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OF THE
UNITED STATES TAX COURT

July 1, 1989, to December 31, 1989

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TAX COURT
UNITED STATES
REPORTS

JUDGES OF THE UNITED STATES TAX COURT

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Judges

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JULES G. KÖRNER III
PERRY SHIELDS
LAPSLEY W. HAMBLEN, JR.
MARY ANN COHEN
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STANLEY J. GOLDBERG
CARLETON D. POWELL
LARRY L. NAMEROFF

CHARLES S. CASAZZA, *Clerk*
PAUL NEJELSKI, *Court Administrator*

[1] Judge Vandervort retired July 14, 1989.
[2] Mr. Nejelski resigned effective July 29, 1989.

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AMENDMENTS

to

RULES OF PRACTICE AND PROCEDURE

of the

UNITED STATES TAX COURT

Prefatory Note[1]

Portions of the Court's Rules of Practice and Procedure have been substantially revised. The revisions include the addition of new rules and both substantive and stylistic changes to existing rules. The revisions are generally effective as of July 1, 1990, except where otherwise stated.

An explanatory note generally follows each rule which has been revised. In several instances a prefatory note introduces a specific title. However, no notes have been prepared for those rules where the only change has been to make the language gender neutral, or where only stylistic, orthographic, or similar nonsubstantive changes have been made.

[1]This prefatory note was prepared by the Rules Committee and is included here for the convenience of the Bar. Neither this prefatory note nor any other prefatory note nor the notes which follow certain of the within rules are officially part of the Rules.

Tax Court Information

The mailing address of the Court is:

UNITED STATES TAX COURT
400 Second Street, N.W.
Washington, D.C. 20217

Inquiries which are made by local or long distance telephone (area code 202) should be made to the following offices of the Court depending upon the nature of the inquiry. The following indicates which office can give particular information directly:

Office of the Clerk of the Court, 376-2754, regarding:
(1) General procedure in and practice before the Court;
(2) General information.

Admissions Section, 376-2736, regarding:
Admissions procedures for practice before the Tax Court.

Appellate Section, 376-2757, regarding:
(1) Filing of notices of appeal from Tax Court decisions;
(2) Other procedures relating to appellate review of cases decided by the Tax Court.

Docket Section, 376-2777, regarding:
(1) Documents and pleadings filed subsequent to petitions;
(2) Action taken on documents filed;
(3) Status of cases.

Petitions Section, 376-2764, regarding:
Information as to petitions filed.

Public Files Section, 376-2727, regarding:
Inspecting case files.

Administrative Office, 376-2751, regarding:
Obtaining the Tax Court Rules of Practice and Procedure.

Copywork Office, 376-2906, regarding:
Obtaining copies of documents pertaining to cases.

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TITLE I

SCOPE OF RULES; CONSTRUCTION; EFFECTIVE DATE; DEFINITIONS

RULE 1. SCOPE OF RULES AND CONSTRUCTION

(a) Scope: These Rules govern the practice and procedure in all cases and proceedings in the United States Tax Court. Where in any instance there is no applicable rule of 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.

(b) Construction: These Rules shall be construed to secure the just, speedy, and inexpensive determination of every case.

RULE 2. EFFECTIVE DATE[1]

[1]**(a) Adoption:** These Rules, except as otherwise provided, will take effect on July 1, 1990. They govern all proceedings and cases commenced after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the Court their application, in a particular case pending when the Rules take effect, would not be feasible or would work injustice, in which event the former procedure applies.

(b) Amendments: Amendments to these Rules shall state their effective date. Amendments shall likewise govern all

[1]The amendment is effective as of July 1, 1990.

proceedings both in cases pending on or commenced after their effective date, except to the extent otherwise provided, and subject to the further exception provided in paragraph (a) of this Rule.

Note

Paragraph (a) of Rule 2 is amended to provide the effective date of these Rules, as amended.

The amendment of Rule 2(a) is effective as of July 1, 1990.

RULE 3. DEFINITIONS

[1](a) **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.

(b) **Clerk:** Reference to the Clerk in these Rules means the Clerk of the United States Tax Court.

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

[2](d) **Special Trial Judge:** The term Special Trial Judge as used in these Rules refers to a judicial officer appointed pursuant to Code Section 7443A(a). See Rule 180.

(e) **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.

(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.

[3](h) **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.

Note

Paragraph (a) of Rule 3 is amended to make an orthographic change.

Paragraph (d) of Rule 3 is amended to reflect the enactment of Code Section 7443A by section 1556(a) of the Tax Reform Act of 1986, Pub. L.

[1]The amendment is effective as of July 1, 1990.

[2]The amendment is effective as of October 22, 1986.

[3]The amendment is effective as of July 1, 1990.

99-514, 100 Stat. 2085, 2754-2755. Provisions pertaining to Special Trial Judges are now set forth in Code Section 7443A, rather than in section 7456(c) and (d). See section 1556(b)(1) of that Act, 100 Stat. at 2755. This paragraph also is amended to conform it to the standard style for references to the Internal Revenue Code.

