailing or hand delivering it to the Court. No paper will be recognized as a petition if it is submitted to the Court in any other way. The address to be used to mail or hand deliver a petition is set forth in Rule 10(e). Petitions may be hand delivered to the Court only during business hours, see Rule 10(d). Failure of the petition to satisfy applicable requirements may be ground for dismissal of the case. As to the joinder of parties, see Rule 61; and as to the effect of misjoinder of parties, see Rule 62. For the circumstances under which a timely mailed petition will be treated as having been timely filed, see Code section 7502.

(2) *Other Actions:* For the requirements relating to the petitions in other actions, see the following Rules: Declaratory judgment actions, Rules 211(b), 311(b); disclosure actions, Rule 221(b); partnership actions, Rules 241(b), 255.2(b), and 301(b); administrative costs actions, Rule 271(b); abatement of interest actions, Rule 281(b); redetermination of employment status actions, Rule 291(b); determination of relief from joint and several liability on a joint return actions, Rule 321(b); lien and levy actions, Rule 331(b); whistleblower actions, Rule 341(b), and certification actions with respect to passports, Rule 350(b). As to joinder of parties in declaratory judgment actions, in disclosure actions, and in all forms of partnership actions, see Rules 215, 226, 241(h), 255.2(c), and 301(f), respectively.

(b) Content of Petition in Deficiency or Liability Action: The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):

(1) In the case of a petitioner who is an individual, the petitioner's name and State of legal residence; in the case of a petitioner other than an individual, the petitioner's name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address and the office of the Internal Revenue Service with

which the tax return for the period in controversy was filed. The mailing address, State of legal residence, principal place of business, or principal office or agency shall be stated as of the date of filing the petition. In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition.

(2) The date of the notice of deficiency or liability, or other proper allegations showing jurisdiction in the Court, and the City and State of the office of the Internal Revenue Service which issued the notice.

(3) The amount of the deficiency or liability, as the case may be, determined by the Commissioner, the nature of the tax, the year or years or other periods for which the determination was made; and, if different from the Commissioner's determination, the approximate amount of taxes in controversy.

(4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the assignments of error shall be deemed to be conceded. Each assignment of error shall be separately lettered.

(5) Clear and concise lettered statements of the facts on which petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(6) A prayer setting forth relief sought by the petitioner.

(7) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(8) A copy of the notice of deficiency or liability, as the case may be, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of deficiency or liability or accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the issues raised by the assignments of error likewise shall be appended to the petition.

A claim for reasonable litigation or administrative costs shall not be included in the petition in a deficiency or liability action. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

(c) Content of Petition in Other Actions: For the requirements as to the content of the petition in a small tax case, see Rule 173(a), declaratory judgment actions, see Rules 211(b)-(g)

~~and 311(b), disclosure actions, see Rule 221(b)-(e), partnership actions, see Rules 241(b)-(e), 255.2(b), and 301(b)-(e), administrative costs actions, see Rule 271(b), abatement of interest actions, see Rule 281(b), redetermination of employment status actions, see Rule 291(b), actions for determination of relief from joint and several liability on a joint return, see Rule 321(b), lien and levy actions, see Rule 331(b), whistleblower actions, see Rule 341(b), and certification actions with respect to passports, see Rule 351(b).~~

~~**(d) Use of Form 2 Petition:** The use of a properly completed Form 2 petition satisfies the requirements of this Rule.~~

~~**(e) Original Required:** Notwithstanding Rule 23(b), only the signed original of each petition is required to be filed.~~

(a) General: A petition must contain the information required by these Rules and must identify the issues presented. If the petition does not comply with these Rules, the case may be dismissed.

(b) Deficiency or Liability Action:

(1) *Content of Petition.* A petition in a deficiency or liability action must be substantially in accordance with Form 1 (Petition) shown in the Appendix and must contain the following:

(A) If the petitioner is an individual, the petitioner's name and State of legal residence.

(B) If the petitioner is not an individual, the petitioner's name and principal place of business or principal office or agency.

(C) The petitioner's mailing address and the office of the Internal Revenue Service with which the tax return for the period in controversy was filed.

(D) The date of the notice and the City and State of the Internal Revenue Office that issued the notice, or other allegations, establishing the Court's jurisdiction.

(E) If the petitioner's name differs from the name on the notice, a statement of the reasons for the difference.

(F) The amount of the deficiency or liability determined by the Commissioner, the nature of the tax, and the year or years or other periods for which the Commissioner determined the deficiency or liability. If only part of the determination is disputed, the petition must state and identify the approximate amount of taxes in dispute.

(G) In separately lettered paragraphs, clear and concise assignments of each and every error, including any assignments of error as to which the burden of proof is on the Commissioner, that the petitioner alleges the Commissioner made in the determination of the deficiency or liability. Any issue not raised in the assignments of error will be deemed conceded.

(H) In separately lettered paragraphs, clear and concise statements of the facts on which the petitioner relies to establish the errors alleged in the petition, except for those assignments of error as to which the burden of proof is on the Commissioner.

(I) Any special matters as required by Rule 39.

(J) A request for the relief that the petitioner seeks.

(K) The signature, mailing address, email address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(2) *Copy of Notice.* A copy of the notice of deficiency or notice of liability must be attached to the petition.

(3) *Separate Petition; Permissive Joinder; Severance*.

(A) *Separate Petition*. Ordinarily a separate petition must be filed with respect to each notice of deficiency or notice of liability.

(B) *Permissive Joinder of Parties and Claims.* A single petition may be filed with respect to all notices of deficiency or notices of liability if issued--

(i) to the same person; or

(ii) to more than one person, such as two spouses, and each person contests the notice or notices. If the notice of deficiency or notice of liability is issued to more than one person, each person wishing to contest the notice must file either a separate petition or a joint petition, and each person must satisfy all the requirements of this Rule in order for the petition to be treated as filed by or for that person.

(C) *Severance*. The Court may issue orders, including an order for separate trials, to protect a party against embarrassment, delay, undue expense, or other prejudice resulting from the joinder of parties or claims.

(4) *Claim for Reasonable Litigation or Administrative Costs.* A claim for reasonable litigation or administrative costs must not be included in the petition. Such a claim may only be made in accordance with Rule 231. See Title XXVI for the rules that govern an action for administrative costs.

(c) Petitions in Other Actions:

(1) *Content of Petition.* See the following Rules for the requirements applicable to petitions in other actions: Rule 173(a) (small tax cases); Rules 211(b)-(g) and 311(b) (declaratory judgment actions); Rule 221(b)-(e) (disclosure actions); Rules 241(b)-(e), 255.2(b), 301(b)-(e) (partnership actions); Rule 271(b) (administrative costs actions); Rule 281(b) (abatement of interest actions); Rule 291(b) (redetermination of employment status actions); Rule 321(b) (actions for determination of relief from joint and several liability on a joint return); Rule 331(b) (lien and levy actions); Rule 341(b) (whistleblower actions); and Rule 351(b) (certification actions with respect to passports).

(2) *Joinder of Parties.* See the following Rules with respect to the joinder of parties in other actions: Rule 215 (declaratory judgment actions); Rule 226 (disclosure actions); and Rules 241(h), 255.2(c), and 301(f) (partnership actions).

(d) Use of Form 2 Petition: The use of a properly completed Form 2 (Petition) shown in the Appendix satisfies the requirements of this Rule.

(e) Filing of Original: Only the signed original of each petition must be filed. For the signature requirement of petitions filed electronically, see Rule 23(a)(3) and the Court's eFiling Instructions on the Court's website.

Explanation

It is proposed that Rule 34 be reorganized and amended stylistically. It is also proposed that Rule 34 be amended by adding language to paragraph (b) directing a party or a party's counsel to provide an email address in the petition.

In addition, it is proposed that current Rule 61 be deleted to eliminate a redundancy in the Rules. In connection with that proposed change, the provisions of current Rule 61(a) and (b) have been incorporated in proposed amendments to paragraphs (b)(3)(B) and (C) of Rule 34, respectively.

Proposed Amendment to Rule 35

RULE 35. ENTRY ON DOCKET

~~Up~~On the Clerk's receipt of the petition ~~by the Clerk~~, the case will be entered ~~up~~on the docket and assigned a number. The Clerk will notify~~, and~~ the parties ~~will be notified thereof by the Clerk~~ of the docket number. The parties must include the docket number ~~shall be placed by the parties~~ on all papers thereafter filed in the case~~,~~ and ~~shall be referred to~~ in ~~all~~ any correspondence with the Court.

Explanation

It is proposed that Rule 35 be amended stylistically. No substantive change is intended.

Proposed Amendment to Rule 36

RULE 36. ANSWER

(a) Time To Answer or Move: The Commissioner ~~shall have~~ has 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Commissioner ~~shall have~~ has like periods from the date of service of those papers within which to answer or move in response thereto, ~~except as~~ unless the Court ~~may~~ orders otherwise ~~direct~~.

(b) Form and Content: The answer ~~shall~~ must be ~~drawn~~ written so that it will advise the petitioner and the Court fully of the nature of the defense. It ~~shall~~ must ~~contain~~ include a specific admission or denial of each material allegation in the petition; however, if the Commissioner ~~shall be~~ is without knowledge or information sufficient to form a belief as to the truth of an allegation, ~~then~~ the Commissioner ~~shall~~ must so state, and ~~such~~ that statement ~~shall~~ will have the effect of a denial. If the Commissioner intends to qualify or to deny only a part of an allegation, ~~then~~ the Commissioner ~~shall~~ must specify so much of it as is true and ~~shall~~ must qualify or deny only the remainder. In addition, the answer ~~shall~~ must contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof, as well as any special matters as required by Rule 39. Paragraphs of the answer ~~shall~~ must be designated to correspond to those of the petition to which they relate. If the petition does not include a copy of the notice of deficiency or other relevant jurisdictional document, the answer must include a copy of the notice of deficiency or other relevant jurisdictional document or state that no such document was issued.

(c) Effect of Answer: Every material allegation set out in the petition and not expressly admitted or denied in the answer ~~shall be~~ is deemed to be admitted.

(d) Declaratory Judgment, Disclosure, and Administrative Costs Actions: For the requirements applicable to the answer in ~~declaratory judgment actions, in disclosure actions, and in administrative costs~~ other actions, see Rules 213(a) (declaratory judgments), 223(a) (disclosure actions), and 272(a) (administrative costs), respectively.

Explanation

It is proposed that Rule 36 be amended stylistically. It is also proposed that paragraph (b) of Rule 36 be amended to include a cross-reference to Rule 39 and to provide that if a copy of the notice of deficiency or other relevant jurisdictional document is not attached as an exhibit to the petition, the Commissioner will include a copy of such document with the answer or state that no such document was issued.

Proposed Amendment to Rule 41

RULE 41. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments: A party may amend a pleading once as a matter of course at any time before a responsive pleading is served. If the pleading is one to which no responsive pleading is permitted and the case has not been placed on a trial calendar, ~~then~~ a party may so amend it at any time within 30 days after it is served. Otherwise a party may amend a pleading only by leave of Court or by written consent of the adverse party, and leave ~~shall~~ will be given freely when justice so requires. No amendment ~~shall~~ will be allowed after expiration of the time for filing the petition, however, which would involve conferring jurisdiction on the Court over a matter which otherwise would not come within its jurisdiction under the petition as then on file. A motion for leave to amend a pleading ~~shall~~ must state the reasons for the amendment and ~~shall~~ must be accompanied by the proposed amendment. The proposed amendment to the pleading ~~shall not incorporated into the motion but rather shall~~ must be separately set forth and ~~consistent~~ must comply with the requirements of Rule 23 regarding form and style of papers filed with the Court. See Rules 36(a) and 37(a) for time for responding to amended pleadings.

(b) Amendments To Conform to the Evidence: (1) *Issues Tried by Consent:* ~~When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.~~ Issues not raised by the pleadings but tried by express or implied consent of the parties are treated in all respects as if raised in the pleadings. The Court, ~~up~~on motion of any party at any time, may allow ~~such~~ any amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues, but failure to amend does not affect the result of the trial of these issues.

(2) *Other Evidence:* If a party objects to evidence ~~is objected to at the trial~~ on the ground that it is not within the issues raised by the pleadings, ~~then~~ the Court may receive the evidence and at any time allow the pleadings to be amended to conform to the proof, and ~~shall~~ will do so freely when justice so requires and the objecting party fails to satisfy the Court that the admission of ~~such~~ the evidence ~~would~~ will prejudice ~~such party in maintaining such~~ that party's position on the merits.

(3) *Filing:* The amendment or amended pleadings permitted under this paragraph (b) ~~shall~~ may be filed with the Court at the trial or as otherwise ordered by the Court ~~shall be filed with the Clerk at Washington, D.C., within such time as the Court may fix~~.

(c) Supplemental Pleadings: ~~Upon~~ On motion ~~of a party~~, the Court may, ~~up~~on ~~such terms as are~~ just terms, permit a party to file a supplemental pleading setting ~~forth~~ out any transaction~~s~~, ~~or~~ occurrence~~s~~, or event~~s which have~~ that happened ~~since~~ after the date of the pleading ~~sought~~ to be supplemented. ~~Permission~~ The Court may permit supplementation ~~be granted~~ even though the original pleading is defective in ~~its statements of~~ stating a claim ~~for relief~~ or defense. ~~If t~~The Court ~~deems it advisable that~~ may order that the ~~adverse~~ opposing party

~~plead~~ respond to the supplemental pleading within a specified time~~, then it shall so direct, specifying the time therefor~~.

(d) Relation Back of Amendments: ~~When an amendment of a pleading is permitted, it shall~~ An amendment to a pleading relates back to the ~~time of filing~~ date of ~~that~~ the original pleading, unless the Court ~~shall~~ orders otherwise either on motion ~~of a party~~ or on its own ~~initiative~~.

Explanation

It is proposed that Rule 41 be amended stylistically. Paragraph (b)(2) of Rule 41 is proposed to be amended to clarify that a party is not limited to objecting to evidence at trial and may raise an objection to evidence before trial.

