



United States Tax Court

Washington, DC 20217

January 22, 2024

PRESS RELEASE

Chief Judge Kathleen Kerrigan announced today that the United States Tax Court has proposed amendments to its Rules of Practice and Procedure. The Court proposes to delete existing Rule 13(c) and amend subsections of other Rules that address the Court's jurisdiction. The proposed amendments reflect recent developments concerning the timing requirements for invoking the Court's jurisdiction and are consistent with existing Rules addressing jurisdiction and the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction.

The proposed amendments are contained in the Notice attached to this press release and are available on the Tax Court's website at www.ustaxcourt.gov.

The Tax Court invites public comment on the proposed amendments. Comments must be received by Friday, March 22, 2024, and may be emailed to Rules@ustaxcourt.gov or addressed to the Clerk of the Court at United States Tax Court, 400 Second Street, N.W., Room 116, 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

January 22, 2024

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Proposed Amendment to Rule 13

RULE 13. JURISDICTION

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~~³(c) [Reserved] Timely Petition Required: In all cases, the jurisdiction of the Court also depends on the timely filing of a petition.~~

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Explanation

Considering recent developments concerning the timing requirements for invoking the Tax Court's jurisdiction, *see, e.g., Boechler v. Commissioner*, 596 U.S. 199 (2022), *rev'g* No. 18578-17L; *Myers v. Commissioner*, 928 F.3d 1025 (D.C. Cir. 2019), *rev'g* 148 T.C. 438 (2017); *Culp v. Commissioner*, 75 F.4th 196 (3rd Cir. 2023), *reh'g en banc denied* (Nov. 28, 2023), *rev'g* No. 14054-21, the Court finds that it is no longer appropriate to address such requirements in its Rules of Practice and Procedure. The Court therefore proposes to delete the text of existing Rule 13(c) and reserve the subsection. Conforming amendments are also proposed in other Titles of the Rules.

³The amendment is effective July 15, 2019.

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, 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 will be given freely when justice so requires. ~~No amendment 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 must state the reasons for the amendment and must be accompanied by the proposed amendment. The proposed amendment to the pleading must be separately set forth and 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.

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Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . .”), the Court proposes to amend existing Rule 41(a).

Proposed Amendment to Rule 210

RULE 210. GENERAL

* * *

- (c) ~~**Jurisdictional Requirements**~~ **Jurisdiction:** The Court ~~does not shall~~ have jurisdiction of an action for declaratory judgment under this Title ~~unless the following conditions are satisfied: when the conditions of Code sections 7428, 7476, 7477, 7478, or 7479, as applicable, have been satisfied.~~ 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 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 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).

(1) ~~There is an actual controversy. In 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, 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.~~

~~(2) 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.~~

~~(3) The petitioner has exhausted all administrative remedies available to the petitioner within the Internal Revenue Service.~~

* * *

Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . .”), the Court proposes to amend existing Rule 210(c).

Proposed Amendment to Rule 220

RULE 220. GENERAL

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(c) ~~Jurisdictional Requirements~~ Jurisdiction: The Court ~~does not shall~~ have jurisdiction of a disclosure action under this Title when the conditions of Code section 6110 have been satisfied, ~~unless the following conditions are satisfied:~~

~~(1) In an additional disclosure action, the petitioner has exhausted all administrative remedies available within the Internal Revenue Service. See Code sec. 6110(f)(2)(A), (4)(A).~~

~~(2) In an action to restrain disclosure—~~

~~(A) The Commissioner has issued a notice of intention to disclose or, in the case of a prior written determination, the Commissioner has issued public notice in the Federal Register that the determination is to be opened to public inspection.~~

~~(B) In the case of a written determination, the petition is filed with the Court within 60 days after mailing by the Commissioner of a notice of intention to disclose, or, in the case of a prior written determination, the petition is filed with the Court within 75 days after the date of publication of the notice in the Federal Register.~~

~~(C) The petitioner has exhausted all administrative remedies available within the Internal Revenue Service. See Code sec. 6110(f)(2)(B), (3)(A)(iii).~~

~~(3) In a third party contact action—~~

~~(A) The Commissioner was required to make a notation on the written determination in accordance with Code section 6110(d)(1).~~

~~(B) A petition is filed within 36 months after the first date on which the written determination is open to public inspection.~~

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Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . .”), the Court proposes to amend existing Rule 220(c).

Proposed Amendment to Rule 240

RULE 240. GENERAL

(c) ~~Jurisdictional Requirements~~ Jurisdiction: The Court ~~does not shall~~ have jurisdiction of a partnership action under this Title when the conditions of Code section 6226 or 6228, as applicable, have been satisfied. ~~unless the following conditions are satisfied:~~

~~(1) — *Actions for Readjustment of Partnership Items:*~~

~~(A) — The Commissioner has issued a notice of final partnership administrative adjustment. See Code sec. 6226(a) and (b).~~

~~(B) — A petition for readjustment of partnership items is filed with the Court by the tax matters partner within the period specified in Code section 6226(a), or by a partner other than the tax matters partner subject to the conditions and within the period specified in Code section 6226(b).~~

~~(2) — *Actions for Adjustment of Partnership Items:*~~

~~(A) — The Commissioner has not allowed all or some of the adjustments requested in an administrative adjustment request. See Code sec. 6228(a).~~

~~(B) — A petition for adjustment of partnership items is filed with the Court by the tax matters partner subject to the conditions and within the period specified in Code section 6228(a)(2) and (3).~~

Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . .”), the Court proposes to amend existing Rule 240(c).