Paragraph (h) of Rule 3 is amended to provide that any reference or citation to the Code in the Court's Rules of Practice and Procedure relates to the Internal Revenue Code of 1986, as in effect for the relevant period or the relevant time. This amendment is consistent with section 2(a) of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085, 2095, which redesignated the 1954 Code as the 1986 Code.

The amendment of Rule 3(d) is effective as of October 22, 1986, the date of enactment of the Tax Reform Act of 1986. See section 1556(c)(1) of that Act, 100 Stat. at 2755. The amendments of Rule 3(a) and (h) are effective as of July 1, 1990.

TITLE II

THE COURT

RULE 10. NAME, OFFICE, AND SESSIONS

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

[1]**(b) Office of Court:** The principal office of the Court shall be in the District of Columbia, but the Court or any of its Divisions may sit at any place within the United States. See Code Sections 7445 and 7701(a)(9).

(c) Sessions: The time and place of sessions of the Court shall be prescribed by the Chief Judge.

[1]**(d) Business Hours:** The office of the Clerk at Washington, D.C., shall be open during business hours on all days, except Saturdays, Sundays, and legal holidays in the District of Columbia, for the purpose of receiving petitions, pleadings, motions, and other papers. Business hours are from 8:00 a.m. to 4:30 p.m. For legal holidays, see Rule 25(b).

(e) Mailing Address: Mail to the Court should 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 not be used, unless the Court directs otherwise.

[1]The amendments are effective as of July 1, 1990.

Note

Paragraph (b) of Rule 10 is amended to include cross-references to Code Section 7445 (relating to offices of the Tax Court) and to Code Section 7701(a)(9) (relating to the definition of the term "United States" as used in a geographical sense).

Paragraph (d) of Rule 10 is amended to change the business hours of the office of the Clerk at Washington, D.C. from 8:30 a.m. - 5:00 p.m. to 8:00 a.m. - 4:30 p.m. However, in light of Code Section 7502, this change is not expected to have any effect on the timeliness of the filing of any document with the Court.

Paragraph (d) also is amended to make it clear that the relevant holidays are those in the District of Columbia. See Code Section 7503; Rule 25(b).

The amendments of Rule 10 are effective as of July 1, 1990.

RULE 11. PAYMENTS TO COURT[1]

All payments to the Court for fees or charges of the Court shall be made either in cash or by check, money order, or other draft made payable to the order of "Clerk, United States Tax Court," and shall be mailed or delivered to the Clerk of the Court at Washington, D.C. For the Court's address, see Rule 10(e). For particular payments, see Rules 12(c) (copies of Court records), 20(b) (filing of petition), 175(a)(2) (small tax cases), 200(e) (application to practice before Court), 200(i) (periodic registration fee), and 271(c) (filing of petition for administrative costs). For fees and charges payable to the Court, see Appendix III.

Note

Rule 11 is amended to include cross-references to Rule 10(e) (relating to the Court's mailing address), to Rule 271(c) (relating to the fee for filing a petition for administrative costs), and to Appendix III (relating to fees and charges payable to the Court). The Rule is also amended to correct a typographical error.

The amendments of Rule 11 are generally effective as of July 1, 1990, except that the cross-reference to Rule 271(c) is effective with respect to actions for administrative costs commenced after November 10, 1988.

[1]The amendments are generally effective as of July 1, 1990, except that the cross-reference to Rule 271(c) is effective with respect to actions for administrative costs commenced after November 10, 1988.

RULE 12. COURT RECORDS[1]

(a) Removal of Records: No original record, paper, document, or exhibit filed with the Court shall be taken from the courtroom or from the offices of the Court or from the custody of a Judge or employee of the Court, except as authorized by a Judge of the Court or except as may be necessary for the Clerk to furnish copies or to transmit the same to other courts for appeal or other official purposes. With respect to return of exhibits after a decision of the Court becomes final, see Rule 143(d)(2).

(b) Copies of Records: After the Court renders its decision in a case, a plain or certified copy of any document, record, entry, or other paper, pertaining to the case and still in the custody of the Court, may be obtained upon application to the Court's Copywork Office and payment of the required fee. Unless otherwise permitted by the Court, no copy of any exhibit or original document in the files of the Court shall be furnished to other than the parties until the Court renders its decision. With respect to protective orders that may restrict the availability of exhibits and documents, see Code Section 7461 and Rule 103(a).

(c) Fees: The fees to be charged and collected for any copies will be determined in accordance with Code Section 7474. See Appendix III.

Note

Paragraph (a) of Rule 12 is amended to make an orthographic change.

Paragraph (b) of Rule 12 is amended to provide that requests for copywork should be directed to the Court's Copywork Office. Inquiries regarding the procedures of that office may be made by telephone to the number for that office which is set forth in the flyleaf to the Court's Rules of Practice and Procedure.

Paragraph (b) is also amended to include a cross-reference to Code Section 7461 and Rule 103(a). Protective orders issued under authority of that section and that rule may restrict the availability of exhibits and documents copies of which might otherwise be obtainable.

The amendments of Rule 12 are effective as of July 1, 1990.

[1]The amendments are effective as of July 1, 1990.