Proposed Deletion of Rule 61

~~**RULE 61. PERMISSIVE JOINDER OF PARTIES**~~

~~**(a) Permissive Joinder:** No person, to whom a notice of deficiency or notice of liability has been issued, may join with any other such person in filing a petition in the Court, except as may be permitted by Rule 34(a)(1). With respect to the joinder of parties in declaratory judgment actions, see Rule 215; in disclosure actions, see Rule 226; and in partnership actions, see Rules 241(h), 255.2(c)(1), and 301(f).~~

~~**(b) Severance or Other Orders:** The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party, or may order separate trials or make other orders to prevent delay or prejudice; or may limit the trial to the claims of one or more parties, either dropping other parties from the case on such terms as are just or holding in abeyance the proceedings with respect to them. Any claim by or against a party may be severed and proceeded with separately. See also Rule 141(b).~~

Explanation

It is proposed to delete current Rule 61 to eliminate a redundancy in the Court's Rules. The provisions and concepts of Rule 61 are now set forth in the Court's proposed amendments to paragraphs (b)(3)(B) and (C) of Rule 34.

Proposed Amendment to Rule 62

RULE 6~~2~~1. MISJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of a case. The Court may order a severance on such terms as are just. See Rule ~~61(b)~~ 34(b)(3)(B) and (C).

Explanation

It is proposed to renumber current Rule 62 as Rule 61 to conform to the Court's proposal to delete current Rule 61. In addition, the cross reference to paragraph (b) of current Rule 61 is amended to provide a cross reference to the appropriate paragraphs of Rule 34.

Proposed Amendment to Rule 63

RULE 6~~3~~2. SUBSTITUTION OF PARTIES; CHANGE OR CORRECTION IN NAME

(a) Death: If a petitioner dies, the Court, on its own or on motion of a party or the decedent's successor or representative ~~or on its own initiative~~, may order substitution of the proper parties.

(b) Incompetency: If a party becomes incompetent, the Court, on its own or on motion of a party or the incompetent's representative ~~or own its own initiative~~, may order the representative to proceed with the case.

(c) Successor Fiduciaries or Representatives: The Court, on its own or on motion ~~made~~ of a party ~~made, the Court~~, may order substitution of the proper successors where a fiduciary or representative is changed.

(d) Other Cause: The Court, on its own or on motion of a party ~~or on it own initiative~~, may order the substitution of proper parties for other cause.

(e) Change or Correction in Name: The Court, on its own or on motion of a party ~~initiative, the Court~~, may order a change of or correction in the name or title of a party.

Explanation

It is proposed to renumber current Rule 63 as Rule 62 to conform to the Court's proposal to delete current Rule 61. It is also proposed to amend the Rule stylistically. No substantive change is intended.

Proposed New Rule 63

RULE 63. INTERVENTION

(a) Intervention of Right:

(1) *In General:* On timely motion, the Court must permit anyone to intervene who is given an unconditional right to intervene by a Federal statute.

(2) *Existing Rules:* For the requirements relating to intervention in certain actions, see Rules 216, 225, 245, and 325(b).

(b) Permissive Intervention:

(1) *In General:* On timely motion, the Court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a Federal statute; or

(B) has a stake in the outcome of the litigation before the Court that may not be adequately protected by the existing parties, if the Court determines in its discretion that permitting the intervention (i) may contribute to a more complete presentation of the legal issues to be decided and (ii) is in the interest of justice.

(2) *By a Government Officer or Agency:* On timely motion, the Court may permit a Federal or State governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice:* In exercising its discretion, the Court must consider whether the intervention will unduly delay or prejudice the adjudication of the issues raised by the existing parties.

(c) Notice Required: A motion to intervene must be served on the parties as provided in Rule 21 and must comply with the requirements of Rules 50 and 54. The motion must state the grounds for intervention and the reasons why intervention should be permitted.

(d) Intervenor's Role: The Court, in its discretion, will determine the extent to which an intervenor may participate in the proceedings.

Explanation

It is proposed that new Rule 63 be adopted to govern the filing of a motion to intervene in Tax Court proceedings. New Rule 63 has been drafted to reflect the Tax Court's historical practice with respect to intervention and to account for differences between the Tax Court's jurisdiction and that of the Federal district courts.

The Tax Court has permitted intervention in the exercise of its discretion and when justice requires. For example, the Court has permitted intervention when doing so may contribute to the disposition of an issue or the resolution of an evidentiary problem. See Central Union Trust Co. v. Commissioner, 18 B.T.A. 300, 302-303 (1929) (individual who claimed that an alleged debt owed to an estate had no value was permitted to intervene in the estate tax case because (1) he had an interest in the estate, (2) he had agreed to pay the estate tax resulting from the inclusion of the claim in the estate, and (3) the executors would not protect his interest in the litigation); Louisiana Naval Stores, Inc. v. Commissioner, 18 B.T.A. 533, 536 (1929) (intervention permitted to help resolve an evidentiary objection by the Commissioner); see also Cincinnati Transit, Inc. v. Commissioner, 455 F.2d 220, 220 (6th Cir. 1972), aff'g 55 T.C. 879 (1971) (denying party petitioner status to a subsidiary of a corporation that received a deficiency notice, while suggesting that the subsidiary could intervene in the proceeding to protect its interest); Estate of Proctor v. Commissioner, T.C. Memo. 1994-208, 1994 WL 184400, at *9 (1994) (three intervenors with adverse interests in an estate tax case were permitted to intervene because their interests were not adequately protected by the existing parties and permitting the interventions would lead to a more complete presentation of certain of the legal issues to be decided).

In cases not involving an unconditional statutory right to intervene, the Tax Court has evaluated motions to intervene taking into account the limited scope of its jurisdiction. See Estate of Smith v. Commissioner, 77 T.C. 326, 329-330 (1981) (surveying the Court's case law and denying a motion to intervene filed by a decedent's surviving spouse). Unlike in other Federal courts, the Commissioner of Internal Revenue is uniformly the respondent in Tax Court proceedings, while the petitioner usually is challenging a notice of a deficiency or notice of determination. The Court normally lacks jurisdiction to adjudicate the rights of persons to whom the Commissioner has not issued an appropriate notice. See, e.g., Estate of Siegel v. Commissioner, 67 T.C. 1033, 1040-1041 (1977) (denying a motion to intervene filed by the beneficiary of an estate).

The Tax Court does not currently have a general intervention rule, although it has adopted specialized intervention rules. See, e.g., Rules 216 (retirement plan actions), 225 (disclosure actions), 245 (partnership actions), and 325 (spousal relief actions). In the absence of a general intervention rule and following the directive of Rule 1(b) of the Tax Court Rules of Practice and Procedure, both the Tax Court and courts of appeals have looked to Rule 24 of the Federal Rules of Civil Procedure in deciding whether intervention should be permitted. The practice has not proven satisfactory, however, because courts of appeals have reached different conclusions on how Fed. R. Civ. P. 24 should be applied in the context of a Tax Court proceeding. See Huff v. Commissioner, 743 F.3d 790, 801 (11th Cir. 2014) (holding that the Virgin Islands Government is permitted to intervene in a Tax Court case under Fed. R. Civ. P. 24(a)(2)), rev'g and remanding 138 T.C. 258 (2012); McHenry v. Commissioner, 677 F.3d 214 (4th Cir. 2012) (affirming Tax Court's order denying intervention of the Virgin Islands Government because Rule 1(b) gives the Tax Court broad discretion to decide whether and to what extent to follow Fed. R. Civ. P. 24 and because Fed. R. Civ. P. 24 itself confers broad discretion on a trial court); Appleton v. Commissioner, 430 F. App'x 135, 136, 139 (3d Cir. 2011) (permitting the Virgin Islands Government to intervene pursuant to Fed. R. Civ. P. 24(b)(2)), rev'g and remanding 135 T.C. 461 (2010); Coffey v. Commissioner, 663 F.3d 947, 949, 951 (8th Cir. 2011) (holding that the Virgin Islands Government could intervene pursuant to Fed. R. Civ. P. 24(b)(2)); Sampson v. Commissioner, 710 F.2d 262, 264 (6th Cir. 1983) (holding that the Tax Court has the authority to permit persons or entities who have not been issued a deficiency notice to intervene in a deficiency case pursuant to Fed. R. Civ. P. 24(b)).

The Court proposes to adopt a general intervention rule tailored to its specialized jurisdiction. Doing so is consistent with Code section 7453, which authorizes the Tax Court to prescribe its own rules of practice and procedure. See, e.g., McHenry v. Commissioner, 677 F.3d at 226 (citing Code section 7453 and noting that the authority "to mandate Tax Court procedure to govern intervention . . . is left exclusively to the Tax Court").

Proposed Rule 63(a) provides that anyone who is given an unconditional right to intervene by a Federal statute may intervene as a matter of right. See, e.g., Code sec. 6015. Permissive intervention may be allowed if a person has been given a conditional right to intervene by a Federal statute. Permissive intervention may also be allowed if a person has a stake in the outcome of the litigation that cannot be adequately protected by the parties, if the Court determines that permitting the intervention may contribute to a more complete presentation of the legal issues and is in the interest of justice. A person's generalized interest in tax matters (for example, tax policy or tax administration) or status as a taxpayer or tax practitioner, standing alone, does not constitute a stake in the outcome of a case that would justify permissive intervention. Federal or State governmental officers or agencies may also be permitted to intervene in appropriate circumstances. The provisions of proposed Rule 63(b) are informed by the standard set forth in Estate of Proctor v. Commissioner, T.C. Memo. 1994-208.

An intervenor must move to intervene and state the grounds for intervention and the reasons why intervention should be permitted. The Court in its discretion will determine the extent to which an intervenor is permitted to participate in the litigation.

Proposed Amendment to Rule 70

RULE 70. GENERAL PROVISIONS

(a) General:

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

(2) *Time for Discovery:* Discovery ~~shall~~ may not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Discovery ~~shall~~ must be completed and any motion to compel or any other motion with respect to ~~such~~ that discovery ~~shall~~ must be filed, unless ~~otherwise authorized by~~ the Court orders otherwise, no later than 45 days ~~prior to~~ before 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~~ that discovery ~~shall~~ must be filed within the time provided by the preceding sentence. Discovery of matters ~~which~~ that are relevant only to the issue of a party's entitlement to reasonable litigation or administrative costs ~~shall~~ may 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~~ must be completed and any motion to compel or any other motion with respect to ~~such~~ that discovery ~~shall~~ must be filed, unless ~~otherwise authorized by~~ the Court orders otherwise, no later than 45 days ~~prior to~~ before the date set for hearing.

(3) *Cases Consolidated for Trial:* With respect to a common matter in cases consolidated for trial, discovery may be had by any party to ~~such~~ the consolidated case to the extent provided by these Rules. ~~and, for that purpose, the reference to a "party" in this Title VII, in Title VIII, or in Title X, shall means any party to any of the consolidated cases involving such a common matter~~.

(b) Scope of Discovery: ~~The information or response sought through~~

(1) Discovery may concern any matter not privileged ~~and which~~ that is relevant to the subject matter involved in the pending case. Discovery must be proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

(2) 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.

(3) 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~~ may 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 proposed discovery is outside the scope of Rule 70(b)(1) ~~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 ~~up~~on 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~~ those 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) Claiming Privilege or Protecting Trial-Preparation Materials.

(1) *Information Withheld*: If a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(A) expressly make the claim; and

(B) describe the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(2) *Information Produced*: If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(~~d~~e) Party's Statements: ~~Up~~On request to the other party and without any showing except the assertion in writing that the requester lacks and has no convenient means of obtaining a copy of a statement made by the requester, a party ~~shall be~~ is entitled to obtain a copy of any ~~such~~ statement ~~which~~ that has a bearing on the subject matter of the case and is in the possession or control of another party to the case.

(~~e~~f) Use In Case: The answers to interrogatories, things produced in response to a request, or other information or responses obtained under Rules 71, 72, 73, and 74 may be used at trial or in any proceeding in the case ~~prior or subsequent to~~ before or after trial to the extent permitted by the rules of evidence. ~~Such~~ The answers or information or responses will not be considered as evidence until offered and received as evidence. No objections to interrogatories

or the answers thereto, or to a request to produce or the response thereto, will be considered unless made within the time prescribed, except that the objection that an interrogatory or answer would be inadmissible at trial is preserved even though not made ~~prior to~~ before trial.

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

(1) Every request for discovery or response or objection thereto made by a party represented by counsel ~~shall~~ must be signed by at least one counsel of record. A party who is not represented by counsel ~~shall~~ must sign the request, response, or objection. The signature ~~shall~~ must conform to the requirements of Rule 23(a)(3). The signature of counsel or a party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, it is:

(A) Consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law,

(B) not ~~interposed~~ presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and

(C) within the scope of Rule 70(b)(1) ~~not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation~~. The Court may strike ~~If~~ a request, response, or objection that is not signed, ~~then it shall be stricken,~~ unless ~~it~~ the paper is signed promptly after the omission is called to the attention of the party making the request, response, or objection.~~, and~~ The time within which a party ~~shall~~ is ~~not be~~ obligated to take ~~any~~ action with respect to ~~it~~ a request, response, or objection does not begin to run until ~~it~~ the paper is signed.

(2) If a certification is made in violation of this Rule, ~~then~~ the Court ~~up~~on motion or ~~up~~on its own ~~initiative~~, may impose ~~up~~on the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable counsel's fees.

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

Explanation

It is proposed that Rule 70 be amended stylistically. It is also proposed that language in paragraph (a)(3) of Rule 70 be deleted, combined with similar language from current Rule 92, and added as new paragraph (g) of Rule 3.

It is further proposed that paragraph (b) of Rule 70 be reorganized into subparagraphs and that subparagraph (b)(1) include new language adopting principles of proportionality in the use of discovery consistent with Rule 26(b)(1) of the Federal Rules of Civil Procedure.

Finally, it is proposed that new paragraph (d) be added to Rule 70 to conform to Rule 26(b)(5) of the Federal Rules of Civil Procedure, which provides a procedure under which a party may claim that information requested in the course of discovery is privileged. The remaining paragraphs of Rule 70 are relettered.

