

**UNITED STATES TAX COURT  
WASHINGTON, D.C. 20217**

December 12, 2005

**PRESS RELEASE**

Chief Judge Joel Gerber announced today that the United States Tax Court has proposed amending its Rules of Practice and Procedure by issuing an Interim Rule and Interim Procedures regarding establishment of an electronic filing pilot program. The proposed Interim Rule and Interim Procedures are contained in the Notice attached to this press release and are available on line at the Tax Court's Web site, [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

Chief Judge Gerber also announced that the Tax Court invites public comment on the proposed Interim Rule and Interim Procedures. Written comments must be received by February 10, 2006. Comments must be addressed to:

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

The Interim Rule and Interim Procedures will not take effect until further notice prior to the Court's commencement of the electronic filing pilot program.

UNITED STATES TAX COURT  
WASHINGTON, D.C. 20217

**NOTICE OF PROPOSED INTERIM RULE  
AND ISSUANCE OF INTERIM PROCEDURES**

Pursuant to section 7453 of the Internal Revenue Code as amended and Rule 1 of the Tax Court Rules of Practice and Procedure, the United States Tax Court hereby provides notice that it proposes the attached Interim Rule and Interim Procedures regarding an electronic filing pilot program and invites public comment thereon. Written comments must be received by February 10, 2006. Comments must be addressed to:

Robert R. Di Trolio  
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The Interim Rule and Interim Procedures will not take effect until further notice prior to the Court's commencement of the electronic filing pilot program.

Unless otherwise indicated, all section references are to the Internal Revenue Code as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure. The proposed Interim Rule and Interim Procedures are as follows.

**I. Interim Rule 22A is added as follows.**

**INTERIM RULE 22A. ELECTRONIC FILING**

In cases assigned to the electronic filing pilot program, the Court will accept for filing documents submitted, signed, or verified by electronic means that comply with procedures established by the Court.

Explanation

The Tax Court proposes to establish a pilot program for the electronic filing of documents with the Court. The Court will implement its pilot program in specific geographic areas, including only cases in which all petitioners are represented by attorneys or other individuals admitted to practice before the Court. Electronic filing in such cases within the designated geographic areas will be mandatory, subject to the discretion of the judicial officer to whom a case is assigned. Large cases that have been assigned to a judicial officer will also be

included in the pilot program, and individual judicial officers will be permitted to request participation. The geographic areas and the duration of the pilot program are matters that will be determined by the Chief Judge and the Clerk on the basis of public comment and experience with the pilot program. The Court will consider electronic filing by pro se petitioners at some future date.

The benefits of electronic filing include: 24-hour access to case files over the Internet, automatic e-mail notice of case activity, ability to download and print up-to-date documents directly from the Court system, concurrent access to case files by multiple parties, savings in time and expenditures for attorneys, expanded search and reporting capabilities, elimination of the cost of mail or courier services, faster delivery and easier tracking of case activity, and a reduction in physical storage space needs and document processing times. See <http://pacer.psc.uscourts.gov/cmecf>.

Proposed Interim Rule 22A permits the filing, signing, and verification of documents by electronic means in cases within the pilot program. The Model Local District Court Rules for Electronic Case Filing in Civil Cases, endorsed by the Judicial Conference of the United States, March 2005 (Model Rules), state that the Federal Rules of Civil Procedure provide that a court may "by local rule" permit filing, signing, and verification of documents by electronic means, and that each District Court is authorized to make and amend rules governing its practice. Fed. R. Civ. P. 5(e), 83(a). The Model Rules further state that each court that intends to allow electronic filing should have at least a general authorizing provision in its local rules. Proposed Interim Rule 22A is derived from the Model Rules' example of a local rule authorizing electronic filing. Under section 7453, the proceedings of the Tax Court are conducted in accordance with the Rules of Practice and Procedure prescribed by the Court and with the rules of evidence applicable in nonjury trials in the District Court for the District of Columbia. There appears to be no statutory prohibition on the Court's providing by Rule for electronic filing.

The majority of the district and bankruptcy courts, the Court of Federal Claims, and the Court of International Trade accept electronically filed documents in accordance with policy and procedures devised and implemented by the Administrative Office of the U.S. Courts (AO). The joint project of the AO and the Federal courts is called CM/ECF (Case Management/Electronic Case Files). The Tax Court will not be a participant in the CM/ECF system.