RULE 13. JURISDICTION

[1](a) **Notice of Deficiency or of Transferee or Fiduciary Liability Required:** Except in actions for declaratory judgment, for disclosure, for readjustment or adjustment of partnership items, or for administrative costs (see Titles XXI, XXII, XXIV, and XXVI), the jurisdiction of the Court depends (1) in a case commenced in the Court by a taxpayer, upon the issuance by the Commissioner of a notice of deficiency in income, gift, or estate tax or, in the taxes under Code Chapter 41, 42, 43, or 44 (relating to the excise taxes on certain organizations and persons dealing with them), or in the tax under Code Chapter 45 (relating to the windfall profit tax), or in any other taxes which are the subject of the issuance of a notice of deficiency by the Commissioner; and (2) in a case commenced in the Court by a transferee or fiduciary, upon the issuance by the Commissioner of a notice of liability to the transferee or fiduciary. See Code Sections 6212, 6213, and 6901.

[1](b) **Declaratory Judgment, Disclosure, Partnership, or Administrative Costs Actions:** For the jurisdictional requirements in an action for declaratory judgment, for disclosure, for readjustment or adjustment of partnership items, or for administrative costs, see Rules 210(c), 220(c), 240(c), and 270(c).

[2](c) **Timely Petition Required:** In all cases, the jurisdiction of the Court also depends on the timely filing of a petition. See Code Sections 6213, 7502; with respect to declaratory judgment actions, see Code Sections 7428, 7476, and 7478; with respect to disclosure actions, see Code Section 6110; and with respect to partnership actions, see Code Sections 6226 and 6228.

[3](d) **Contempt of Court:** Contempt of Court may be punished by fine or imprisonment within the scope of Code Section 7456(c).

[2](e) **Bankruptcy and Receivership:** With respect to the filing of a petition or the continuation of proceedings in this Court after the filing of a bankruptcy petition, see 11 U.S.C.

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[1]The amendments are effective with respect to actions for administrative costs commenced after November 10, 1988.

[2]The amendments are effective as of July 1, 1990.

[3]The amendment is effective as of October 22, 1986.

section 362(a)(8) and Code Section 6213(f)(1). With respect to the filing of a petition in this Court after the appointment of a receiver in a receivership proceeding, see Code Section 6871(c)(2).

Note

Paragraph (a) of Rule 13 is amended to include actions for administrative costs as well as a cross-reference to Title XXVI. This paragraph also is amended to conform it to the standard style for references to the Internal Revenue Code.

Paragraph (b) of Rule 13 is amended to include actions for administrative costs as well as a cross-reference to Rule 270(c).

Paragraph (c) of Rule 13 is amended to delete the cross-reference to section 7477 of the Internal Revenue Code of 1954, involving declaratory judgments relating to transfers of property from the United States. That section was repealed by section 131(e)(1) of the Tax Reform Act of 1984, Pub. L. 98-369, 98 Stat. 494, 664. Paragraph (c) is also amended to restore the cross-reference to disclosure actions and Code Section 6110. That cross-reference was inadvertently deleted from the Rule by a printer's error in the 1988 amendments to the Court's Rules.

Paragraph (d) of Rule 13 is amended to reflect the technical amendment made to Code Section 7456 by section 1556(b)(1) of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085, 2755.

Paragraph (e) of Rule 13 is amended to include a cross-reference to Code Section 6871(c)(2), relating to the filing of a petition in this Court after the appointment of a receiver in a receivership proceeding. The heading of the Rule is also amended to include both bankruptcy and receivership.

The amendments of paragraphs (a) and (b) of Rule 13 are effective with respect to actions for administrative costs commenced after November 10, 1988. See Title XXVI of these Rules. The amendments of paragraphs (c) and (e) of Rule 13 are effective as of July 1, 1990. The amendment of paragraph (d) of Rule 13 is effective as of October 22, 1986, the date of enactment of the Tax Reform Act of 1986. See section 1556(c)(1) of that Act, 100 Stat. at 2755.

TITLE III

COMMENCEMENT OF CASE; SERVICE AND FILING OF PAPERS; FORM AND STYLE OF PAPERS; APPEARANCE AND REPRESENTATION; COMPUTATION OF TIME

RULE 20. COMMENCEMENT OF CASE

[1]**(a) General:** A case is commenced in the Court by filing a petition with the Court to redetermine a deficiency set forth in a notice of deficiency issued by the Commissioner, or to redetermine the liability of a transferee or fiduciary set forth in a notice of liability issued by the Commissioner to the transferee or fiduciary, or to obtain a declaratory judgement, or to obtain or restrain a disclosure, or to adjust or readjust partnership items, or to obtain an award for reasonable administrative costs. See Rule 13, Jurisdiction.

[2]**(b) Filing Fee:** 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 containing specific financial information the inability to make such payment.

Note

Paragraph (a) of Rule 20 is amended to include a petition filed with the Court to obtain an award for reasonable administrative costs.

Paragraph (b) of Rule 20 is amended to make an orthographic change and to make the language gender neutral.

The amendment of paragraph (a) is effective with respect to actions for administrative costs commenced after November 10, 1988. See Title XXVI of these Rules. The amendments of paragraph (b) are effective as of July 1, 1990.

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,

[1]The amendment is effective with respect to actions for administrative costs commenced after November 10, 1988.

[2]The amendments are effective as of July 1, 1990.