Proposed Amendment to Rule 74

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.~~

(b) Depositions ~~U~~pon Consent of the Parties:

(1) *When Deposition May Be Taken:* ~~Up~~On consent of all the parties to a case, and within the time limits provided in Rule 70(a)(2), a deposition for discovery purposes may be taken of ~~either~~ a party, a nonparty witness, or an expert witness. ~~Such~~ A party's consent ~~shall~~ must be set forth in a stipulation filed ~~in duplicate~~ with the Court. ~~which shall contain~~ The stipulation ~~the information required in Rule 81(d) and which otherwise shall be~~ is subject to the procedure provided in Rule 81(d).

(2) *Notice to Nonparty Witness or Expert Witness:* A party desiring to take a deposition of a nonparty witness or an expert witness must serve a notice of deposition ~~shall be served~~ on ~~a~~ that nonparty witness or ~~an~~ expert witness. The notice ~~shall~~ must state that the deposition is to be taken under Rule 74(b) and ~~shall~~ must set forth the name of the party or parties seeking the deposition; the name and address of the person to be deposed; the time and place proposed for the deposition; the name of the officer before whom the deposition is to be taken; a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition; and a statement of the issues in controversy to which the expected testimony of the witness, or the document, electronically stored information, or thing relates, and the reasons for deposing the witness. With respect to the deposition of an organization described in Rule 81(c), the notice ~~shall~~ must also set forth the information required under that Rule, and the organization ~~shall~~ must make the designation authorized by that Rule.

(3) *Objection by Nonparty Witness or Expert Witness:* Within 15 days after service of the notice of deposition, a nonparty witness or expert witness ~~shall~~ must serve on the parties seeking the deposition any objections to the deposition. The burden ~~shall be~~ is ~~up~~on a party seeking the deposition to move for an order with respect to ~~such~~ any objection or other failure of the nonparty witness or expert witness, and ~~such~~ that party ~~shall~~ must annex to ~~any such~~ the motion the notice of deposition with proof of service

thereof, together with a copy of the response and objections, if any. Before a motion for an order is filed, neither the notice nor the responses are filed with the Court.

(c) Depositions Without Consent of the Parties:

(1) *In General:*

(A) *When Depositions May Be Taken:* After a notice of trial has been issued or after a case has been assigned to a Judge or Special Trial Judge of the Court, and within the time for completion of discovery under Rule 70(a)(2), any party may take a deposition for discovery purposes of a party, a nonparty witness, or an expert witness in the circumstances described in this paragraph.

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

(2) *Nonparty Witnesses:* A party may take the deposition of a nonparty witness without leave of court and without the consent of all the parties as follows:

(A) *Notice:* A party desiring to take a deposition under this subparagraph ~~shall~~ must give notice in writing to every other party to the case and to the nonparty witness to be deposed. The notice ~~shall~~ must state that the deposition is to be taken under Rule 74(c)(2) and ~~shall~~ must include the same type of information required under Rule 74(b)(2) ~~set forth the name of the party seeking the deposition; the name and address of the person to be deposed; the time and place proposed for the deposition; the officer before whom the deposition is to be taken; a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition; and a statement of the issues in controversy to which the expected testimony of the witness, or the document, electronically stored information, or thing relates, and the reasons for deposing the witness. With respect to the deposition of an organization described in Rule 81(c), the notice shall also set forth the information~~

~~required under that Rule, and the organization shall make the designation authorized by that Rule~~.

(B) *Objections:* Within 15 days after service of the notice of deposition, a party or a nonparty witness ~~shall~~ must serve on the party seeking the deposition any objections to the deposition. The procedures set forth in Rule 74(b)(3) otherwise apply. ~~The burden shall be upon the party seeking the deposition to move for an order with respect to any such objections or any failure of the nonparty witness, and such party shall annex to any such motion the notice of deposition with proof of service thereof, together with a copy of any responses and objections. Prior to a motion for such an order, neither the notice nor the responses shall be filed with the Court~~.

(3) *Party Witnesses:* A party may take the deposition of another party without the consent of all the parties as follows:

(A) *Motion:* A party desiring to depose another party ~~shall~~ must file a written motion ~~which shall~~ stating that the deposition is to be taken under Rule 74(c)(3) and ~~shall~~ setting forth the name of the person to be deposed, the time and place of the deposition, and the officer before whom the deposition is to be taken. With respect to the deposition of an organization described in Rule 81(c), the motion ~~shall~~ must also set forth the information required under that Rule, and the organization ~~shall~~ must make the designation authorized by that Rule.

(B) *Objection:* ~~Up~~On the filing of a motion to take the deposition of a party, the Court ~~shall~~ will issue an order directing each non-moving party to file a written objection or response thereto.

(C) *Action By The Court ~~Sue Sponte~~:* In the exercise of its discretion the Court may ~~on its own motion~~ order the taking of a deposition of a party witness and may in its order allocate the cost therefor as it deems appropriate.

(4) *Expert Witnesses:* A party may take the deposition of an expert witness without the consent of all the parties as follows:

(A) *Scope of Deposition:* The deposition of an expert witness under this subparagraph ~~shall be~~ is limited to: (i) The knowledge, skill, experience, training, or education that qualifies the witness to testify as an expert in respect of the issue or issues in dispute, (ii) the opinion of the witness in respect of which the witness's expert testimony is relevant to the issue or issues in

dispute, (iii) the facts or data that underlie that opinion, and (iv) the witness's analysis, showing how the witness proceeded from the facts or data to draw the conclusion that represents the opinion of the witness.

(B) *Procedure:*

(i) *In General:* A party desiring to depose an expert witness under this subparagraph (4) ~~shall~~ must file a written motion and ~~shall~~ set forth therein the matters specified below:

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

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

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

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

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

(f) any provision desired with respect to the payment of the costs, expenses, fees, and charges relating to the deposition (see paragraph (c)(4)(D)); and

(g) if the movant proposes to video record the deposition, ~~then~~ a statement to that effect and the name and address of the video recorder operator and the operator's employer. (The video recorder operator and the officer before whom the deposition is to be taken may be the same person.)

The movant ~~shall~~ must also show that prior notice of the motion has been given to the expert witness whose deposition is sought and to each other party, or counsel for each other party, and ~~shall~~ must state the position of each of these persons with respect to the motion, in accordance with Rule 50(a).

(ii) *Disposition of Motion:* Any objection or other response to the motion for order to depose an expert witness under this subparagraph ~~shall~~ must be filed with the Court within 15 days after service of the motion. If the Court approves the taking of a deposition, ~~then~~ it will issue an order as described in paragraph (e)(4) of this Rule. If the deposition is to be video recorded, ~~then~~ the Court's order will so state.

(C) *Action by the Court ~~Sua Sponte~~:* In the exercise of its discretion the Court may ~~on its own motion~~ order the taking of a deposition of an expert witness and may in its order allocate the cost therefor as it deems appropriate.

(D) *Expenses:*

(i) *In General:* By stipulation among the parties and the expert witness to be deposed, or on order of the Court, provision may be made for any costs, expenses, fees, or charges relating to the deposition. If there is not ~~such a~~ stipulation or order, ~~then~~ the costs, expenses, fees, and charges relating to the deposition ~~shall~~ will be borne by the parties as set forth in paragraph (c)(4)(D)(ii).

(ii) *Allocation of Costs, Etc.:* The party taking the deposition ~~shall~~ will pay the following costs, expenses, fees, and charges:

(a) A reasonable fee for the expert witness, with regard to the usual and customary charge of the witness, for the time spent in preparing for and attending the deposition;

(b) reasonable charges of the expert witness for models, samples, or other like matters that may be required in the deposition of the witness;

(c) ~~such~~ amounts as are allowable under Rule 148(a) for transportation and subsistence for the expert witness;

(d) any charges of the officer presiding at or recording the deposition (other than for copies of the deposition transcript);

(e) any expenses involved in providing a place for the deposition; and

(f) the cost for the original of the deposition transcript as well as for any copies thereof that the party taking the deposition might order.

The other parties and the expert witness ~~shall~~ must pay the cost for any copies of the deposition transcript that they might order.

(iii) *Failure To Attend:* If the party authorized to take the deposition of the expert witness fails to attend or to proceed therewith, ~~then~~ the Court may order that party to pay the witness ~~such~~ any fees, charges, and expenses that the witness would otherwise be entitled to under paragraph (c)(4)(D)(ii) and to pay any other party's ~~such~~ expenses, including attorney's fees, that the Court deems reasonable under the circumstances.

(d) Use of Deposition of an Expert Witness for Other Than Discovery Purposes:

(1) *Use as Expert Witness Report:* ~~Up~~On written motion by the proponent of the expert witness and in appropriate cases, the Court may order that the deposition transcript serve as the expert witness report required by Rule 143(g)(1). Unless the Court ~~shall~~ determines otherwise for good cause shown, the taking of a deposition of an expert witness will not serve to extend the date under Rule 143(g)(1) by which a party is required to furnish to each other party and to submit to the Court a copy of all expert witness reports prepared pursuant to that Rule.

(2) *Other Use:* Any other use of a deposition of an expert witness ~~shall be~~ is governed by the provisions of Rule 81(i).

(e) General Provisions: Depositions taken under this Rule are subject to the following provisions.

(1) *Transcript:* A transcript ~~shall~~ must be made of every deposition ~~up~~on oral examination taken under this Rule, but the transcript and exhibits introduced in connection with the deposition generally ~~shall~~ should not be filed with the Court. See Rule 81(h)(3).

(2) *Depositions ~~Up~~on Written Questions:* Depositions under this Rule may be taken ~~up~~on written questions rather than ~~up~~on oral examination. If the deposition is to be taken on written questions, a copy of the written questions ~~shall~~ must be annexed to the notice of deposition or motion to take deposition. The use of ~~such~~ written questions is not favored, and the deposition should not be taken in this manner in the absence of a special reason. See Rule 84(a). There ~~shall~~ will be an opportunity for cross-questions

and redirect questions to the same extent and within the same time periods as provided in Rule 84(b) (starting with service of a notice of or motion to take deposition rather than service of an application). With respect to taking the deposition, the procedure of Rule 84(c) ~~shall~~ will apply.

(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).

(4) *Orders:* If the Court approves the taking of a deposition under this Rule, ~~then~~ it will issue an order ~~which~~ including ~~in its terms~~ the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken.

(5) *Continuances:* Unless the Court ~~shall~~ determines otherwise for good cause shown, the taking of a deposition under this Rule will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set.

(f) Other Applicable Rules: Unless otherwise provided in this Rule, the depositions described in this Rule generally ~~shall be~~ are governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 81(c) (designation of person to testify), 81(e) (person before whom deposition taken), 81(f) (taking of deposition), 81(g) (expenses), 81(h) (execution, form, and return of deposition), 81(i) (use of deposition), and Rule 85 (objections, errors, and irregularities). For Rules concerned with the timing and frequency of depositions, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X. For provisions governing the issuance of subpoenas, see Rule 147~~(d)~~.

Explanation

It is proposed that Rule 74 be amended stylistically and to eliminate unnecessary language and redundancies. It is also proposed that the technical term "sua sponte" be stricken from the headings of paragraphs (c)(3)(C) and (4)(C) of Rule 74. No substantive change is intended.

Proposed Amendment to Rule 81

RULE 81. DEPOSITIONS IN PENDING CASE

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

(b) The Application:

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

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

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

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

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

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

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

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

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

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

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

The application ~~shall~~ must also have annexed to it a copy of the questions to be propounded, if the deposition is to be taken on written questions. ~~For the form of application to take a deposition, see the Appendix I~~ See Form 15 (Application for Order To Take Deposition To Perpetuate Evidence) shown in the Appendix.

(2) *Filing and Disposition of Application:* The application may be filed with the Court at any time after the case is docketed in the Court, but must be filed at least 45 days prior to the date set for the trial of the case. The application and a conformed copy ~~thereof~~, together with an additional conformed copy for each additional docket number involved, ~~shall~~ must be filed with the Clerk. In addition to serving each of the other parties to the case, the applicant ~~shall~~ must serve a copy of the application on ~~such other~~ the persons who are to be examined pursuant to the application, and ~~shall~~ must file with the Clerk a certificate showing such service. ~~Such~~ The other parties or persons ~~shall~~ must file their objections or other response, with the same number of copies and with a certificate of service thereof on the other parties and ~~such~~ the other persons, within 15 days after ~~such~~ service of the application. A hearing on the application will be held only if directed by the Court. Unless the Court ~~shall~~ determines otherwise for good cause shown, an application to take a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set. If the Court approves the taking of a deposition, ~~then~~ it will issue an order ~~which will~~ including ~~in its terms~~ the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken. If the deposition is to be video recorded, ~~then~~ the Court's order will so state.

(c) Designation of Person To Testify: The party seeking to take a deposition may name, as the deponent in the application, a public or private corporation or a partnership or association or governmental agency, and ~~shall~~ must designate with reasonable particularity the matters on which examination is requested. The organization so named ~~shall~~ must designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which such person will

testify. The persons so designated ~~shall~~ must testify as to matters known or reasonably available to the organization.

(d) Use of Stipulation: The parties or their counsel may execute and file a stipulation to take a deposition by agreement instead of filing an application ~~as herein above provided~~. Such a stipulation ~~shall~~ must be filed with the Court ~~in duplicate~~, and ~~shall~~ must ~~contain~~ include the same information as is required in items (A), (F), (G), (I), and (J) of Rule 81(b)(1), but ~~shall~~ does not require the approval or an order of the Court unless the effect is to delay the trial of the case. A deposition taken pursuant to a stipulation ~~shall~~ must in all respects conform to the requirements of these Rules.

(e) Person Before Whom Deposition Taken:

(1) *Domestic Depositions:* Within the United States or a territory or insular possession subject to the dominion of the United States, depositions ~~shall~~ must be taken before an officer authorized to administer oaths by the laws of the United States (see Code section 7622) or of the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and to take such testimony.

