

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

ADRIAN D. SMITH & NANCY W. SMITH,)
ET AL.,)
)
Petitioners,)
)
v.) Docket Nos. 13382-17, 13385-17,
) 13387-17.
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

These cases were calendared for a special trial session in Chicago, Illinois previously scheduled to commence May 4, 2020. However, after assessing all relevant factors relating to coronavirus disease 2019 (COVID-19), including travel and public health considerations, the Court determined that it was necessary and appropriate to cancel the foregoing special trial session. Nevertheless, by Order dated March 24, 2020, the Court directed the parties to continue to work towards the timely resolution of the issues in these cases and, accordingly, to comply with the provisions of the scheduling Order dated October 15, 2019, as modified by the Order dated February 21, 2020.

For the health and safety of Court employees and the public, the Court determined on March 18, 2020, that it was necessary and appropriate to close the Tax Court building, effective immediately and until further notice. Since that time mail delivery to the Court has been suspended.

On March 30, 2020, petitioners electronically filed a Report, advising that they were submitting, “in accordance with Tax Court Rule 143(g)(2) and the Standing Pretrial Order”, the “Expert Report of Brent M. Longnecker.” The scheduling Order dated October 15, 2019, as modified by the Order dated February 21, 2020, directed that any expert witness report be submitted to the Court and served on the opposing party, on or before March 30, 2020.

Pursuant to Rule 143(g)(2): “After the case is calendared for trial or assigned to a Judge or Special Trial Judge, each party who calls any expert witness

SERVED Apr 01 2020

shall serve on each other party, and shall submit to the Court, not later than 30 days before the call of the trial calendar on which the case shall appear, a copy of all expert witness reports prepared pursuant to this subparagraph.” (Emphasis added.) Under Rule 143 an expert report is submitted, as opposed to being filed, because at trial such a report is “marked as an exhibit, identified by the witness, and received in evidence as the direct testimony of the expert witness, unless the Court determines that the witness is not qualified as an expert.”

While petitioners’ electronic filing of the “Expert Report of Brent M. Longnecker” as an attachment to petitioners’ Report filed March 30, 2020, violates Rule 143, we nevertheless conclude that compliance with the mailing requirement is infeasible with mail delivery suspended. Accordingly, the Court will direct the Clerk of the Court to recharacterize petitioners’ Report filed March 30, 2020, as the Report of Brent M. Longnecker, Petitioners’ Proffered Expert, file it as of the foregoing date, and serve a copy thereof on respondent.

We note that, notwithstanding the filing of the report, petitioners’ proffered expert has not been so qualified by the Court and his report has not been received into evidence.

The foregoing considered, it is

ORDERED that the Clerk of the Court shall recharacterize the document filed March 30, 2020, designated as petitioners’ Report, as the Report of Brent M. Longnecker, Petitioners’ Proffered Expert, and file it as of the foregoing date. It is further

ORDERED that the Clerk of the Court shall serve a copy of the Report of Brent M. Longnecker, Petitioners’ Proffered Expert, on respondent.

In view of our action herein, respondent may seek leave of the Court, which we will grant, to electronically file the report of his proffered expert, Joseph J. Ruble, referred to in his Report filed March 25, 2020.

**(Signed) Joseph H. Gale
Judge**

Dated: Washington, D.C.
March 31, 2020