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.

[1](b) **Manner of Service:** (1) *General:* All petitions shall be served by the Clerk. All other papers required to be served on a party shall also be served by the Clerk unless otherwise provided in these Rules or directed by the Court, or unless the original paper is 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 Form 13, Appendix I. Such service may be made by 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. As an alternative to service by mail, service may be made by 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)). Service shall be made on the Commissioner by service on, or directed to, the Commissioner's counsel at the office address shown in the Commissioner's answer filed in the case or, if no answer has been filed, on the Chief Counsel, Internal Revenue Service, Washington, D.C. 20224. 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 direct 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 will be made only on that counsel whose appearance was first entered of record, unless that counsel notifies the Court, by a designation of

[1]The amendments are effective as of July 1, 1990.

counsel to receive service filed with the Court, that other counsel of record is to receive service, in which event service will 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(a)(2),(3), and (b)). A separate notice of change of address shall be filed for each docket number.

RULE 22. FILING

Any pleadings or other papers to be filed with the Court must be filed with the Clerk in Washington, D.C., during business hours, except that the Judge presiding at any trial or hearing may permit or require documents pertaining thereto to be filed at that particular session of the Court, or except as otherwise directed by the Court.

RULE 23. FORM AND STYLE OF PAPERS

(a) Caption, Date, and Signature Required: All papers filed with the Court shall have a caption, shall be dated, and shall be signed as follows:

[1](1) *Caption:* A proper caption shall be placed on all papers filed with the Court, and the requirements provided in 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 full name and surname of each individual petitioner shall be set forth in the caption. The name of an estate or trust or other person

[1]The amendments are effective as of July 1, 1990.

for whom a fiduciary acts shall 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 be placed on all papers filed with the Court.

[1](3) *Signature:* The original signature, either of the party or the party's counsel, shall be subscribed in writing to the original of every paper filed by or for that party with the Court, except as otherwise provided by these Rules. An individual rather than a firm name shall be used, except that the signature of a petitioner corporation or unincorporated association shall 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." The name, mailing address, and telephone number of the party or the party's counsel, as well as counsel's Tax Court bar number, shall be typed or printed immediately beneath the written signature. The mailing address of a signatory shall include a firm name if it is an essential part of the accurate mailing address.

[1](b) **Number Filed:** For each paper filed in Court, there shall be filed four conformed copies together with the signed original thereof, except as otherwise provided in these Rules. 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. As to stipulations, see Rule 91(b).

[1](c) **Legible Copies Required:** Papers filed with the Court may be prepared by any process, but only if all papers, including copies, filed with the Court are clear and legible.

(d) **Size and Style:** Typewritten papers shall be typed on only one side, unless produced by offset, mimeograph, multilith, photocopy, or similar process, and shall be on plain white paper, 8-1/2 inches wide by 11 inches long, and weighing not less than 16 pounds to the ream, except that copies other than the original may be made on any weight paper. Printed papers shall be printed in 10-point or 12-point type, on good quality unglazed paper, 5-7/8 inches wide by 9 inches long, and with double-leaded text and single-leaded quotations. All papers, whether typed or

[1]The amendment is effective as of July 1, 1990.

printed, shall have an inside margin not less than 1-1/4 inch wide.

(e) **Binding and Covers:** All papers shall be bound together on the upper left-hand side only and shall have no backs or covers.

[1](f) **Citations:** All citations of case names shall be underscored when typewritten, and shall be in italics when printed.

(g) **Return of Papers for Failure to Conform to Rule:** The Clerk may return without filing any paper that does not conform to the requirements of this Rule.

Note

Paragraph (a)(1) of Rule 23 is amended to make the examples gender balanced.

Paragraph (a)(3) of Rule 23 is amended to require that counsel's Tax Court bar number, as well as counsel's name, mailing address, and telephone number, shall be typed or printed immediately beneath counsel's written signature on all papers filed with the Court. The paragraph is also amended to make the language gender neutral and the example gender balanced.

Paragraph (b) of Rule 23 is amended to make an orthographic change.

Paragraph (c) of Rule 23 is amended to clarify the meaning of the rule.

Paragraph (f) of Rule 23 is amended to clarify the intent of the rule.

The amendments of Rule 23 are effective as of July 1, 1990.

RULE 24. APPEARANCE AND REPRESENTATION

(a) **Appearance:** (1) *General:* Counsel may enter an appearance either by subscribing the petition or other initial pleading or document in accordance with subparagraph (2) hereof, or thereafter by filing an entry of appearance in accordance with subparagraph (3) hereof.

[2](2) *Appearance in Initial Pleading:* If (A) the petition or other paper initiating the participation of a party in a case is subscribed by counsel admitted to practice before the Court, and (B) such initial paper contains the mailing address and Tax Court bar number of counsel and other information required for entry of appearance (see subparagraph (3)), then (C) that counsel shall be recognized as representing that party and no separate entry of

[1]The amendment is effective as of July 1, 1990.

[2]The amendments are effective as of July 1, 1990.

appearance shall be necessary. Thereafter counsel shall be required to notify the Clerk of any changes in applicable information to the same extent as if counsel had filed a separate entry of appearance.