**II. Interim Procedures are issued as follows.**

**INTERIM PROCEDURES FOR ELECTRONIC FILING  
PILOT PROGRAM**

The following provisions are effective \_\_\_\_\_. These provisions will eventually be superseded by formal amendments to the Tax Court Rules of Practice and Procedure.

For purposes of these provisions, the term "system" means the Court's system for electronic filing, and the term "user" means an attorney or other individual admitted to practice before the Court to whom the Court has issued a log-in and a password to file documents electronically using the system. Electronic filing and online access to filed documents in the system will be limited to the Court and to the users representing the parties in each case assigned to the electronic filing pilot program.

Explanation

The E-Government Act of 2002, Pub. L. 107-347, sec. 205, 116 Stat. 2913, requires Federal courts to establish and maintain Internet Web sites containing, among other things, rules of the court; docket information for each case; the substance of all written opinions issued by the court, in a text-searchable format; and access to documents filed with the court in electronic form or filed in paper form and converted by the court to electronic form. The deadline for providing public online access to electronic documents is April 16, 2007. Id., sec. 402, 116 Stat. 2961. The E-Government Act of 2002, as amended by the Act of Aug. 2, 2004, Pub. L. 108-281, sec. 1, 118 Stat. 889, also directs the Supreme Court to prescribe rules to protect privacy and security concerns relating to electronic filing of documents and the public availability of documents filed electronically. The E-Government Act of 2002, as amended, provides: "Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts."

Section 205(a) of the E-Government Act of 2002 expressly names the Supreme Court, the Courts of Appeals, the District Courts, the Court of Federal Claims, and the bankruptcy courts. Because the Tax Court is not expressly named, the Court has questioned whether this was an oversight and whether it should comply with the provisions of the act. The Court already has in place a Web site which satisfies all requirements of the act except as they relate to providing public online access to documents filed in or converted by the Court to electronic form. Because of privacy and security concerns and the nature of the

parties and issues in cases before the Court, the Court is considering whether and to what extent to provide public online access to its electronic records.

In June 1999, before the enactment of the E-Government Act of 2002, the Judicial Conference of the United States, through a subcommittee of its Committee on Court Administration and Case Management, began a study of privacy and security concerns regarding public electronic access to case file information. The subcommittee held numerous meetings and received information from experts and academics, court users, judges, court clerks, and Government agencies. As a result, it developed several policy options and alternatives for the creation of a judiciarywide electronic access privacy policy; these options were presented to the full Committee on Court Administration and Case Management. A document containing the alternatives was published, and comments were received from a wide range of interested persons, including private citizens, privacy rights groups, journalists, private investigators, attorneys, and representatives of financial services groups. At some point, comments apparently were solicited from the Department of Justice regarding tax cases, but none were received.

Further public hearings were held, after which the subcommittee developed a final set of privacy policy recommendations which were endorsed by the full Committee on Court Administration and Case Management and adopted by the Judicial Conference. The policy provides for public electronic access to case file documents with certain personal identifiers redacted. The policy adopted by the Judicial Conference states that there should be consistent, nationwide policies in Federal courts to ensure that similar privacy protections and access presumptions apply regardless of which Federal court is the custodian of a particular case file. The policy further states that it generally applies to both paper and electronic files, and the availability of case files at courthouses will not be affected or limited.

The Judicial Conference privacy policy places the burden on the parties to exclude from filed documents unnecessary personal data identifiers such as Social Security numbers, names of minor children, birth dates, and financial account numbers, and to file unredacted documents under seal. As the privacy policy states: "Providing remote electronic access equal to courthouse access will require counsel and pro se litigants to protect their interests through a careful review of whether it is essential to their case to file certain documents containing private sensitive

information or by the use of motions to seal and for protective orders." <http://www.privacy.uscourts.gov/Policy.htm>.

With respect to civil case files, the Judicial Conference decided to exclude Social Security cases from electronic access because of the inherently personal nature of the cases. Although there is no indication that they were specifically discussed, tax cases were not excepted by the Judicial Conference.