(2) *Foreign Depositions:* In a foreign country, depositions may be taken: (A) Before a person authorized to administer oaths or affirmations in the place in which the examination is held, either by the law thereof or by the law of the United States; (B) before a person commissioned by the Court, and a person so commissioned ~~shall~~ will have the power, by virtue of the commission, to administer any necessary oath and take testimony; or (C) pursuant to a letter rogatory or a letter of request issued in accordance with the provisions of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. (Part 3) 2555. A commission, a letter rogatory, or a letter of request ~~shall~~ must be issued on application and notice and on terms that are just and appropriate. The party seeking to take a foreign deposition ~~shall~~ must contact the United States Department of State to ascertain any requirements imposed by it or by the foreign country in which the deposition is to be taken, including any required foreign language translations and any fees or costs, and ~~shall~~ must submit to the Court, along with the application, any ~~such~~ foreign language translations, fees, costs, or other materials required. It is not requisite to the issuance of a commission, a letter rogatory, or a letter of request that the taking of the deposition in any other manner be impracticable or inconvenient; and both a commission and a letter rogatory, or both a commission and a letter of request, may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." A letter of request

is addressed to the central authority of the requested State. The model recommended for letters of request is set forth in the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Evidence obtained by deposition or in response to a letter rogatory or a letter of request need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions within the United States under these Rules.

(3) *Disqualification for Interest:* No deposition ~~shall~~ may be taken before a person who is a relative or employee or counsel of any party, or is a relative or employee or associate of such counsel, or is financially interested in the action. However, on consent of all the parties or their counsel, a deposition may be taken before such a person, but only if the relationship of that person and the waiver are set forth in the certificate of return to the Court.

(f) Taking of Deposition:

(1) *Arrangements:* All arrangements necessary for taking of the deposition ~~shall~~ must be made by the party filing the application or, in the case of a stipulation, by such other persons as may be agreed upon by the parties.

(2) *Procedure:* Attendance by the persons to be examined may be compelled by the issuance of a subpoena, and production likewise may be compelled of exhibits required in connection with the testimony being taken. The officer before whom the deposition is taken ~~shall~~ must first put the witness on oath (or affirmation) and ~~shall~~ must personally, or by someone acting under ~~such~~ the officer's direction and in ~~such~~ the officer's presence, record accurately and verbatim the questions asked, the answers given, the objections made, and all matters transpiring at the taking of the deposition which bear on the testimony involved. Examination and cross-examination of witnesses, and the marking of exhibits, ~~shall~~ will proceed as permitted at trial. All objections made at the time of examination ~~shall~~ must be noted by the officer ~~up~~on the deposition. Evidence objected to, unless privileged, ~~shall~~ must be taken subject to the objections made. If an answer is improperly refused and as a result a further deposition is taken by the interrogating party, the objecting party or deponent may be required to pay all costs, charges, and expenses of that deposition to the same extent as is provided in paragraph (g) of this Rule where a party seeking to take a deposition fails to appear at the taking of the deposition. At the request of either party, a prospective witness at the deposition, other than a person acting in an expert or advisory capacity for a party, ~~shall~~ will be excluded from the room in which, and during the time that, the testimony of another witness is being taken; and if ~~such~~ the person remains in the room or within hearing of the examination after such request has been made, ~~such~~ the person ~~shall~~ will not

thereafter be permitted to testify, except by the consent of the party who requested ~~such~~ the person's exclusion or by permission of the Court.

(g) Expenses:

(1) *General:* The party taking the deposition ~~shall~~ must pay all the expenses, fees, and charges of the witness whose deposition is taken by ~~such~~ that party, any charges of the officer presiding at or recording the deposition other than for copies of the deposition, and any expenses involved in providing a place for the deposition. The party taking the deposition ~~shall~~ must pay for the original of the deposition; and, upon payment of reasonable charges therefor, the officer ~~shall~~ must also furnish a copy of the deposition to any party or the deponent. By stipulation between the parties or on order of the Court, provision may be made for any costs, charges, or expenses relating to the deposition.

(2) *Failure To Attend or To Serve Subpoena:* If the party authorized to take a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the arrangements made, ~~then~~ the Court may order the former party to pay to ~~such~~ the other party the reasonable expenses incurred by ~~such~~ the other party and ~~such~~ the other party's attorney in attending, including reasonable attorney's fees. If the party authorized to take a deposition of a witness fails to serve a subpoena upon the witness and the witness does not attend because of ~~such~~ that failure ~~does not attend~~, and if another party attends in person or by attorney because ~~such~~ that party expects the deposition of that witness to be taken, ~~then~~ the Court may order the former party to pay to ~~such~~ the other party the reasonable expenses incurred by ~~such~~ the other party and ~~such~~ the other party's attorney attending, including reasonable attorney's fees.

(h) Execution and Return of Deposition:

(1) *Submission to Witness; Changes; Signing*: When the testimony is fully transcribed, the deposition ~~shall~~ must be submitted to the witness for examination and ~~shall~~ must be read to or by the witness, unless ~~such~~ the examination and reading are waived by the witness and by the parties. Any changes in form or substance~~, which~~ that the witness desires to make~~, shall~~ must be entered ~~up~~on the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition ~~shall~~ must then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, ~~then~~ the officer ~~shall~~ must sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless the Court

determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. As to correction of errors, see Rules 85 and 143(d).

(2) *Form:* The deposition ~~shall~~ must show the docket number and caption of the case as they appear in the Court's records, the place and date of taking the deposition, the name of the witness, the party by whom called, and the names of counsel present and whom they represent. The pages of the deposition ~~shall~~ must be ~~securely fastened~~ bound using a removable fastener. Exhibits ~~shall~~ must be carefully marked, and when practicable annexed to, and in any event returned with, the deposition, unless, ~~up~~on motion to the Court, a copy ~~shall~~ may be permitted as a substitute after an opportunity is given to all interested parties to examine and compare the original and the copy. The officer ~~shall~~ must execute and attach to the deposition a certificate in accordance with Form 16 (Certificate on Return) shown in the Appendix ~~I~~.

(3) *Return of Deposition:* The deposition and exhibits ~~shall~~ should not be filed with the Court. Unless the Court orders otherwise ~~directed by the Court~~, the officer ~~shall~~ must deliver the original deposition and exhibits to the party taking the deposition or ~~such~~ that party's counsel, who ~~shall~~ must take custody of and be responsible for the safeguarding of the original deposition and exhibits. Upon payment of reasonable charges therefor, the officer also ~~shall~~ must deliver a copy of the deposition and exhibits to any party or the deponent, or to counsel for any party or for the deponent. As to use of a deposition at the trial or in any other proceeding in the case, see paragraph (i) of this Rule. As to introduction of a deposition in evidence, see Rule 143(d).

(4) *Electronic Records:* On the agreement of the parties, the requirements of paragraphs (h)(2) and (3) may be satisfied by retaining a copy of a deposition and any exhibits in electronic form.

(i) Use of Deposition: At the trial or in any other proceeding in the case, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) The deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party may be used by an adverse party for any purpose.

(3) The deposition may be used for any purpose if the Court finds:

(A) That the witness is dead;

(B) that the witness is at such distance from the place of trial that it is not practicable for the witness to attend, unless it appears that the absence of the witness was procured by the party seeking to use the deposition;

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition has been unable to obtain attendance of the witness at the trial, as to make it desirable, in the interest~~s~~ of justice, to allow the deposition to be used; or

(E) that such exceptional circumstances exist, in regard to the absence of the witness at the trial, as to make it desirable, in the interest~~s~~ of justice, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, ~~then~~ an adverse party may require the party offering the deposition to introduce any other part ~~which~~ that ought in fairness to be considered with the part introduced, and any party may introduce any other parts. As to introduction of a deposition in evidence, see Rule 143(d).

(j) Video Recorded Depositions:

(1) *General:* By stipulation of the parties or ~~up~~on the Court's order ~~of the Court~~, a deposition to perpetuate testimony to be taken upon oral examination may be video recorded. Except as otherwise provided by this paragraph, all other provisions of these Rules governing the practice and procedure in depositions ~~shall~~ apply.

(2) *Procedure:* The deposition ~~shall~~ must begin by the operator stating on camera: (A) The operator's name and address; (B) the name and address of the operator's employer; (C) the date, time, and place of the deposition; (D) the caption and docket number of the case; (E) the name of the witness; and (F) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken ~~shall~~ must then identify himself or herself and swear the witness on camera. At the conclusion of the deposition, the operator ~~shall~~ must state on camera that the deposition is concluded. The officer before whom the deposition is taken and the operator may be the same person. When the deposition spans multiple units of video storage medium (tape, disc, etc.), the end of each unit and the beginning of each succeeding unit ~~shall~~ must be announced on camera by the operator. The deposition ~~shall~~ must be timed by a digital clock on camera which ~~shall~~ must show continually each hour, minute, and second of the deposition.

(3) *Transcript:* If requested by one of the parties, ~~then~~ the testimony ~~shall~~ must be transcribed at the cost of such party; but no signature of the witness ~~shall be~~ is required, and the transcript ~~shall~~ should not be filed with the Court.

(4) *Custody:* The party taking the deposition or ~~such~~ the party's counsel ~~shall~~ must take custody of and be responsible for the safeguarding of the video recording together with any exhibits, and ~~such~~ the party ~~shall~~ must permit the viewing of or ~~shall~~ must provide a copy of the video recording and any exhibits ~~up~~on the request and at the cost of any other party.

(5) *Use:* A video recorded deposition may be used at a trial or hearing in the manner and to the extent provided in paragraph (i) of this Rule. The party who offers the video recording in evidence ~~shall~~ must provide all necessary equipment for viewing the video recording and personnel to operate ~~such~~ the equipment. At a trial or hearing, that part of the audio portion of a video recorded deposition ~~which~~ that is offered in evidence and admitted, or ~~which~~ that is excluded on objection, ~~shall~~ must be transcribed in the same manner as the testimony of other witnesses. The video recording shall be marked as an exhibit and, subject to the provisions of Rule 143(e)(2), ~~shall~~ will remain in the custody of the Court.

Explanation

It is proposed that Rule 81 be amended stylistically. It is also proposed to add new paragraph (h)(4) to Rule 81 to permit the parties to agree to satisfy the requirements of paragraphs (h)(2) and (3) of the Rule by retaining a copy of a deposition and any exhibits in electronic form.

Proposed Amendment to Heading of Title IX

TITLE IX. ADMISSIONS ~~AND,~~ STIPULATIONS, AND ADMINISTRATIVE RECORD.

Explanation

It is proposed that the heading of Title IX be amended to conform to the addition of proposed new Rule 92 (Identification and Certification of Administrative Record in Certain Actions).

Proposed Amendment to Rule 90

RULE 90. REQUESTS FOR ADMISSIONS

(a) Scope and Time of Request: A party may serve ~~up~~on any other party a written request to admit ~~for the admission~~, for purposes of the pending action only, ~~of~~ the truth of any matters within the scope of Rule 70(b)(1) ~~which are not privileged and are relevant to the subject matter involved in the pending action~~, but only if ~~such~~ those matters are set forth in the request and relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. However, the Court expects the parties to attempt to attain the objectives of such a request through informal consultation or communication before utilizing the procedures provided in this Rule. Requests for admission ~~shall~~ may not be commenced, without leave of Court, ~~before the expiration of~~ until ~~30~~ 31 days after joinder of issue (see Rule 38). ~~Requests for admission shall be completed and any motion to review under paragraph (c) hereof 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.~~

(b) The Request: ~~The request may, without leave of Court, be served by any party to a pending case. The~~ A request ~~shall~~ must separately set forth each matter of which an admission is requested and ~~shall~~ must advise the party to whom the request is directed of the consequences of failing to respond as provided by paragraph (c). Copies of documents ~~shall~~ must be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The party making the request ~~shall~~ must simultaneously serve a copy thereof on the other party and file the ~~original~~ request with proof of service with the Court.

(c) Response to Request: Each matter is deemed admitted unless, within 30 days after service of the request or within ~~such~~ a shorter or longer time as the Court may allow, the party to whom the request is directed serves ~~up~~on the requesting party:

(1) A written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so; or

(2) an objection, stating in detail the reasons therefor.

The response ~~shall~~ must be signed by the party or the party's counsel, and the ~~original thereof~~ response, with proof of service on the other party, ~~shall~~ must be filed with the Court. A denial ~~shall fairly~~ must meet the substance of the requested admission, and, ~~when~~ if good faith requires that a party qualify an answer or deny only a part of a matter, ~~such~~ that party ~~shall~~ must specify so much of it as is true and deny or qualify the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless ~~such~~ the party states that

~~such~~ the party has made reasonable inquiry and that the information known or readily obtainable by ~~such~~ the party is insufficient to enable ~~such~~ the party to admit or deny. A party who considers that a matter, of which an admission has been requested, presents a genuine issue for trial may not, on that ground alone, object to the request; ~~such~~ that party may, subject to the provisions of paragraph (g) of this Rule, deny the matter or set forth reasons why ~~such~~ that party cannot admit or deny it. An objection on the ground of relevance may be noted by any party but it is not to be regarded as just cause for refusal to admit or deny.

(d) Effect of Signature:

(1) The signature of counsel or a party constitutes a certification that the signer has read the request for admission or response or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, it is:

(A) Consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not ~~interposed~~ presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) is within the scope of Rule 70(b)(1) ~~not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation~~.

The Court may strike an unsigned ~~If a~~ request, response, or objection unless the paper is ~~not~~ signed~~, it shall be stricken, unless it is signed~~ promptly after the omission is called to the attention of the party making the request, response, or objection. The time within which a party ~~shall~~ is ~~not be~~ obligated to take ~~any~~ action with respect to ~~it~~ an unsigned request, response, or objection does not begin to run until the paper is signed.

(2) If a certification is made in violation of this Rule, the Court, ~~up~~on motion or ~~up~~on its own ~~initiative~~, may impose ~~up~~on the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable counsel's fees.