[1](3) *Subsequent Appearance:* Where counsel has not previously appeared, counsel shall file an entry of appearance in duplicate, signed by counsel individually, containing the name and docket number of the case, the name, mailing address, telephone number, and Tax Court bar number of counsel so appearing, and a statement that counsel is admitted to practice before the Court. A separate entry of appearance, in duplicate, shall be filed for each additional docket number in which counsel shall appear. The entry of appearance shall be substantially in the form set forth in Appendix I. The Clerk shall be given prompt written notice, filed in duplicate for each docket number, of any change in the foregoing information. An entry of appearance shall not be joined to or made part of a motion to withdraw as counsel.

[1](4) *Counsel Not Admitted to Practice:* No entry of appearance by counsel not admitted to practice before this Court will be effective until counsel shall have been admitted, but counsel may be recognized as counsel in a pending case to the extent permitted by the Court and then only where it appears that counsel can and will be promptly admitted. For the procedure for admission to practice before the Court, see Rule 200.

[1](b) **Personal Representation Without Counsel:** In the absence of appearance by counsel, a party will be deemed to appear on the party's own behalf. An individual party may represent himself or herself. A corporation or an unincorporated association may be represented by an authorized officer of the corporation or by an authorized member of the association. An estate or trust may be represented by a fiduciary thereof. Any such person shall state, in the initial pleading or other paper filed by or for the party, such person's name, address, and telephone number, and thereafter shall promptly notify the Clerk in writing, in duplicate for each docket number involving that party, of any change in that information.

[1]The amendments are effective as of July 1, 1990.

[1](c) **Withdrawal of Counsel:** Counsel of record desiring to withdraw such counsel's appearance, or any party desiring to withdraw the appearance of counsel of record for such party, must file a motion with the Court requesting leave therefor, showing that prior notice of the motion has been given by such counsel to such counsel's client, or such party's counsel, as the case may be, and to each of the other parties to the case or their counsel, and stating whether there is any objection to the motion. A motion to withdraw as counsel and a motion to withdraw counsel shall each also state the then current mailing address and telephone number of the party in respect of whom or by whom the motion is filed. A motion to withdraw as counsel shall not be joined to or made part of an entry of appearance. The Court may, in its discretion, deny such motion.

(d) **Death of Counsel:** If counsel of record dies, the Court shall be so notified, and other counsel may enter an appearance in accordance with this Rule.

[1](e) **Change in Party or Authorized Representative or Fiduciary:** Where (1) a party other than an individual participates in a case through an authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in such representative or fiduciary, or (2) there is a substitution of parties in a pending case, counsel subscribing the motion resulting in the Court's approval of the change or substitution shall thereafter be deemed first counsel of record for the representative, fiduciary, or party.

[2](f) **Conflict of Interest:** If any counsel of record (1) was involved in planning or promoting a transaction or operating an entity that is connected to any issue in a case, (2) represents more than one person with differing interests with respect to any issue in a case, or (3) is a potential witness in a case, then such counsel must either secure the informed consent of the client (but only as to items (1) and (2)); withdraw from the case; or take whatever other steps are necessary to obviate a conflict of interest or other violation of the ABA Model Rules of Professional Conduct,

[1]The amendments are effective as of July 1, 1990.
[2]New paragraph (f) is effective as of July 1, 1990.

and particularly Rules 1.7, 1.8, and 3.7 thereof. The Court may inquire into the circumstances of counsel's employment in order to deter such violations. See Rule 201.

Note

Paragraph (a)(2) and (3) of Rule 24 is amended to require that counsel's Tax Court bar number (as well as counsel's name, mailing address, and telephone number) be set forth on the appropriate paper when counsel enters an appearance in a case.

Paragraph (a)(2), (3), and (4) of Rule 24 is amended to make the language gender neutral and to improve the punctuation.

Also, stylistic changes are made to paragraph (a)(2) of Rule 24 to clarify the first sentence.

Paragraph (b) of Rule 24 is amended to make the language gender neutral and to improve the punctuation.

Paragraph (c) of Rule 24 is amended to require that a motion to withdraw as counsel shall state the then current mailing address and telephone number of the party in respect of whom the motion is filed and that a motion to withdraw counsel shall state the then current address and telephone number of the party by whom the motion is filed. The amendment is designed to insure that if the motion is granted and the party becomes pro se (i.e., appearing on his or her own behalf), then the Court will be able to effect meaningful service on the party and effectively communicate with the party. If counsel can no longer communicate with the party, then the motion (1) should so state, (2) should include the last address and telephone number at which counsel communicated with the party, and (3) should include any other information likely to be helpful in enabling the Court to communicate with the party. Paragraph (c) is also amended to make the language gender neutral.

Paragraph (e) of Rule 24 is amended to correct a typographical error and to supply an omitted word.

Paragraph (f) of Rule 24 is new. It has been added because the Court is concerned about the integrity of its decisions. All too frequently a disappointed party challenges a decision on the ground that the party's prior counsel had a conflict of interest. Paragraph (f) is designed to insure that the bar of this Court disclose or rectify any conflict of interest.