Bankruptcy cases also were not excepted by the Judicial Conference. However, the Federal Rules of Bankruptcy Procedure were amended in 2003 to provide that a debtor's full Social Security number is no longer required in the caption of the case and in the petition. Fed. R. Bank. P. 1005, 1007, 2002. Congress also has recognized the importance of protecting from improper disclosure tax information received by a bankruptcy court. On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, was enacted. Section 315 of the act, 119 Stat. 87, amends the Bankruptcy Code to require debtors in bankruptcy cases to provide tax returns and other tax information to the bankruptcy court, trustee, or creditors. It further provides that the Director of the AO shall, within 180 days after enactment, establish procedures for safeguarding the confidentiality of any tax information required to be provided and, within 540 days after enactment, prepare and submit a report to Congress on the effectiveness of said procedures. On September 20, 2005, the Director issued interim guidance regarding tax information. That guidance provides that no tax information filed with the bankruptcy court will be available to the public electronically. The interim guidance defines tax information to include tax returns, transcripts of returns, amendments to returns, and any other document containing tax information provided by the debtor. The AO is continuing to study these issues. <http://www.uscourts.gov/bankruptcycourts/DirTaxGuidanceJCUSapproved905.pdf>.

The Tax Court is considering the privacy and security issues raised by providing public online access to electronic records in the peculiar context of a Court whose docket consists solely of Federal tax cases and over 75 percent of whose petitioners are pro se individuals, and whether it is unrealistic to expect those pro se individuals to file case documents in a manner that adequately protects their privacy and security interests. Information contained in Court documents can include a great deal of personal data in addition to Social Security numbers and tax information, such as financial account numbers, property descriptions and addresses, names and birth dates of minor

children, employment information, medical and health information, and original signatures. The information most often will relate to petitioners but can also relate to witnesses and other third parties. Although section 6103 disclosure restrictions do not apply with respect to returns or return information in a Federal judicial proceeding, see sec. 6103(h)(4)(3), it is believed that there is a distinction to be drawn between public access to information in the Court's records pursuant to section 7461 and publication of the information on the Internet. Consequently, the Court proposes to limit online access to the Court's electronic records at this time to the Court and to the users representing the parties in each case assigned to the electronic filing pilot program. The Court will, however, provide public access to its electronic records at the Clerk's Office during the Court's regular business hours.

1. Designation of Cases

The Court will designate the cases to be assigned to the electronic filing pilot program and notify counsel that their cases have been so designated. Except as otherwise provided and in exceptional circumstances preventing a party from filing electronically, every filing in a designated case shall be made electronically using the system.

2. Registration; Log-in and Password

(a) The attorney or other individual admitted to practice before the Court who is recognized as counsel in a designated case will be required to register as a user of the system using the form prescribed by the Court, a copy of which will be available on the Court's Web site. The form will require the user's name, address, telephone number, Internet e-mail address, and Tax Court bar number. See Rule 24 for requirements regarding appearance and representation in a case.

(b) Once registration is completed, the user will be notified of his or her log-in and password. The log-in and the password will be issued to an individual and not to a firm. By registering to use the system, the user agrees to protect the security of the password and to notify the Court if the user learns the password has been compromised. No user shall permit the user's password to be used by anyone other than an authorized agent of the user, and the user may be subject to sanctions for failure to comply with the provision.

(c) A user whose address, telephone number, or Internet e-mail address has changed shall file a notice of change of address in accordance with Rule 21(b)(4).

### 3. Electronic Filing of Documents

(a) The petition or other paper initiating the participation of a party in a case, the designation of place of trial, a motion to enforce an overpayment, a motion to redetermine interest, and a notice of appeal shall be filed in paper rather than in electronic form. The Court will scan the petition or other document so that the images will be available electronically to the parties and the Court on the system. Payment of the filing fee shall be made by cash, check, money order, or credit card.

#### Explanation

The Model Rules provide that the initial papers in a case shall be filed in paper form rather than electronically, but there is a divergence of practice among the Federal courts in the CM/ECF system; e.g., some require that the initial papers be filed in paper form, some require paper form with a disk containing a PDF image of the document, and some require electronic filing plus the submission of a paper copy. Because the Court will scan the paper petitions and other documents it receives, there is no need to require the filing party to provide an electronic version.

The documents specified in paragraph 3(a) above (with the exception of the designation of place of trial, which is included only because it is filed with a petition) are documents for which there are statutorily prescribed time limits. Filing these documents in paper form will permit verification of their timeliness in the historical manner and prevent any potential section 7502 issues. Filing the documents in paper form is also consistent with Rule 34(a)(1), "No \* \* \* electronically transmitted copy, or similar communication will be recognized as a petition", which was amended to include that language after the issuance of Blum v. Commissioner, 86 T.C. 1128 (1986).