(e) Motion To Review: The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Any motion to review under this paragraph must be filed no later than 45 days before the date set for call of the case from a trial calendar, unless the Court orders otherwise. Unless the Court determines that an objection is

justified, it ~~shall~~ will order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, ~~then~~ it may order either that the matter is admitted or that an amended answer be served. In lieu of ~~any such~~ an order, the Court may determine that final disposition of the request ~~shall~~ will be made at some later time ~~which~~ that may be more appropriate for disposing of the question involved.

(f) Effect of Admission: Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or modification of the admission. Subject to any other Court orders ~~made in the case by the Court~~, withdrawal or modification may be permitted ~~when~~ if the presentation of the merits of the case will be ~~subserved~~ promoted thereby, and the party who obtained the admission fails to satisfy the Court that the withdrawal or modification will prejudice ~~such~~ that party in prosecuting ~~such party's~~ the case or ~~defense~~ defending on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by ~~such~~ that party for any other purpose, nor may it be used against ~~such~~ that party in any other proceeding.

(g) Sanctions: If any party unjustifiably fails to admit the genuineness of any document or the truth of any matter as requested in accordance with this Rule, the party requesting the admission may apply to the Court for an order imposing ~~such~~ any sanction on the other party or the other party's counsel as the Court may find appropriate in the circumstances, including but not limited to the sanctions provided in Title X. The failure to admit may be found unjustifiable unless the Court finds that:

(1) The request was held objectionable pursuant to this Rule,

(2) the admission sought was of no substantial importance,

(3) the party failing to admit had reasonable ground to doubt the truth of the matter or the genuineness of the document in respect of which the admission was sought, or

(4) there was other good reason for failure to admit.

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

Explanation

It is proposed that Rule 90 be amended stylistically and to eliminate redundancies. No substantive change is intended.

Proposed Amendment to Rule 91

RULE 91. STIPULATIONS FOR TRIAL

(a) Stipulations Required:

(1) *General:* The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged ~~which~~ that are relevant to the pending case, regardless of whether ~~such~~ those matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence ~~which~~ that fairly should not be in dispute. ~~Where~~ If the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation ~~shall~~ will be considered to be part of the stipulation.

(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~~ the matter from the stipulation. Such procedures should be regarded as aids to stipulation, and matter obtained through them ~~which~~ that 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~~ the admitted matter.

(b) Form: Stipulations required under this Rule ~~shall~~ must be in writing, signed by the parties thereto or by their counsel, and ~~shall~~ must observe the requirements of Rule 23 as to form and style of papers, except that a stipulation filed in paper in open Court ~~shall~~ must be filed with the Court in duplicate and only one set of exhibits ~~shall be~~ is required. Documents or other papers~~, which~~ that are the subject of stipulation in any respect and ~~which~~ that the parties intend to place before the Court~~, shall~~ must be annexed to or filed with the stipulation. The stipulation ~~shall~~ must be clear and concise. Separate items ~~shall~~ must be stated in separate paragraphs~~,~~ and ~~shall~~ must be appropriately lettered or numbered. Exhibits attached to a stipulation ~~shall~~ must be numbered serially; i.e., 1, 2, 3, etc. The exhibit number ~~shall~~ must be followed by "P" if offered by the petitioner, e.g., 1-P; "R" if offered by the respondent, e.g., 2-R; or "J" if joint, e.g., 3-J.

(c) Filing: Executed stipulations prepared pursuant to this Rule, and related exhibits, ~~shall~~ must be filed by the parties at or before commencement of the trial of the case, unless the Court ~~in the particular case shall~~ orders otherwise ~~specify~~. A stipulation ~~when~~ that has been filed need not be offered formally to be considered in evidence.

(d) Objections: Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to a stipulated matter made at the commencement of the trial or for good cause shown made during the trial.

(e) Binding Effect: A stipulation ~~shall~~ will be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or as agreed ~~upon~~ by those parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except that it may do so ~~where~~ if justice requires. A stipulation and the admissions therein ~~shall be~~ are binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding.

(f) Noncompliance by a Party:

(1) *Motion To Compel Stipulation:* If, after the date the notice setting the case for trial is served ~~date of issuance of trial notice in a case~~, a party has refused or failed to confer with an ~~adversary~~ opposing party with respect to entering into a stipulation in accordance with this Rule, or a party has refused or failed to ~~make such a stipulation of~~ stipulate to any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than 45 days ~~prior to~~ before the date set for call of the case from a trial calendar, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion ~~shall~~ must:

(A) ~~Show~~ Identify with particularity and by separately numbered paragraphs each matter ~~which~~ that is claimed for stipulation;

(B) set forth in express language the specific stipulation ~~which~~ that the moving party proposes with respect to each ~~such~~ matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation;

(C) set forth the sources, reasons, and basis for claiming, with respect to each ~~such~~ matter, that it should be stipulated; and

(D) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation.

(2) *Procedure:* ~~Up~~On the filing of ~~such~~ a motion, an order to show cause as moved ~~shall~~ will be issued forthwith, unless the Court ~~shall~~ orders otherwise. The order to show cause will be served by the Clerk, with a copy thereof sent to the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed ~~shall~~ must file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed admitted for purposes of the pending case. The response ~~shall~~ must list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. ~~Where~~ If a matter is disputed only in part, the response ~~shall~~ must show the part admitted and the part disputed. ~~Where~~ If the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response ~~shall~~ must set forth the variance or qualification and the admission ~~which~~ that the responding party is willing to make. ~~Where~~ If the response claims that there is a dispute as to any matter in part or in whole, or ~~where~~ if the response presents a variance or qualification with respect to any matter in the motion, the response ~~shall~~ must show the sources, reasons, and basis on which the responding party relies for that purpose. The Court~~, where it is found appropriate,~~ may set the order to show cause for a hearing or conference at any ~~such~~ time ~~as the Court shall determine~~.

(3) *Failure of Response:* If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be issued accordingly.

(4) *Matters Considered:* Opposing claims of evidence will not be weighed under this Rule unless ~~such~~ the evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interest~~s~~ of justice a matter ought not be deemed stipulated.

Explanation

It is proposed that Rule 91 be amended stylistically. No substantive change is intended.

Proposed Deletion of Rule 92

~~**RULE 92. CASES CONSOLIDATED FOR TRIAL**~~

~~With respect to a common matter in cases consolidated for trial, the reference to a "party" in Titles IX and Title X shall mean any party to any of the consolidated cases involving such common matter.~~

Explanation

It is proposed that current Rule 92 be deleted, combined with similar language from Rule 70(a)(3), and added as new paragraph (g) of Rule 3.

Proposed New Rule 92

RULE 92. IDENTIFICATION AND CERTIFICATION OF ADMINISTRATIVE RECORD IN CERTAIN ACTIONS

(a) General: Except as otherwise provided in this Rule, if judicial review of the Commissioner's determination ordinarily would be based wholly or partly on the administrative record, the parties must file with the Court, no later than 30 days after the notice setting the case for trial is served, the entire administrative record as defined in paragraph (c) (or so much of that record as either party may deem necessary for a complete disposition of the issue or issues in dispute), stipulated as to its genuineness. If, however, the parties are unable to file a stipulated administrative record, the Commissioner must file with the Court, no later than 30 days after the notice setting the case for trial is served, the entire administrative record, appropriately certified as to its genuineness by the Commissioner or by an official authorized to act for the Commissioner in such situation.

(b) Motion to Supplement: If a party contends that the administrative record is incomplete, that party may move to supplement the administrative record no later than 60 days after the notice setting the case for trial is served, unless the Court orders otherwise. The motion must state in detail why the party contends that the administrative record is incomplete, and the party must attach any documents or other information that the party alleges is or should be part of the administrative record.

(c) Administrative Record: The term "administrative record" includes, if applicable, any request for determination or other administrative action (request), all documents submitted to the Internal Revenue Service by the taxpayer (including the taxpayer's representative) in respect of the request, all protests and related papers submitted to the Internal Revenue Service, all written correspondence between the Internal Revenue Service and the taxpayer in respect of the taxpayer's request for relief in such protests, all materials prepared by Internal Revenue Service personnel in connection with the administrative proceeding, all pertinent returns filed with the Internal Revenue Service, the notice of determination, recorded interviews, and any other information or communications submitted to or considered by the Internal Revenue Service in making the determination or taking the administrative action.

(d) Declaratory Judgment Actions: This Rule does not apply to declaratory judgment actions. For Rules governing the filing of the administrative record in declaratory judgment actions, see Title XXI of these Rules.

(e) Deficiency Cases: Although this Rule does not ordinarily apply to deficiency cases, the Court may direct the parties to follow the procedure set forth in this Rule in any case where identification and certification of the administrative record may contribute to a prompt resolution of the case.

Explanation

New Rule 92 is proposed to fill a gap in the Court's Rules of Practice and Procedure. Although the Court has longstanding Rules governing the submission of the administrative record in declaratory judgment cases, see Title XXI of the Court's Rules, the Court has not adopted a rule of procedure or a uniform process governing the submission of the administrative record to the Court in other actions where judicial review is normally limited to the administrative record or where judicial review requires an examination of the administrative record and other relevant evidence, as appropriate. Examples of types of cases that are covered by the new Rule include whistleblower actions, collection review actions, and spousal relief disputes. The new Rule normally is not applicable in deficiency cases, although in appropriate circumstances the Court may invoke the procedure.

Under the proposed new Rule, the parties are expected to file the administrative record, stipulated as to its genuineness, no later than 30 days after the notice setting the case for trial is served. If the parties are unable to stipulate, the Commissioner is expected to file the administrative record, certified as to its genuineness, within the same 30 day period. The opposing party may move to supplement that record.

Proposed Amendment to Rule 103

RULE 103. PROTECTIVE ORDERS

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

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

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

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

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

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

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

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

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

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

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

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

(b) Denials: If a motion for a protective order is denied in whole or in part, ~~then~~ the Court may, on such terms or conditions it deems just, order any party or person to comply or to respond in accordance with the procedure involved.

Explanation

It is proposed that Rule 103 be amended stylistically and that paragraph (a) of Rule 103 be amended to clarify that the Court may issue a protective order on its own. No substantive change is intended.

Proposed Amendment to Rule 110

RULE 110. PRETRIAL CONFERENCES

(a) General: In appropriate cases, the Court will ~~undertake to~~ confer with the parties in pretrial conferences with a view to narrowing issues, stipulating facts, simplifying the presentation of evidence, or otherwise assisting in the preparation for trial or possible disposition of the case in whole or in part without trial.

(b) Cases Calendared: Either party in a case listed on any trial calendar may request of the Court, or the Court on its own ~~motion~~ may order, a pretrial conference. The Court may, in its discretion, set the case for a pretrial conference during the trial session. If sufficient reason appears therefor, a pretrial conference will be scheduled ~~prior to~~ before the call of the calendar at ~~such~~ a time and place as may be practicable and appropriate.

(c) Cases Not Calendared: If a case is not listed on a trial calendar, the Court on motion or on its own ~~the Chief Judge, in the exercise of discretion upon motion of either party or sua sponte,~~ may list ~~such~~ the case for a pretrial conference ~~up~~on a calendar in the place requested for trial, or may ~~assign~~ set the case for a pretrial conference either in Washington, D.C., or in any other convenient place.

(d) Conditions: A request or motion for a pretrial conference ~~shall~~ must include a statement of the reasons therefor. Pretrial conferences will in no circumstances be held as a substitute for the conferences required between the parties in order to comply with the provisions of Rule 91~~,~~. The Court may hold ~~but~~ a pretrial conference~~,~~ for the purpose of assisting the parties in entering into the stipulations called for by Rule 91~~, will be held by the Court where~~ if the party requesting ~~such~~ a pretrial conference has in good faith attempted without success to obtain ~~such~~ stipulations from ~~such party's adversary~~ an opposing party. ~~Nor will any~~ The Court will not hold a pretrial conference ~~be held where~~ if the Court is satisfied that the request therefor is frivolous or is made for purposes of delay.

(e) Order: The Court may, in its discretion, issue appropriate pretrial orders.

Explanation

It is proposed that Rule 110 be amended stylistically. It is also proposed to amend paragraph (c) of Rule 110 to clarify that, in the event that a case has been assigned to a Judge or Special Trial Judge, but the case has not been set on a trial calendar, the Court, on the order of the Chief Judge or of the Judge or Special Trial Judge assigned to the case, may set the case for a pretrial conference.

Proposed Amendment to Rule 121

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.~~

~~**(c) Case Not Fully Adjudicated on Motion:** If, on motion under this Rule, decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be concluded accordingly.~~

~~**(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.~~

(a) Motion for Summary Judgment or Partial Summary Judgment:

(1) A party may move for summary judgment on all or any part of the legal issues in controversy.

(2) The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

(3) The Court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion and Response in Opposition:

(1) Unless the Court orders otherwise, a party may file a motion for summary judgment at any time beginning 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.

(2) Any response in opposition to the motion must be filed within such period as the Court directs.

(c) Procedures:

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The Court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) Nonmovant Must Respond or Risk Adverse Ruling: When a motion for summary judgment is made and supported as set forth in this Rule, the nonmovant may not rest on the allegations or denials in that party's pleading. The nonmovant must respond, setting forth specific facts and supporting those facts as required by Rule 121(c), to show that there is a

genuine dispute of fact for trial. If the nonmovant does not so respond, a decision may be entered against that party.

(e) When Facts Are Unavailable to the Nonmovant: If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the Court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(f) Failing to Properly Support or Address a Fact: If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 121(c), the Court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials (including the facts considered undisputed) show that the movant is entitled to it; or

(4) issue any other appropriate order.

(g) Judgment Independent of the Motion: After giving notice and a reasonable time to respond, the Court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(h) Declining to Grant All the Requested Relief: If the Court does not grant all the relief requested by the motion, it may issue an order stating any material fact that is not genuinely in dispute and treating the fact as established in the case.