Paragraph (f) is operative if any counsel of record (1) was involved in planning or promoting a transaction, or operating an entity, that is connected to any issue in a case, (2) represents more than one person with differing interests with respect to any issue in a case, or (3) is a potential witness in a case. If any of these conditions exist, then counsel must either (1) secure the informed consent of the client, but only as to the first two conditions; (2) withdraw from the case (see Rule 24(c)); or (3) take whatever other steps are necessary to obviate a conflict of interest or other violation of the ABA Model Rules of Professional Conduct, and particularly Rules 1.7 (relating to conflict of interest—general rule), 1.8 (relating to conflict of interest—prohibited transactions), and 3.7 (relating

to lawyer as witness) thereof. In order to deter such violations, paragraph (f) provides that the Court may inquire into the circumstances of counsel's employment.

The amendments of Rule 24 are effective as of July 1, 1990.

RULE 25. COMPUTATION OF TIME

[1](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, then a period of time computed with respect to the service shall begin on the day after the date of mailing.

(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.

(3) *Cross-references:* For computation of the period within which to file a petition with the Court to redetermine a deficiency or liability, see Code Section 6213; for the period

[1]The amendments are generally effective as of January 12, 1990. However, the amendment to subparagraph (3) is effective as of July 1, 1990.

within which to file a petition in a declaratory judgment action, see Code Sections 7428, 7476, and 7478; for the period within which to file a petition in a disclosure action, see Code Section 6110; and for the period within which to file a petition in a partnership action, see Code Sections 6226 and 6228. See also Code Section 7502.

(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
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 134. 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 to redetermine a deficiency or liability, cannot be extended by the Court.

[1]**(d) Miscellaneous:** With respect to the computation of time, see also Rule 3(e) (definition), Rule 10(d) (business hours of the Court), Rule 13(c) (filing of petition), and Rule 134 (continuances).

[1]The amendment is effective as of July 1, 1990.

Note

Paragraph (a) of Rule 25 is amended in order to clarify the computation of time when the relevant period extends back in time from a given point, rather than forward, and the earliest day of that period is a Saturday, Sunday, or legal holiday in the District of Columbia. Thus, for example, Rule 70(a)(2) generally requires that discovery shall be completed "no later than" 45 days before the date set for call of the case from a trial calendar. Similarly, Rule 143(f) generally requires that an expert witness report be furnished to the other party and submitted to the Court "not later than" 30 days before the call of the trial calendar on which the case appears. So, if a case had been calendared for trial at a session beginning on Monday, October 31, 1988, then Rule 143(f) requires that any expert witness report should have been served and submitted "not later than" October 1, 1988. However, since that date is a Saturday, Rule 25(a) requires that the report should have been served and submitted "not later than" the next preceding business day, or Friday, September 30, 1988. A report served and submitted on Monday, October 3, 1988, would therefore have been untimely.

Paragraph (a) is also amended to delete the cross-reference to section 7477 of the Internal Revenue Code of 1954, involving declaratory judgments relating to transfers of property from the United States. That section was repealed by section 131(e)(1) of the Tax Reform Act of 1984, Pub. L. 98-369, 98 Stat. 494, 664.

Finally, paragraph (a) is amended by restructuring it into three subparagraphs in order to more clearly reflect its content.

Paragraph (d) of Rule 25 is amended to correct a typographical error.

The amendments to paragraph (a) of Rule 25 generally represent a clarification of the existing rule. Accordingly, they generally take effect immediately. See Rule 2. However, the amendment to paragraph (a) deleting the cross-reference to section 7477 of the Internal Revenue Code of 1954 and the amendment to paragraph (d) of Rule 25 are effective as of July 1, 1990.

TITLE IV

PLEADINGS

RULE 30. PLEADINGS ALLOWED[1]

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 175(b) as to small tax cases.)

[1]The amendments are effective as of July 1, 1990.

Note

Rule 30 is amended to include a cross-reference to Rule 175(b) (relating to the special rule for answers in small tax cases).

The amendment of Rule 30 is effective as of July 1, 1990.

RULE 31. GENERAL RULES OF PLEADING[1]

(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

[1]The amendments of the heading to the Rule and of paragraphs (a), (b), and (c) are effective as of July 1, 1990.

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.

[1](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), and 240(d).

Note

Paragraph (d) of Rule 32 is amended to include cross-references to Rule 56(a) (relating to the form and style of motions for review of jeopardy assessments or jeopardy levies), Rule 57(a) (relating to the form and style of motions for review of proposed sales of seized property), and Rule 240(d) (relating to the form and style of papers filed in partnership actions).

The amendments of Rule 32(d) are effective as of July 1, 1990.

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.

[1](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

[1]The amendments are effective as of July 1, 1990.

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

[1](a) General: (1) *Deficiency or Liability Actions:* 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 communica-

[1]The amendments of subparagraph (1) are effective with respect to petitions filed after July 1, 1990. The amendments of subparagraph (2) are effective with respect to actions for administrative costs commenced after November 10, 1988; except that the amendment deleting the cross-reference to Rule 241(d)(3) is effective with respect to petitions in partnership actions filed on or after September 1, 1988.

tion 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 petition in declaratory judgment actions, in disclosure actions, in partnership actions, or in administrative costs actions, see Rules 211(b), 221(b), 241(b), and 271(b), respectively. As to joinder of parties in declaratory judgment actions and in disclosure actions, see Rules 215 and 226, respectively.