(b) All other documents shall be filed electronically except as hereinafter provided or as ordered by the Court.

(c) An electronically transmitted document requiring leave of the Court for filing, such as an amended pleading, shall be attached as an exhibit to the motion for leave to file. If the

Court grants the motion for leave, then the Court will electronically file the document.

(d) Exhibits or attachments, other than those submitted at trial, shall be submitted in electronic form, unless the Court permits otherwise, subject to file size limitations provided by the Court. Excerpted material shall be clearly and prominently identified as such, and either party may submit additional excerpts or the complete document. The Court may require parties to submit additional excerpts or the complete document. Exhibits or attachments that are too large or not in a format that readily permits electronic conversion may be submitted in the conventional manner. Trial exhibits shall be submitted in the conventional manner unless the Court directs otherwise.

(e) An agreed decision document or stipulation of settled issues, bearing the signatures of all parties, shall be submitted to the Court in paper form.

(f) Transcripts shall be filed with the Court in paper form.

#### Explanation

The AO initially concluded that transcripts would be made available on line through its CM/ECF system. However, the AO received complaints from court reporters that their income was adversely affected by parties' obtaining their transcripts on line as opposed to ordering copies from the court reporters. The AO currently is reconsidering the provision of transcripts in electronic form, and a study of the economic impact on court reporters is pending. The Court is not authorized by its current contracts with reporting companies to provide copies of transcripts until 1 year after the proceeding; this constraint includes the pages of a transcript containing a bench opinion, copies of which are ordered by the Court from the reporting company for service on the parties to a case. See sec. 7458.

#### 4. Signatures

(a) The user log-in and the password shall serve as the user's signature on all electronic documents filed with the Court.

#### Explanation

Digital signatures are governed in commerce by State law and the Electronic Signatures in Global and National Commerce Act,

Pub. L. 106-229, 114 Stat. 464 (2000). The Uniform Electronic Transactions Act (UETA), 7A U.L.A. 28 (Supp. 2001), a model law adopted in substantial form by over 45 States, forms the basis for the use of digital signatures in the various Federal courts. The State statutes provide that a log-in and a password, a digitized signature, or an electronic mark can be viewed as a signature for State law purposes.

(b) Each document that is filed in electronic form shall state on the first page that it has been electronically filed; the document shall also include the typed name of the user under whose log-in and password the document is submitted, preceded by an "s/", the address, the telephone number, and the Tax Court bar number. Alternatively, a party may electronically file a document containing a digitized signature or a scanned document that contains a written signature.

(c) Documents requiring signatures of more than one party shall be filed electronically by: (1) Filing a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; or (3) in any other manner approved by the Court. For agreed decision documents and stipulations of settled issues, see supra par. 3(e).

#### 5. Consequences of Electronic Filing

(a) When a document is received electronically by the system, the system will generate an electronic notification of receipt that will be sent to the filing party immediately upon the receipt of the document. Before the document is filed and a Notice of Electronic Filing is sent to the filing party, the Clerk will review the document for errors regarding caption, timeliness, improper joinder of motions, etc. The Clerk will also coordinate the service of simultaneous briefs pursuant to Rule 151(c).

(b) Upon completion of filing of the document, a Notice of Electronic Filing will be generated by the system and e-mailed to the filing party and to any other user authorized to receive service in the case. The document, if filed, shall be filed as of the date of its receipt in the system, consistent with the Court's current practice with respect to paper filings. The Notice of Electronic Filing will indicate the date, the time of filing, the names of the party and the attorney filing the document, the type of document, and the text of the docket entry. Users who receive the Notice of Electronic Filing may view the filed document by clicking on an associated hyperlink embedded in the Notice of Electronic Filing.

(c) Electronic transmission of a document to the system, together with a transmission by the Court of a Notice of Electronic Filing, shall constitute filing of the document for all purposes of the Court and constitute entry of the document on the docket.

(d) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party shall be bound by the document as filed.

#### Explanation

Section 7441 establishes the Tax Court as a court of record, with no limitation on the manner in which the record is kept. There thus appears to be no statutory requirement that the Tax Court maintain its records in paper format. Some courts provide that the court will not maintain a paper file in any case begun after the effective date of the electronic case filing procedures. The Court will consider whether it will retain paper copies of the documents filed.