Proposed Amendment to Rule 255.1

RULE 255.1. GENERAL

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(c) ~~Jurisdictional Requirements~~ Jurisdiction: The Court ~~does not shall~~ have jurisdiction of a partnership action under this Title when the conditions of Code section 6234 have been satisfied, ~~unless the following conditions are satisfied:~~

- ~~(1) The Commissioner has mailed a notice of final partnership adjustment with respect to the partnership's taxable year(s).~~
- ~~(2) The partnership representative files a petition for readjustment with respect to the year(s) within 90 days after the date on which the notice of final partnership adjustment is mailed.~~

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Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . .”), the Court proposes to amend existing Rule 255.1(c).

Proposed Amendment to Rule 270

RULE 270. GENERAL

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(c) ~~Jurisdictional Requirements~~ Jurisdiction: The Court ~~does not shall~~ have jurisdiction of an action for administrative costs under this Title when the conditions of Code section 7430 have been satisfied. ~~unless the following conditions are satisfied:~~

- ~~(1) The Commissioner has made a decision denying (in whole or in part) an award for reasonable administrative costs under Code section 7430(a).~~
- (2) A petition for an award for reasonable administrative costs is filed with the Court within the period specified in Code section 7430(f)(2).

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Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . .”), the Court proposes to amend existing Rule 270(c).

Proposed Amendment to Rule 280

RULE 280. GENERAL

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(b) Jurisdiction: The Court ~~does not~~ shall have jurisdiction of an action for review of the Commissioner's failure to abate interest under this Title when the conditions of Code section 6404 have been satisfied. ~~unless the following conditions are satisfied:~~

- ~~(1) The Commissioner has mailed a notice of final determination not to abate interest under Code section 6404 or has been requested to make a determination and failed to do so within 180 days after the claim to abate interest was filed with the Internal Revenue Service.~~
- ~~(2) A petition for review of the Commissioner's failure to abate interest is filed with the Court within the period specified in Code section 6404(h) by a taxpayer who meets the requirements of Code section 7430(e)(4)(A)(ii).~~

Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 ("These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . ."), the Court proposes to amend existing Rule 280(b).

Proposed Amendment to Rule 290

RULE 290. GENERAL

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(b) Jurisdiction: The Court ~~does not~~ shall have jurisdiction of an action for redetermination of employment status under this Title when the conditions of Code section 7436 have been satisfied. ~~unless the following conditions are satisfied:~~

~~(1) In connection with an audit of any person, there is an actual controversy involving a determination by the Commissioner as part of an examination that:~~

~~(A) One or more individuals performing services for such person are employees of such person for purposes of subtitle C of the Code, or~~

~~(B) such person is not entitled to the treatment under subsection (a) of sec. 530 of the Revenue Act of 1978, Pub. L. 95-600, 92 Stat. 2885, with respect to such an individual.~~

~~(2) A petition for redetermination of employment status is filed with the Court in accordance with Rule 291 by the person for whom the services are performed.~~

~~**(c) Time for Filing After Notice Sent:** If the Commissioner sends by certified or registered mail to the petitioner notice of the Commissioner's determination of matters set forth in Code section 7436(a)(1) and (2), then no proceeding may be initiated with respect to such determination unless the petition is filed within the period specified in Code section 7436(b)(2).~~

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Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 ("These rules do not extend or limit the

jurisdiction of the district courts or the venue of actions in those courts”), the Court proposes to amend existing Rule 290.

Proposed Amendment to Rule 300

RULE 300. GENERAL

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(c) ~~Jurisdictional Requirements~~ Jurisdiction: The Court ~~does not shall~~ have jurisdiction of a large partnership action under this Title when the conditions of Code sections 6245, 6247, and 6252 have been satisfied. ~~unless the following conditions are satisfied:~~

~~(1) *Actions for Readjustment of Partnership Items of a Large Partnership:*~~

~~(A) The Commissioner has issued a notice of partnership adjustment. See Code sec. 6245(b).~~

~~(B) A petition for readjustment of partnership items of a large partnership is filed with the Court by the large partnership within the period specified in Code section 6247(a).~~

~~(2) *Actions for Adjustment of Partnership Items of a Large Partnership:*~~

~~(A) The Commissioner has not allowed all or some of the adjustments requested in an administrative adjustment request. See Code sec. 6252(a).~~

~~(B) A petition for adjustment of partnership items of a large partnership is filed with the Court by the large partnership subject to the conditions and within the period specified in Code section 6252(b) and (e).~~

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Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . .”), the Court proposes to amend existing Rule 300(c).

Proposed Amendment to Rule 310

RULE 310. GENERAL

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(c) Jurisdiction: The Court ~~does not~~ shall have jurisdiction of an action for declaratory judgment under this Title when the conditions of Code section 6234 have been satisfied. ~~unless the following conditions are satisfied:~~

- (1) ~~The Commissioner has issued a notice of adjustment. See Code sec. 6234(a)(3).~~
- (2) ~~A petition for declaratory judgment is filed with the Court within the period specified in Code section 6234(e). See Code sec. 7502.~~

Explanation

In accord with the proposed amendment to existing Rule 13(c) and to conform more closely both to certain existing Rules addressing jurisdiction, *see, e.g.*, Rule 320(b), and to the approach embodied in the Federal Rules of Civil Procedure concerning jurisdiction, *see* Fed. R. Civ. P. 82 (“These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts . . .”), the Court proposes to amend existing Rule 310(c).