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

(1) In the case of a petitioner other than a corporation, the petitioner's name and legal residence; in the case of a corporate petitioner, its name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address and identification number (e.g., Social Security number or employer identification number) and the office of the Internal Revenue Service with which the tax return for the period in controversy was filed. The mailing address, 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

[1]The amendments are effective as of July 1, 1990.

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 assignment 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.

[1](c) **Content of Petition in Other Actions:** For the requirements as to the content of the petition in other actions, see Rule 211(c), (d), and (e), Rule 221(c), (d), and (e), Rule 241(c), (d), and (e), and Rule 271(b).

(d) **Number Filed:** For each petition filed, there shall be a signed original together with two conformed copies.

[1]The amendments are effective as of July 1, 1990.

Note

Paragraph (a)(1) of Rule 34 is amended to clarify that a single petition may be filed seeking a redetermination with respect to all notices of deficiency or liability directed to a husband and a wife individually. See Rule 61(a) regarding permissive joinder. The Rule is also amended to make the language gender neutral.

Paragraph (a)(2) of Rule 34 is amended to include petitions in actions for administrative costs and a cross-reference to Rule 271(b). Rule 34(a)(2) has also been amended to delete the cross-reference to Rule 241(d)(3). That rule was previously amended to eliminate prepetition joinder. See 90 T.C. 1367.

Paragraph (b)(1) of Rule 34 is amended to require inclusion of the petitioner's mailing address in the petition and to make an orthographic change.

Paragraph (b)(7) of Rule 34 is amended to require inclusion of counsel's Tax Court bar number in the petition and to make the language gender neutral.

The final flush language of Rule 34(b) is amended (1) to provide that a claim for reasonable administrative costs is not to be included in the petition and (2) to include claims for reasonable administrative costs in the cross-reference to Rule 231.

Paragraph (c) of Rule 34 is amended to reflect the relettering of the pertinent paragraphs of Rule 211 and to include a cross-reference to Rule 271(b).

The amendments of Rule 34(a)(1) are effective with respect to petitions filed after July 1, 1990. The amendments of Rule 34(a)(2) are generally effective with respect to actions for administrative costs commenced after November 10, 1988. See Title XXVI of these Rules. However, the amendment deleting the cross-reference to Rule 241(d)(3) is effective with respect to petitions in partnership actions filed on or after September 1, 1988. The amendments of Rule 34(b) are effective with respect to petitions filed after July 1, 1990. The amendments of Rule 34(c) are effective as of July 1, 1990.

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.

[1](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.

[1](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.

Note

Paragraph (b) of Rule 36 is amended to make the language gender neutral and stylistically consistent.

Paragraph (d) of Rule 36 is amended to include answers in actions for administrative costs as well as a cross-reference to Rule 272(a).

The amendments of Rule 36 are effective as of July 1, 1990.

[1]The amendments are effective as of July 1, 1990.

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.

[1]**(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.

(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 will be served on the petitioner and 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.

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[1]The amendments are effective as of July 1, 1990.

[1](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.

Note

Paragraph (b) of Rule 37 is amended to make the language gender neutral.

The heading of paragraph (e) of Rule 37 is amended to include actions for administrative costs. Paragraph (e) is amended to include a cross-reference to Rule 272(b) relating to replies in actions for administrative costs.

The amendments of Rule 37 are effective as of July 1, 1990.

RULE 38. JOINDER OF ISSUE[2]

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, and administrative costs actions, see Rules 214, 224, 244, and 273, respectively.

Note

Rule 38 is amended to include actions for administrative costs as well as a cross-reference to Rule 273.

The amendments of Rule 38 are effective with respect to actions for administrative costs commenced after November 10, 1988. See Title XXVI of these Rules.

RULE 39. PLEADING SPECIAL MATTERS[3]

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

[1]The amendments are effective as of July 1, 1990.

[2]The amendments are effective with respect to actions for administrative costs commenced after November 10, 1988.

[3]The amendment is effective as of July 1, 1990.

responsive pleading will not be sufficient to raise any such issue.

RULE 40. DEFENSES AND OBJECTIONS MADE BY PLEADING OR MOTION[1]

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

[2](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

[1]The amendments are effective as of July 1, 1990.

[2]The amendments are generally effective as of July 1, 1990. However, the amendment requiring that an amendment to a pleading be separately set forth and not incorporated into a motion for leave to file is effective as of January 12, 1990.

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.

[1](2) *Other Evidence:* If evidence is objected to at the trial on the ground that it is not within the issues raised by 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.

[1](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

[1]The amendments are effective as of July 1, 1990.

filing of that pleading, unless the Court shall order otherwise either on motion of a party or on its own initiative.

Note

Paragraph (a) of Rule 41 is amended to provide that an amendment to a pleading shall not be incorporated into a motion for leave to file but rather shall be separately set forth. The amendment shall bear the original signature of the party or the party's counsel (Rule 23(a)(3)) and shall also comply with the other requirements of Rule 23 relating to form and style of papers filed with the Court. The requisite number of copies shall also be furnished.