(i) Affidavit or Declaration Submitted in Bad Faith: If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the Court, after notice and a reasonable time to respond, may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(j) Review Based Solely on Administrative Record: In cases in which judicial review is based solely on the administrative record, paragraphs (a)(2) and (c)(1) through (4) are not applicable. In such cases, a motion for summary judgment and any response in opposition to a motion for summary judgment must include a statement of facts with references to the administrative record. For procedures governing the identification, certification, and filing of the administrative record, see Rule 92.

Explanation

It is proposed that Rule 121 be amended stylistically and reorganized to conform more closely to Rule 56 of the Federal Rules of Civil Procedure. Although most of the changes are stylistic and are not substantive, a few of the changes incorporate concepts that are not explicitly set forth in current Rule 121 but inform the Court's summary judgment procedure. Proposed Rule 121(a)(3) provides, consistent with Fed. R. Civ. P. 56(a), that the Court should state on the record the reasons for granting or denying the motion. Proposed Rule 121(c) makes explicit the requirement of Fed. R. Civ. P. 56(c) that a fact supporting or disputing summary judgment must be provable in a form that would be admissible in evidence. Proposed Rule 121(g) adopts Fed. R. Civ. P. 56(f), which acknowledges the Court's ability to grant summary judgment for a nonmovant or to consider summary judgment on its own under specified circumstances.

Current Rule 121(e) sets forth the Court's procedure when affidavits and declarations are unavailable to present facts essential to support a party's opposition and specifically identifies the need for cross-examination or the testimony of third parties from whom affidavits or declarations cannot be secured as a reason for the Court to determine that certain facts are genuinely disputed. Proposed Rule 121(d) incorporates the same procedure but adopts the simplified wording of Fed. R. Civ. P. 56(d). No substantive change is intended.

Proposed Rule 121 differs from Fed. R. Civ. P. 56 in that it adds paragraph (j) setting forth the procedure applicable to motions for summary judgment in cases where judicial review is based solely on the administrative record. See, e.g., Lissack v. Commissioner, 157 T.C. 63 (2021).

Proposed Amendment to Rule 133

RULE 133. CONTINUANCES

The Court may continue ~~A~~ a case or matter scheduled on a calendar ~~may be continued by the Court upon~~ on motion or ~~at~~ on its own ~~initiative~~. A motion for continuance ~~shall~~ must inform the Court of the position of the other parties with respect ~~there~~to the motion, either by endorsement ~~thereon~~ by the other parties or by a representation of the moving party. A motion for continuance based ~~up~~on the pendency in a court of a related case or cases ~~shall~~ must include the name and docket number ~~of any such related case~~, the names of counsel for the parties ~~in such case~~, and the status of ~~such~~ any related case or cases, and ~~shall~~ must identify all issues common to ~~any such~~ the related case or cases. Continuances will be granted only in exceptional circumstances. Conflicting engagements of counsel or employment of new counsel ordinarily will not be regarded as ground for continuance. A motion for continuance~~,~~ filed 30 days or less ~~prior to~~ before the date to which it is directed~~,~~ may be set for hearing on that date, but ordinarily will be deemed dilatory and will be denied unless the ground therefor arose during that period or there was good reason for not making the motion sooner. As to extensions of time, see Rule 25(~~c~~b)).

Explanation

It is proposed that Rule 133 be amended stylistically and to conform to proposed amendments to Rule 25. No substantive change is intended.

Proposed Amendment to Rule 140

RULE 140. PLACE OF TRIAL

(a) Request for Place of Trial: When filing a petition, the petitioner~~, at the time of filing the petition, shall~~ must also file a separate paper requesting ~~for~~ the place of trial ~~showing the place at which the petitioner would prefer the trial to be held~~. See Form 5 (Request for Place of Trial) shown in the Appendix ~~I~~. If the petitioner ~~has not~~ fails to file~~d such~~ a request, then no later than the date for filing the answer, the Commissioner~~, at the time the answer is filed, shall~~ must file a request showing the Commissioner's preferred place of trial ~~preferred by the Commissioner~~. The Court will make reasonable efforts to conduct the trial at the location most convenient to that requested, ~~where~~ if suitable facilities are available, and will notify~~.~~ ~~T~~the parties ~~shall be notified~~ of the place at which the trial will be held.

(b) ~~Form:~~ ~~Such request shall be set forth on a paper separate from the petition or answer. See Form 5, Appendix I.~~

~~(c)~~ Motion To Change Place of Trial: ~~If a~~ A party seeking a change in the place of trial~~,~~ ~~then such party shall~~ must file a motion ~~to that effect,~~ stating fully the reasons therefor. A motion ~~Such motions,~~ made after the notice setting the case for trial is served~~,~~ may be deemed dilatory and may be denied unless the ground therefor arose during that period or there was good reason for not making the motion sooner.

Explanation

It is proposed that Rule 140 be amended stylistically. It is also proposed that Rule 140 be reorganized by incorporating the text of current paragraph (b) into paragraph (a) and relettering current paragraph (c) as paragraph (b). No substantive change is intended.

Proposed Amendment to Rule 141

RULE 141. CONSOLIDATION; SEPARATE TRIALS

(a) Consolidation: When cases involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue, it may order all the cases consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs, delay, or duplication. Similar action may be taken where cases involve different tax liabilities of the same parties, notwithstanding the absence of a common issue. Unless otherwise permitted by the Court for good cause shown, a motion to consolidate cases may be filed only after all the cases sought to be consolidated have become at issue. The caption of a motion to consolidate shall include all of the names and docket numbers of the cases sought to be consolidated arranged in chronological order (i.e., the oldest case first). Unless otherwise ordered, the caption of all documents subsequently filed in consolidated cases shall include all of the docket numbers arranged in chronological order, but may include only the name of the oldest case with an appropriate indication of other parties.

(b) Separate Trials: The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition or economy, may order a separate trial of any one or more claims, defenses, or issues, or of the tax liability of any party or parties. The Court may enter appropriate orders or decisions with respect to any such claims, defenses, issues, or parties that are tried separately. As to severance of parties or claims, see Rule ~~61(b)~~ 34(b)(3)(B), (C).

Explanation

It is proposed that paragraph (b) of Rule 141 be amended to conform to a proposal to delete Rule 61 and to incorporate the provisions of that Rule within paragraph (b) of Rule 34. No substantive change is intended.

Proposed Amendment to Rule 147

RULE 147. SUBPOENAS

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

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

(c) Service: A subpoena may be served by a United States marshal, or by a deputy marshal, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commissioner, fees and mileage need not be tendered. See Rule 148 for fees and mileage payable. The person making service of a subpoena shall make the return thereon in accordance with the form appearing in the subpoena.

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

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

~~(2) *Place of Examination*: The place designated in the subpoena for examination of the deponent shall be the place specified in the notice of deposition served pursuant to Rule 74(b)(2) or (c)(2), in a motion to take deposition under Rule 74(c)(3) or (4), in the order of the Court referred to in Rule 81(b)(2), or in the executed stipulation referred to in Rule 81(d). With respect to a deposition to be taken in a foreign country, see Rules 74(e)(2), 81(e)(2), and 84(a).~~

~~**(c) Contempt:** Failure by any person without adequate excuse to obey a subpoena served upon any such person may be deemed a contempt of the Court.~~

(a) In General:

(1) *Form and Contents*.

(A) *Requirements--In General*. Every subpoena must:

(i) state the name of the Court;

(ii) state the title of the action and the docket number;

(iii) command each person to whom it is directed to do one or more of the following at a specified time and place: attend and testify or produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; and

(iv) set out the text of Rule 147(d) and (e).

(B) *Command to Produce; Specifying the Form for Electronically Stored Information*. Any command to produce documents, electronically stored information, or tangible things must be included in a subpoena commanding

attendance at a deposition, hearing, or trial. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(C) *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) *Issued by Whom*. The Clerk or a duly authorized representative must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. A subpoena can be downloaded from the Court's website. See Form 14 (Subpoena) shown in the Appendix.

(3) *Notice to Other Parties Before Service*. If the subpoena commands the production of documents, electronically stored information, or tangible things, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) Service:

(1) *By Whom and How; Tendering Fees*. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and tendering to that person the fees for one day's attendance and the mileage allowed by law. See Rule 148 for fees and mileage payable. Fees and mileage need not be tendered when the subpoena issues on behalf of the Commissioner**.**

(2) *Service in the United States*. A subpoena may be served at any place within the United States.

(3) *Proof of Service*. Proving service, when necessary, requires filing with the Court the completed return of service appearing on the subpoena or a certified statement by the server showing the date and manner of service and the names of the persons served.

(c) Place of Compliance: A subpoena may command a person to attend a trial, hearing, or deposition as provided in Code section 7456.

(d) Protecting a Person Subject to a Subpoena; Enforcement:

(1) *Avoiding Undue Burden or Expense; Sanctions*. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid

imposing undue burden or expense on a person subject to the subpoena. The Court will enforce this duty and impose an appropriate sanction, which may include an award of lost earnings and reasonable attorney's fees, against a party or attorney who fails to comply.

(2) *Command to Produce Materials.*

(A) *Release from Attendance.* If a person has complied with a command in a subpoena to produce documents, electronically stored information, or tangible things, the serving party may excuse the person from attending and giving testimony at the time and place specified in the subpoena.

(B) *Objections*. A person commanded to produce documents or tangible things may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials, or to producing electronically stored information in the form or forms requested. The objection must be served within 15 days after the subpoena is served or within the time specified for compliance, if earlier. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the Court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena*.

(A) *When Required*. On timely motion, the Court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iii) subjects a person to undue burden.

(B) *When Permitted*. To protect a person subject to or affected by a subpoena, the Court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative*. In the circumstances described in Rule 147(d)(3)(B), the Court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena:

(1) *Producing Documents or Electronically Stored Information*. These procedures apply to producing documents or electronically stored information:

(A) *Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding 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.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld*. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced*. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the Court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Contempt: The Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Explanation

It is proposed that Rule 147 be amended to conform more closely to Rule 45 of the Federal Rules of Civil Procedure. The proposed amendment adds new provisions to Rule 147 consistent with Fed. R. Civ. P. 45(d) and (e) which provide procedures for protecting a person subject to a subpoena and rules governing a person's duties in responding to a subpoena, respectively. The language of former paragraph (d) of Rule 147 is not included in the proposed amendment to the Rule because the subject of subpoenas issued in connection with depositions is adequately covered in Title VII (Discovery) and Title VIII (Depositions to Perpetuate Evidence).

Proposed Amendment to Rule 151

RULE 151. BRIEFS

(a) General: Briefs ~~shall~~ must be filed after trial or submission of a case, except as otherwise directed by the presiding Judge or Special Trial Judge. The presiding Judge or Special Trial Judge may permit or direct the parties to make oral argument or file memoranda of points and ~~or statements of~~ authorities, in addition to or in lieu of briefs. The Court may ~~return without filing~~ strike 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~~ deadlines for filing briefs ~~shall prevail~~ apply ~~in the absence of any different direction by~~ unless the presiding Judge or Special Trial Judge orders otherwise:

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

(2) *Seriatim Briefs:* Opening briefs must be filed 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 unless the Court grants leave ~~except on leave granted by the Court~~. A motion for extension of time for filing any brief ~~shall~~ must be made ~~prior to~~ before the due date and ~~shall~~ must recite that the moving party has advised ~~such party's adversary~~ each other party and state whether there is an objection to the motion ~~or not such adversary objects to the motion~~. As to the effect of extensions of time, see Rule 25(~~c~~b)).

(c) Service:

(1) Seriatim briefs ~~shall~~ must be served ~~up~~on an ~~opposite~~ opposing party when filed.

(2) ~~In the event of a~~ Simultaneous briefs~~, such brief shall~~ will be served by the Clerk after each corresponding brief of other parties has been filed, unless the Court ~~directs~~ orders otherwise.

(3) Delinquent briefs ~~will not be accepted unless~~ must be accompanied by a motion for leave to file setting forth the reasons ~~deemed sufficient by the Court to account~~ for the delay. In the case of simultaneous briefs, the Court may ~~return without filing~~ strike a ~~delinquent~~ brief that is filed ~~from~~ by a party after the opposing ~~such~~ party's ~~adversary's~~ brief has been served ~~upon such~~ that party.

(d) Number of Copies: A party filing a brief in paper form, ~~A~~ must file a signed original ~~and two copies of each brief,~~ plus an additional copy for each person to be served ~~shall be filed~~. Only one transmission of an electronically filed brief is required.

(e) Form and Content: All briefs ~~shall~~ must conform to the requirements of Rule 23 and ~~shall~~ must contain the following in the order indicated:

(1) On the first page, a table of contents with page references, followed by a list of all citations arranged alphabetically as to cited cases and stating the pages in the brief at which cited. ~~Citations shall be in italics when printed and underscored when typewritten.~~

(2) A statement of the nature of the controversy, the tax involved, and the issues to be decided.

(3) Proposed findings of fact (in the opening brief or briefs), based on the evidence, in the form of numbered statements, each of which ~~shall~~ must be complete and ~~shall~~ must consist of a concise statement of essential fact and not a recital of testimony nor a discussion or argument relating to the evidence or the law. ~~In~~ Each ~~such~~ numbered statement must include~~;~~ ~~there shall be inserted~~ references to the pages of the transcript or the exhibits or other sources relied ~~upon~~ to support the statement. In an answering or reply brief, the party ~~shall~~ must set forth any objections, together with the reasons therefor, to any proposed findings of any other party, showing the numbers of the statements to which the objections are directed; in addition, the party may set forth alternative proposed findings of fact.

(4) A concise statement of the points on which the party relies.

(5) The argument, which sets forth and discusses the points of law involved and any disputed questions of fact.

(6) The signature of counsel or the party submitting the brief. As to signature, see Rule 23(a)(3).

Explanation

It is proposed that Rule 151 be amended stylistically. It is also proposed that paragraphs (a) and (c) of Rule 151 be amended to clarify that the Court may strike from the record a brief that does not conform to the requirements of the Rule or is filed late. It is further proposed to amend paragraph (d) of Rule 151 to provide that a party filing a brief in paper form must file a signed original and an additional copy for each person to be served and that only one transmission of an electronically filed brief is required.

