

## TITLE IV

### PLEADINGS

#### RULE 30. PLEADINGS ALLOWED

There shall be a petition and an answer, and, where required under these Rules, a reply. No other pleading shall be allowed, except that the Court may permit or direct some other responsive pleading. (See Rule 173 as to small tax cases.)

#### RULE 31. GENERAL RULES OF PLEADING

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

(b) **Pleading To Be Concise and Direct:** Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading are 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. 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 subject to the signature requirements of Rules 23(a)(3) and 33.

(d) **Construction of Pleadings:** All pleadings shall be so construed as to do substantial justice.

#### RULE 32. FORM OF PLEADINGS

(a) **Caption; Names of Parties:** Every pleading shall contain a caption setting forth the name of the Court (United States Tax Court), the title of the case, the docket number after it becomes available (see Rule 35), and a designation to show the nature of the pleading. In the petition, the title of the case shall include the names of all parties, but shall not include as a party-petitioner the name of any person other than the person or persons by or on whose behalf the petition

is filed. In other pleadings, it is sufficient to state the name of the first party with an appropriate indication of other parties.

**(b) Separate Statement:** 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. Each claim and defense shall be stated separately whenever a separation facilitates the clear presentation of the matters set forth.

**(c) Adoption by Reference; Exhibits:** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

**(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).

### **RULE 33. SIGNING OF PLEADINGS**

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

**(b) Effect of Signature:** The signature of counsel or a party constitutes a certificate by the signer 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 a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The signature of counsel also 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 shall be stricken, unless it is signed promptly after the omission is called to the attention of the pleader. If a

pleading is signed in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon 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.

### **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 require 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. No telegram, cablegram, radiogram, telephone call, electronically transmitted copy, or similar communication will be recognized as a petition. 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), 301(b); administrative costs actions, Rule 271(b); abate-

ment 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); and whistleblower actions, Rule 341(b). As to joinder of parties in declaratory judgment actions, in disclosure actions, and in partnership actions, see Rules 215, 226, and 241(h) 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). For the requirements as to the content of the petition in other actions, see Rule 211(c), (d), (e), (f), and (g), Rule 221(c), (d), and (e), Rule 241(c), (d), and (e), Rule 271(b), Rule 281(b), Rule 291(b), Rule 301(b), Rule 311(b), Rule 321(b), Rule 331(b), and Rule 341(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.

### **RULE 35. ENTRY ON DOCKET**

Upon receipt of the petition by the Clerk, the case will be entered upon the docket and assigned a number, and the parties will be notified thereof by the Clerk. The docket number shall be placed by the parties on all papers thereafter

filed in the case, and shall be referred to in all correspondence with the Court.

### **RULE 36. ANSWER**

**(a) Time To Answer or Move:** The Commissioner shall have 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 like 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.

**(b) Form and Content:** The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition; however, if the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the Commissioner shall so state, and such statement shall 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 specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall 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 be designated to correspond to those of the petition to which they relate.

**(c) Effect of Answer:** Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be 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 actions, see Rules 213(a), 223(a), and 272(a), respectively.

### **RULE 37. REPLY**

**(a) Time To Reply or Move:** The petitioner shall have 45 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 have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

**(b) 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 contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the petitioner shall so state, and such statement shall have the effect of a denial. In addition, the reply shall 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 Rule 36(b) shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

**<sup>1</sup>(c) Effect of Reply or Failure Thereof:** Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied unless the Commissioner, within 45 days after expiration of the time for filing the reply, files a motion that specified allegations in the answer be deemed admitted. That motion may be granted unless the required reply is filed within the time directed by the Court.

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

**(e) Declaratory Judgment, Disclosure, and Administrative Costs Actions:** For the requirements applicable to the reply in declaratory judgment actions and in disclosure actions, see Rules 213(b) and 223(b), respectively. See Rule 272(b) with respect to replies in actions for administrative costs.

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<sup>1</sup>The amendment is effective as of January 1, 2010.

**RULE 38. JOINDER OF ISSUE**

A case shall be deemed at issue upon the filing of the answer, unless a reply is required under Rule 37, in which event it shall be deemed at issue upon the filing of a reply or the entry of an order disposing of a motion under Rule 37(c) or the expiration of the period specified in Rule 37(c) in case the Commissioner fails to move. With respect to declaratory judgment actions, disclosure actions, partnership actions, administrative costs actions, and actions for determination of relief from joint and several liability on a joint return, see Rules 214, 224, 244, 273, and 324, respectively.

**RULE 39. PLEADING SPECIAL MATTERS**

A party shall set forth in the party's pleading any matter constituting an avoidance or affirmative defense, including res judicata, collateral estoppel, estoppel, waiver, duress, fraud, and the statute of limitations. A mere denial in a responsive pleading will not be sufficient to raise any such issue.

**RULE 40. DEFENSES AND OBJECTIONS MADE BY PLEADING OR MOTION**

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion: (a) Lack of jurisdiction, and (b) failure to state a claim upon which relief can be granted. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, then such party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting failure to state a claim on which relief can be granted, matters outside the pleading are to be presented, then the motion shall be treated as one for summary judgment and disposed of as provided in Rule 121, and the parties shall be given an opportunity to present all material made pertinent to a motion under Rule 121.

**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 be given freely when justice so requires. No amendment shall 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 state the reasons for the amendment and shall be accompanied by the proposed amendment. The amendment to the pleading shall not be incorporated into the motion but rather shall be separately set forth and consistent 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. The Court, upon motion of any party at any time, may allow such 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 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 do so freely when justice so requires and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice such party in maintaining such party's position on the merits.

(3) *Filing:* The amendment or amended pleadings permitted under this paragraph (b) shall be filed with the

Court at the trial or shall be filed with the Clerk at Washington, D.C., within such time as the Court may fix.

**(c) Supplemental Pleadings:** Upon motion of a party, the Court may, upon such terms as are just, permit a party to file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statements of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, then it shall so direct, specifying the time therefor.

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