(e) Filing a document electronically does not alter the filing deadline for that document. An electronic filing shall be complete when it is acknowledged by the Court through the Notice of Electronic Filing. Except in the case of documents that are first filed in paper form, a document filed electronically shall be filed as of the date and time stated on the Notice of Electronic Filing. A document shall be deemed timely filed if it is filed electronically no later than 6 a.m. in Washington, D.C., on the day after the last day for filing. For rules regarding technical failure and correction of errors, see infra par. 8.

#### Explanation

As stated above, over 45 States have adopted UETA, which provides an electronic mailbox rule whereby an electronic message will be considered sent when it is properly addressed or directed through an information processing system pursuant to the instructions of the recipient. An electronic message will be considered received when it enters a previously designated information processing system and is capable of being retrieved by the recipient.

The Court is proposing a time of filing that is consistent with UETA and the Court's current practice and is analogous to the timely mailing/timely filing rule of section 7502. Establishing a 6-hour window will provide a uniform, easily

administrable rule that will not disadvantage individuals filing electronically from western time zones. In any event, because it is proposed that petitions, notices of appeal, and other documents for which there are statutory deadlines be filed in paper format, see supra par. 3(a), timeliness issues will arise only in situations in which the Court can grant leave to file if it so chooses.

## 6. Service

(a) Registration as a user shall constitute consent to electronic service of all filings and shall require the user to be responsible for monitoring e-mail accounts and retrieving the noticed filings.

### Explanation

Section 7455 provides that the mailing by certified or registered mail of any pleading, decision, order, notice, or process is sufficient service by the Court of such pleading, etc. Section 7455 does not limit the Court to service by mail. Written consent to electronic service is required under the Federal Rules of Civil Procedure, but the Committee Notes and the Model Rules permit the consent to be provided by electronic means.

(b) The Notice of Electronic Filing shall constitute service of the filed document on users.

## 7. Entry of Court-Generated Documents

(a) In cases designated for electronic filing, the Clerk shall electronically file all notices, orders, and other documents issued by the Court, and such filings shall constitute entry on the docket. Any notice, order, or other Court-generated document filed electronically at the direction of the judicial officer or Clerk but without the original signature of the judicial officer or Clerk shall have the same force and effect as if the judicial officer or Clerk had signed the paper copy and it had been entered on the docket in the conventional manner.

(b) Orders may be issued as "text-only" entries on the docket, without an attached document. Such orders are official and binding.

(c) Immediately upon the entry of a notice, order, or other document on the Court's docket, the Court shall transmit to the

parties in the case, in electronic form, a Notice of Electronic Filing.

(d) Dispositive orders and decisions entered by the Court shall be electronically filed by the Court but shall be served on the parties in paper form rather than in electronic form, although an electronic image of each order or decision shall be available to the Court and the parties on the system.

#### 8. Technical Failure and Correction of Errors

(a) A user whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(b) Once a document is filed electronically and becomes part of the case docket, corrections to the docket shall be made only by the Court. A user will not be able to make changes to the document or docket entry once the transaction has been accepted and the Notice of Electronic Filing has been generated and served. As soon as possible after an error is discovered, the user should contact the Court with the docket number and entry number for which the correction is being requested. The Court will make a docket entry, if appropriate, indicating that the document was filed in error and notify the user if the document needs to be refiled.

#### 9. Retention of Original Documents

Documents that are electronically filed and require original signatures other than that of the filing party shall be maintained in paper form by the filing party for a period of 18 months after the decision in the case is final. On request of the Court, the filing party shall provide original documents for review.

#### 10. Hyperlinks

(a) Electronically filed documents may contain the following types of hyperlinks:

- (1) Hyperlinks to other portions of the same document;
- and
- (2) hyperlinks to a location on the Internet that contains a source document for a legal citation.

(b) Hyperlinks to cited authority shall not replace standard citation format. Neither a hyperlink nor any site to which it refers shall be considered a part of the record. The

Court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The Court accepts no responsibility for the availability or functionality of any hyperlink.

11. Public Access to Documents

(a) Electronic access to electronically filed documents is available to the public at no charge at the Clerk's Office during the Court's regular business hours. A copy fee for electronic reproduction will be charged pursuant to section 7474.

(b) Paper copies and certified copies of electronically filed documents may be obtained from the Clerk's Office.