Proposed New Rule 152

RULE 152: BRIEF OF AN AMICUS CURIAE

(a) When Permitted: The Court may direct an amicus curiae to file a brief or an amicus curiae may file with the Court a motion for leave to file a brief.

(b) Motion for Leave to File: The motion for leave to file must comply with the requirements of Rule 23, be accompanied by the proposed brief, and state:

(1) the movant's interest; and

(2) why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form: An amicus brief must comply with Rules 23 and 15l(e), indicate the party or parties supported, if any, and must include the following:

(1) if applicable, a disclosure statement like that required of parties by Rule 20(c);

(2) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(3) a statement that indicates whether:

(A) a party's counsel authored the brief in whole or in part;

(B) a party or a party's counsel contributed money that was intended to fund the preparation or submission of the brief; and

(C) a person (other than the amicus curiae, its members, or its counsel) contributed money that was intended to fund the preparation or submission of the brief and, if so, identifies each such person.

(d) Length: Unless the Court permits otherwise, an amicus brief may be no more than 25 pages, excluding the cover page, the disclosure statement, the table of contents, the table of citations, the signature block, and the certificate of service.

(e) Time for Filing: An amicus curiae supporting a party must file a motion for leave to file, accompanied by its brief, no later than 14 days after the first brief of the party being supported is filed. An amicus curiae that does not support either party must file a motion for

leave to file, accompanied by its brief, no later than 14 days after the first opening brief is filed. The Court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief: Except by the Court's permission, an amicus curiae may not file a reply brief.

(g) Objection by Party: Any party may file an opposition to a motion for leave to file an amicus brief, concisely stating the reasons for such opposition, within 14 days after service of the motion or as ordered by the Court.

Explanation

It is proposed that the Court adopt new Rule 152 governing the filing of a motion for leave to file an amicus brief to fill a gap in the Court's Rules of Practice and Procedure. The proposed rule is drawn from Rule 29 of the Federal Rules of Appellate Procedure and Rule 7(o) of the local rules of the U.S. District Court for the District of Columbia.

The adoption of new Rule 152 will result in the renumbering of existing Rule 152, Oral Findings of Fact or Opinion, as Rule 153.

Proposed Amendment to Rule 152

RULE ~~152~~ 153. ORAL FINDINGS OF FACT OR OPINION

(a) General: Except in actions for declaratory judgment or for disclosure (see Titles XXI and XXII), the Judge, or the Special Trial Judge in any case in which the Special Trial Judge is authorized to make the decision of the Court pursuant to Code section 7436(c) or 7443A(b)(2), (3), (4), ~~or~~ (5), or (6), and (c), may, in the exercise of discretion, orally state the findings of fact or opinion if the Judge or Special Trial Judge is satisfied as to the factual conclusions to be reached in the case and that the law to be applied thereto is clear.

(b) Transcript: Oral findings of fact or opinion ~~shall~~ will be recorded in the transcript of the hearing or trial. The pages of the transcript that contain ~~such~~ findings of fact or opinion (or a written summary thereof) ~~shall~~ will be served by the Clerk ~~up~~on all parties.

(c) Nonprecedential Effect: Opinions stated orally in accordance with paragraph (a) of this Rule ~~shall~~ may not be relied ~~up~~on as precedent, except as may be relevant for purposes of establishing the law of the case, res judicata, collateral estoppel, or other similar doctrine.

Explanation

It is proposed that Rule 152 be renumbered as Rule 153 to conform to the adoption of new Rule 152, and that the Rule be amended stylistically. In addition, it is proposed that paragraph (a) of the Rule be amended to clarify that a Special Trial Judge may dispose of a whistleblower case brought pursuant to Code section 7623(b) by way of oral findings of fact or opinion.

Proposed Amendment to Rule 161

RULE 161. MOTION FOR RECONSIDERATION OF FINDINGS OR OPINION

Any motion for reconsideration of an opinion or findings of fact, with or without a new or further trial, ~~shall~~ must be filed within 30 days after a written opinion or the pages of the transcript that contain findings of fact or opinion stated orally pursuant to Rule ~~152~~ 153 (or a written summary thereof) have been served, unless the Court ~~shall~~ orders otherwise ~~permit~~.

Explanation

It is proposed that Rule 161 be amend stylistically and to conform to a proposed amendment renumbering current Rule 152 as Rule 153. No substantive change is intended.

Proposed Amendment to Rule 170

RULE 170. GENERAL

The Rules of this Title XVII, referred to ~~herein~~ as the "Small Tax Case Rules", set forth the special provisions ~~which are to be applied~~ applicable to small tax cases. The term "small tax case" means a case in which (1) the amount in dispute is $50,000 or less (within the meaning of the ~~Internal Revenue~~ Code), (2) the petitioner has made a request under Rule 171, and (3) the Court has concurred in the petitioner's ~~election~~ request. See Code secs. 7436(c), 7463. Except as otherwise provided in these Small Tax Case Rules, the ~~other~~ Rules of Practice and Procedure ~~of the Court are applicable~~ apply to ~~such~~ small tax cases.

Explanation

It is proposed that Rule 170 be amended stylistically and that the Rule be amended to conform to a proposed amendment to Rule 171.

Proposed Amendment to Rule 171

RULE 171. ~~ELECTION OF~~ REQUEST FOR SMALL TAX CASE PROCEDURE

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

(a) Request in Petition: A petitioner ~~who wishes~~ may request in the petition 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) Motion Opposing Request: If the Commissioner opposes the petitioner's request ~~to have the proceedings conducted as a small tax case, then,~~ the Commissioner ~~shall~~ must file with the answer a motion that the proceedings not be conducted as a small tax case.

(c) Request After Petition Is Filed: 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~~ the 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) Small Tax Case Designation; Procedure for Removing Small Tax Case Designation. If a petitioner makes ~~such~~ a 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,~~ made at any time before the trial commences, may 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

It is proposed that Rule 171 be amended stylistically, that the heading of the Rule be amended, and that headings be added to paragraphs (a) through (d) of the Rule. No substantive change is intended.

Proposed Amendment to Rule 180

RULE 180. ASSIGNMENT

The Chief Judge may from time to time designate a Special Trial Judge (see Rule 3~~(d)~~(h)) to deal with any matter pending before the Court in accordance with these Rules and such directions as may be prescribed by the Chief Judge.

Explanation

It is proposed that Rule 180 be amended to conform to proposed amendments to Rule 3. No substantive change is intended.

Proposed Amendment to Rule 182

RULE 182. CASES IN WHICH THE SPECIAL TRIAL JUDGE IS AUTHORIZED TO MAKE THE DECISION

Except as otherwise directed by the Chief Judge, the following procedure ~~shall~~ will be observed in small tax cases (as defined in Rule 170); in cases where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000; in declaratory judgment actions; in lien and levy actions; and in whistleblower actions:

(a) Small Tax Cases: Except in cases where findings of fact or opinion are stated orally pursuant to Rule ~~152~~ 153, a Special Trial Judge who conducts the trial of a small tax case ~~shall~~ will, as soon after ~~such~~ trial as ~~shall be~~ is practicable, prepare a summary of the facts and reasons for the proposed disposition of the case, which ~~then shall~~ will be submitted promptly to the Chief Judge, or, if the Chief Judge ~~shall so~~ directs, to a Judge or Division of the Court.

(b) Cases Involving $50,000 or Less: Except in cases where findings of fact or opinion are stated orally pursuant to Rule ~~152~~ 153, a Special Trial Judge who conducts the trial of a case (other than a small tax case) where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000 ~~shall~~ will, as soon after ~~such~~ trial as ~~shall be~~ is practicable, prepare proposed findings of fact and opinion, which ~~shall then~~ will be submitted promptly to the Chief Judge.

(c) Declaratory Judgment, Lien and Levy, and Whistleblower Actions: A Special Trial Judge who conducts the trial of a declaratory judgment action or, except in cases where findings of fact or opinion are stated orally pursuant to Rule ~~152~~ 153, a lien or levy or a whistleblower action, or to whom such a case is submitted for decision, ~~shall~~ will, as soon after ~~such~~ trial or submission as ~~shall be~~ is practicable, prepare proposed findings of fact and opinion, which ~~shall then~~ will be submitted promptly to the Chief Judge.

(d) Decision: The Chief Judge may authorize the Special Trial Judge to make the decision of the Court in any small tax case (as defined in Rule 170); in any case where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000; in any declaratory judgment action; in any lien or levy action; and in any whistleblower action, subject to such conditions and review as the Chief Judge may provide.

(e) Procedure in Event of Assignment to a Judge: In the event the Chief Judge assigns a case (other than a small tax case) to a Judge to prepare a report in accordance with Code section 7460 and to make the decision of the Court, the proposed findings of fact and opinion previously

submitted to the Chief Judge ~~shall~~ will be filed as the Special Trial Judge's recommended findings of fact and conclusions of law. Thereafter, the procedures of Rule 183(b), (c), and (d) ~~shall~~ apply.

Explanation

It is proposed that Rule 182 be amended stylistically and to conform to a proposed amendment renumbering current Rule 152 as Rule 153. No substantive change is intended.

Proposed Amendment to Rule 210

RULE 210. GENERAL

(a) Applicability: The Rules of this Title XXI set forth the special provisions ~~which~~ that apply to declaratory judgment actions relating to the qualification of certain retirement plans, the value of certain gifts, the status of certain governmental obligations, the eligibility of an estate with respect to installment payments under Code section 6166, and the initial or continuing qualification of certain exempt organizations or the initial or continuing classification of certain private foundations. For the Rules that apply to declaratory judgment actions relating to treatment of items other than partnership items with respect to an oversheltered return, see the Rules contained in Title XXX. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to ~~such~~ actions for declaratory judgment.

(b) Definitions: As used in the Rules in this Title--

(l) "Retirement plan" has the meaning provided by Code section 7476(c).

(2) A "gift" is any transfer of property that was shown on the return of tax imposed by Chapter 12 or disclosed on ~~such~~ that return or in any statement attached to ~~such~~ that return.

(3) "Governmental obligation" means an obligation the status of which under Code section 103(a) is in issue.

(4) An "estate" is any estate whose initial or continuing eligibility with respect to the deferral and installment payment election under Code section 6166 is in issue.

(5) An "exempt organization" is an organization described in Code section 501(c)(3) ~~which~~ that is exempt from tax under Code section 501(a) or is an organization described in Code section 170(c)(2).

(6) A "private foundation" is an organization described in Code section 509(a).

(7) A "private operating foundation" is an organization described in Code section 4942(j)(3).

(8) An "organization" is any organization whose qualification as an exempt organization, or whose classification as a private foundation or a private operating foundation, is in issue.

(9) A "determination" means--

(A) A determination with respect to the initial or continuing qualification of a retirement plan;

(B) a determination of the value of any gift;

(C) a determination as to whether prospective governmental obligations are described in Code section 103(a);

(D) a determination as to whether, with respect to an estate, an election may be made under Code section 6166 or whether the extension of time for payment of estate tax provided in Code section 6166 has ceased to apply; or

(E) a determination with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

(10) A "revocation" is a determination that a retirement plan is no longer qualified, or that an organization, previously qualified or classified as an exempt organization or as a private foundation or private operating foundation, is no longer qualified or classified as such an organization.

(11) An "action for declaratory judgment" is either a retirement plan action, a gift valuation action, a governmental obligation action, an estate tax installment payment action, or an exempt organization action, as follows:

(A) A "retirement plan action" means an action for declaratory judgment provided for in Code section 7476 relating to the initial or continuing qualification of a retirement plan.

(B) A "gift valuation action" means an action for declaratory judgment provided for in Code section 7477 relating to the valuation of a gift.

(C) A "governmental obligation action" means an action for declaratory judgment provided for in Code section 7478 relating to the status of certain prospective governmental obligations.

(D) An "estate tax installment payment action" means an action for declaratory judgment provided for in Code section 7479 relating to the eligibility of an estate with respect to installment payments under Code section 6166.

(E) An "exempt organization action" means a declaratory judgment action provided for in Code section 7428 relating to the initial or continuing qualification of an organization as an exempt organization, or relating to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

(12) "Administrative record" includes, ~~where~~ if applicable, the request for determination, all documents submitted to the Internal Revenue Service by the applicant in respect of the request for determination, all protests and related papers submitted to the Internal Revenue Service, all written correspondence between the Internal Revenue Service and the applicant in respect of the request for determination ~~of such~~ and protests, all pertinent returns filed with the Internal Revenue Service, any other information, materials, or records that the Internal Revenue Service reviewed or relied upon in its determination, and the notice of determination issued by the Commissioner.

(13) "Party" includes a petitioner and the respondent Commissioner of Internal Revenue. In a retirement plan action, an intervenor is also a party. In a gift valuation action, only the donor may be a petitioner. In a governmental obligation action, only the prospective issuer may be a petitioner. In an estate tax installment payment action, a person joined pursuant to Code section 7479(b)(1)(B) is also a party. In an exempt organization action, only the organization may be a petitioner.

(14) "Declaratory judgment" is the decision of the Court in a retirement plan action, a gift valuation action, a governmental obligation action, an estate tax installment payment action, or an exempt organization action.

(c) Jurisdictional Requirements: The Court does not have jurisdiction of an action for declaratory judgment under this Title unless the following conditions are satisfied:

(1) The Commissioner has issued a notice of determination, or has been requested to make a determination and failed to do so for a period of at least 270 days (180 days in the case of either a request for determination as to the status of prospective governmental obligations or a request for determination as to the initial or continuing eligibility of an estate with respect to installment payments under Code section 6166) after the request for ~~such~~ determination was made. In the case of a retirement plan action, the Court has jurisdiction over an action brought because of the Commissioner's failure to make a determination with respect to the continuing qualification of the plan only if the

controversy arises as a result of an amendment or termination of ~~such~~ the plan. See Code sec. 7476(a)(2)(B). In the case of a gift valuation action, the Court has jurisdiction if the Commissioner has issued a notice of determination. See Code sec. 7477(a).

(2) There is an actual controversy. In ~~that connection~~ particular--

(A) In the case of a retirement plan action, the retirement plan or amendment thereto in issue has been put into effect before commencement of the action.

(B) In the case of a governmental obligation action, the prospective issuer has, ~~prior to the~~ before commencement of the action, adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations.

(C) In the case of an exempt organization action, the organization must be in existence before commencement of the action.

(3) A petition for declaratory judgment is filed with the Court within the period specified in Code section 7476(b)(5) with respect to a retirement plan action, or the period specified in Code section 7477(b)(3) with respect to a gift valuation action, or the period specified in Code section 7478(b)(3) with respect to a governmental obligation action, or the period specified in Code section 7479(b)(3) with respect to an estate tax installment payment action, or the period specified in Code section 7428(b)(3) with respect to an exempt organization action. See Code sec. 7502.

(4) The petitioner has exhausted all administrative remedies ~~which were~~ available to the petitioner within the Internal Revenue Service.

(d) Form and Style of Papers: All papers filed in an action for declaratory judgment, with the exception of documents included in the administrative record, ~~shall~~ must be prepared in the form and style set forth in Rule 23. ~~;except that whenever any party joins or intervenes in the action in those instances in which joinder or intervention is permitted, then thereafter, in addition to the number of copies required to be filed under such Rule, an additional copy shall be filed for each party who joins or intervenes in the action.~~

Explanation

It is proposed that Rule 210 be amended stylistically. It is also proposed that paragraph (b)(12) of Rule 210 be amended to conform the definition of the term "Administrative Record" to that of paragraph (c) of proposed new Rule 92 (Identification and Certification of Administrative Record in Certain Actions) and that paragraph (d) of Rule 210 be amended to eliminate the requirement for the filing of an additional copy of a paper when joinder or intervention is permitted.

Proposed Amendment to Rule 213

RULE 213. OTHER PLEADINGS

(a) Answer:

(1) *Time To Answer or Move:* The Commissioner ~~shall have~~ has 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Commissioner ~~shall~~ will have like time periods from the date of service of those papers within which to answer or move in response thereto, except as the Court may otherwise direct.

(2) *Form and Content:* The answer ~~shall~~ must be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It ~~shall~~ must contain a specific admission or denial of each material allegation of the petition. If the Commissioner ~~shall be without~~ lacks knowledge or information sufficient to form a belief as to the truth of an allegation as to jurisdictional facts or as to inferences or conclusions that may be drawn from materials in the administrative record or as to facts involved in a revocation, ~~then~~ the Commissioner may so state, and ~~such~~ that statement ~~shall~~ will have the effect of a denial. Facts other than jurisdictional facts, and other than facts involved in a revocation or in a governmental obligation action, may be admitted only for purposes of the pending action for declaratory judgment. If the Commissioner intends to clarify or to deny only a part of an allegation, ~~then~~ the Commissioner ~~shall~~ must specify so much of it as is true and ~~shall~~ must qualify or deny only the remainder. In addition, the answer ~~shall~~ must contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof. Paragraphs of the answer ~~shall~~ must be designated to correspond to those of the petition to which they relate.

(3) *Index to Administrative Record:* In addition, the answer ~~shall~~ must include as an attachment a complete index of the contents of the administrative record to be filed with the Court and the answer must contain an affirmative allegation that the index is attached thereto. See Rule 217(b). ~~There shall be attached to the answer such complete index.~~

(4) *Effect of Answer:* Every material allegation set out in the petition and not expressly admitted or denied in the answer ~~shall be~~ is deemed to be admitted.

(b) Reply: Each petitioner ~~shall~~ must file a reply in every action for declaratory judgment.

(1) *Time To Reply or Move:* The petitioner ~~shall have~~ has 60 days from the date of service of the answer within which to file a reply, or 30 days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer, the petitioner ~~shall~~ will have like periods from the date of service of those papers within which to reply or move in response thereto, ~~except as~~ unless the Court ~~may~~ orders otherwise ~~direct~~.

(2) *Form and Content:* In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply ~~shall~~ must contain a specific admission or denial; however, if the petitioner ~~shall be without~~ lacks knowledge or information sufficient to form a belief as to the truth of an allegation, ~~then~~ the petitioner ~~shall~~ must so state, and ~~such~~ that statement ~~shall~~ will have the effect of a denial. If the petitioner denies the affirmative allegation in the answer that a complete index of the contents of the administrative record is attached to the answer, ~~then~~ the petitioner ~~shall~~ must specify the reasons for ~~such~~ that denial. In addition, the reply ~~shall~~ must contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects, the requirements of pleading applicable to the answer provided in paragraph (a)(2) of this Rule ~~shall~~ apply to the reply. The paragraphs of the reply ~~shall~~ must be designated to correspond to those of the answer to which they relate.

(3) *Effect of Reply or Failure Thereof:* ~~Where~~ If a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply ~~shall~~ will be deemed to be admitted. ~~Where~~ If a reply is not filed, the affirmative allegations in the answer will be deemed admitted.

(4) *New Material:* Any new material contained in the reply ~~shall~~ will be deemed to be denied.

Explanation

It is proposed that Rule 213 be amended stylistically. No substantive change is intended.

Proposed Amendment to Rule 217

RULE 217. DISPOSITION OF ACTIONS FOR DECLARATORY JUDGMENT

(a) General: Disposition of an action for declaratory judgment ~~which~~ that involves the initial qualification of a retirement plan or the initial qualification or classification of an exempt organization, a private foundation, or a private operating foundation will ordinarily be made on the basis of the administrative record, as defined in Rule 210(b)(12). Only with the permission of the Court, ~~up~~on good cause shown, will any party be permitted to introduce before the Court any evidence other than that presented before the Internal Revenue Service and contained in the administrative record as so defined. Disposition of an action for declaratory judgment involving a revocation, a gift valuation, or the eligibility of an estate with respect to installment payments under Code section 6166 may be made on the basis of the administrative record alone only ~~where~~ if the parties agree that ~~such~~ the administrative record contains all the relevant facts and ~~that such~~ those facts are not in dispute. Disposition of a governmental obligation action will be made on the basis of the administrative record, augmented by additional evidence to the extent that the Court may direct.

(b) Procedure:

(1) *Disposition on the Administrative Record:* Within 30 days after service of the answer, the parties ~~shall~~ must file with the Court the entire administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness. If, however, the parties are unable to file ~~such~~ a stipulated administrative record, ~~then,~~ not sooner than 30 days nor later than 45 days after service of the answer, the Commissioner ~~shall~~ must file with the Court the entire administrative record, as defined in Rule 210(b)(12), appropriately certified as to its genuineness by the Commissioner or by an official authorized to act for the Commissioner in such situation. See Rule 212~~,~~ as to the time and place for submission of the action to the Court. The Court will thereafter issue an opinion and declaratory judgment in the action. In an action involving the initial qualification of a retirement plan or the initial qualification or classification of an exempt organization, a private foundation, or a private operating foundation, the Court's decision will be based on the assumption that the facts as represented in the administrative record as so stipulated or so certified are true and ~~up~~on any additional facts as found by the Court if the Court deems that a trial is necessary. In an action involving a gift valuation, the eligibility of an estate with respect to installment payments under Code section 6166, a revocation, or the status of a governmental obligation, the Court may, on the basis of the evidence presented, make findings of fact ~~which~~ that differ from the administrative record.

(2) *Other Dispositions Without Trial:* In addition, an action for declaratory judgment may be decided on a motion for a judgment on the pleadings under Rule 120 or on a motion for summary judgment under Rule 121 or ~~such an~~ the action may be submitted at any time by ~~notice~~ motion of the parties filed with the Court in accordance with Rule 122.

(3) *Disposition ~~Where~~ If Trial Is Required:* Whenever a trial is required in an action for declaratory judgment, ~~such~~ the trial ~~shall~~ will be conducted in accordance with the Rules contained in Title XIV, except as otherwise provided in this Title.

Explanation

It is proposed that Rule 217 be amended stylistically. It is also proposed that subparagraph (b)(2) of Rule 217 be amended to clarify that the parties may submit a declaratory judgment action for decision by filing a motion in accordance with Rule 122. No substantive change is intended.

Proposed Amendment to Rule 231

RULE 231. CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS

(a) Time and Manner of Claim:

(1) *Agreed Cases:* ~~Where~~ If the parties have reached a settlement ~~which disposes~~ disposing of all issues in the case including litigation and administrative costs, an award of reasonable litigation and administrative costs, if any, ~~shall~~ must be included in the stipulated decision submitted by the parties for entry by the Court.

(2) *Unagreed Cases:* ~~Where~~ If a party has substantially prevailed, or is treated as the prevailing party in the case of a qualified offer made as described in Code section 7430(g), and wishes to claim reasonable litigation or administrative costs, and there is no agreement as to that party's entitlement to ~~such~~ those costs, a claim ~~shall~~ must be made by motion filed–

(A) within 30 days after the service of a written opinion determining the issues in the case;

(B) within 30 days after the service of the pages of the transcript that contain findings of fact or opinion stated orally pursuant to Rule ~~152~~ 153 (or a written summary thereof); or

(C) after the parties have settled all issues in the case other than litigation and administrative costs. See paragraphs (b)(3) and (c) of this Rule regarding the filing of a stipulation of settlement with the motion in such cases.

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

(1) A statement that the moving party is a party to a Court proceeding that was commenced after February 28, 1983;

(2) if the claim includes a claim for administrative costs, a statement that the administrative proceeding was commenced after November 10, 1988;

(3) a statement sufficient to demonstrate that the moving party has substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented, or is treated as the prevailing party in the case of a qualified offer

made as described in Code section 7430(g), either in the Court proceeding or, if the claim includes a claim for administrative costs, in the administrative proceeding, including a stipulation in the form prescribed by paragraph (c) of this Rule as to any settled issues;

(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~~ must be supported by an affidavit or a declaration executed by the moving party and not by counsel for the moving party;

(5) a statement that the moving party has exhausted the administrative remedies available ~~to such party~~ within the Internal Revenue Service;

(6) a statement that the moving party has not unreasonably protracted the Court proceeding and, if the claim includes a claim for administrative costs, the administrative proceeding;

(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;

(8) if the moving party requests a hearing on the motion, a statement of the reasons why the motion cannot be disposed of by the Court without a hearing (see Rule 232(a)(2) regarding the circumstances in which the Court will direct a hearing); and

(9) an appropriate prayer for relief.

(c) Stipulation as to Settled Issues: If some or all of the issues in a case (other than litigation and administrative costs) have been settled by the parties, ~~then~~ a motion for an award of reasonable litigation or administrative costs ~~shall~~ must be accompanied by a stipulation, signed by the parties or by their counsel, setting forth the terms of the settlement as to each such issue (including the amount of tax involved). A stipulation of settlement ~~shall be~~ is binding ~~up~~on the parties unless ~~otherwise permitted by~~ the Court orders otherwise or ~~agreed upon by those~~ the parties agree otherwise.

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

(e) Qualified Offer: If a qualified offer was made by the moving party as described in Code section 7430(g), ~~then~~ a motion for award of reasonable litigation or administrative costs ~~shall~~ must be accompanied by a copy of ~~such~~ the offer.

Explanation

It is proposed that Rule 231 be amended stylistically and that paragraph (a) of Rule 231 be amended to conform to a proposed amendment renumbering current Rule 152 as Rule 153. No substantive change is intended.

FORM 6

CORPORATE DISCLOSURE STATEMENT

(See Rule 20(c).)

www.ustaxcourt.gov

UNITED STATES TAX COURT

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

CORPORATE DISCLOSURE STATEMENT

The undersigned counsel or duly authorized representative for _____ (name of party) certifies that (please mark the appropriate option):

(1) _____ This party is a non-governmental corporate party, and the party's parent corporation and all publicly held corporations owning 10% or more of this party's stock are listed here:

_____

_____

_____

OR

(2) _____ This party does not have a parent corporation, nor is there any publicly held corporation that owns 10% or more of this party's stock.

_____ _____

Signature of Party's Counsel or Party's Duly Authorized Representative — Date

_____

Address

_____

City/State/Zip

_____

Email address

Explanation

It is proposed that Form 6 (Ownership Disclosure Statement) be amended to conform to proposed amendments to paragraph (c) of Rule 20 which concerns disclosure statements. It is proposed that the title of Form 6 be changed to "Corporate Disclosure Statement". It is also proposed that the text of Form 6 be amended to require a non-governmental corporate party to identify the party's parent corporation and all publicly held corporations owning 10% or more of the party's stock, if any, or to report that there are no such entities.

FORM 10

NOTICE OF CHANGE OF ADDRESS

(See Rule 21~~(b)~~(~~4~~(c).)

www.ustaxcourt.gov

UNITED STATES TAX COURT

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

NOTICE OF CHANGE OF ADDRESS

(See Rule 21~~(b)~~(~~4~~(c).)*

Please take notice that my address and/or contact information has changed. My new address and contact information are as follows:

_____

Name

_____

Street Address

_____

City, State, Zip Code

_____

Email Address

_____

Telephone Number

_____

Tax Court Bar No. (If applicable)

_____ _____

Signature Date

* See also Rule 200(e), which requires each person admitted to practice before the Tax Court promptly to notify the Admissions Clerk of any change in office address or email address. If a practitioner updates registration information in DAWSON, the system will automatically generate a notice updating that practitioner's contact information in all of that practitioner's open cases and cases closed within 6 months before the update. Log into DAWSON at https://dawson.ustaxcourt.gov/, click on "My Account," and update the information. Alternatively, a practitioner can file Form 10 in each pending case in which the practitioner has entered an appearance. If a practitioner has not entered an appearance in a pending case, the practitioner can satisfy the Rule 200(e) notification requirement by mailing Form 10 (omitting any caption and docket number) or other written communication to the Admissions Clerk.

Explanation

It is proposed to reformat Form 10 (Notice of Change of Address) and to update the language in the lower margin of Form 10 to explain that the most expedient way that a practitioner can notify the Court of a change in office address or email address is to update his or her contact information through the Court's DAWSON case management system.