Paragraph (a) is also amended to make the language gender neutral.

Paragraphs (b)(2) and (c) of Rule 41 are amended to make the language gender neutral. Paragraph (c) is also amended to make the language stylistically consistent.

The amendment of Rule 41(a) requiring that an amendment to a pleading be separately set forth and not incorporated into a motion for leave to file clarifies the Court's existing practice. Accordingly, that amendment is effective as of January 12, 1990. The remaining amendments of Rule 41 are effective as of July 1, 1990.

TITLE V

MOTIONS

RULE 50. GENERAL REQUIREMENTS

[1]**(a) Form and Content of Motion:** An application to the Court for an order shall be by motion in writing, which shall state with particularity the grounds therefor and shall set forth the relief or order sought. The motion shall show that prior notice thereof has been given to each other party or counsel for each other party and shall state whether there is any objection to the motion. If a motion does not include such a statement, the Court will assume that there is an objection to the motion. Unless the Court directs otherwise, motions made during a hearing or trial need not be in writing. The rules applicable to captions, signing, and other matters of form and style of pleadings apply to all written motions. See Rules 23, 32, and 33.

(b) Disposition of Motions: A motion may be disposed of in one or more of the following ways, in the discretion of the Court:

[1]The amendments are effective as of July 1, 1990.

(1) The Court may take action after directing that a written response be filed. In that event, the motion shall be served upon the opposing party, who shall file such response within such period as the Court may direct. Written response to a motion shall conform to the same requirements of form and style as apply to motions.

(2) The Court may take action after directing a hearing, which normally will be held in Washington, D.C. The Court may, on its own motion or upon the written request of any party to the motion, direct that the hearing be held at some other location which serves the convenience of the parties and the Court.

(3) The Court may take such action as the Court in its discretion deems appropriate, on such prior notice, if any, which the Court may consider reasonable. The action of the Court may be taken with or without written response, hearing, or attendance of a party to the motion at the hearing.

[1](c) **Attendance at Hearings:** If a motion is noticed for hearing, then a party to the motion may, prior to or at the time for such hearing, submit a written statement of such party's position together with any supporting documents. Such statement may be submitted in lieu of or in addition to attendance at the hearing.

(d) Defects in Pleading: Where the motion or order is directed to defects in a pleading, prompt filing of a proper pleading correcting the defects may obviate the necessity of a hearing thereon.

(e) Postponement of Trial: The filing of a motion shall not constitute cause for postponement of a trial. With respect to motions for continuance, see Rule 134.

(f) Service of Motions: The rules applicable to service of pleadings apply to service of motions. See Rule 21.

RULE 51. MOTION FOR MORE DEFINITE STATEMENT

[2](a) **General:** If a pleading to which a responsive pleading is permitted or required is so vague or ambiguous that a party cannot reasonably be required to frame a responsive

[1]The amendment is effective as of July 1, 1990.
[2]The amendments are effective as of July 1, 1990.

pleading, then the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. See Rules 70 and 90 for procedures available to narrow the issues or to elicit further information as to the facts involved or the positions of the parties.

(b) Penalty for Failure of Response: The Court may strike the pleading to which the motion is directed or may make such other order as it deems just, if the required response is not made within such period as the Court may direct.

RULE 52. MOTION TO STRIKE

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 30 days after the service of the pleading, or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, frivolous, or scandalous matter. In like manner and procedure, the Court may order stricken any such objectionable matter from briefs, documents, or any other papers or responses filed with the Court.

RULE 53. MOTION TO DISMISS

A case may be dismissed for cause upon motion of a party or upon the Court's initiative.

RULE 54. TIMELY FILING AND JOINDER OF MOTIONS[1]

Motions must be made timely, unless the Court shall permit otherwise. Motions shall be separately stated and not joined together, except that motions may be joined in the following instances: (1) motions under Rules 51 and 52 directed to the same pleading or other paper; and (2) motions under Rule 56 for the review of a jeopardy assessment and for the review of a jeopardy levy, but only

[1]The amendments are effective for motions filed in respect of jeopardy assessments made and jeopardy levies issued on or after July 1, 1989.

if the assessment and the levy are the subject of the same written statement required by Code Section 7429(a)(1).

Note

Rule 54 has been amended to make clear that motions for the review of a jeopardy assessment and a jeopardy levy need not be separately stated and may instead be joined together, but only if the making of the assessment and levy are the subject of the same written statement required by Code Section 7429(a)(1).

The amendments of Rule 54 are effective for motions filed in respect of jeopardy assessments made and jeopardy levies issued on or after July 1, 1989.

RULE 55. MOTION TO RESTRAIN ASSESSMENT OR COLLECTION[1]

A motion to restrain assessment or collection where a petition has been filed with this Court, made pursuant to Code Section 6213(a), shall include as exhibits a copy of each notice of assessment and each collection notice in respect of which the motion is filed. For the rules applicable to captions, signing, and other matters of form and style of motions, see Rule 50(a).

Note

Rule 55 is a new rule. It is intended to implement Code Section 6213(a), as amended by section 6243(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, 3749. As amended, Code Section 6213(a) serves to confer jurisdiction on the Court to restrain the premature assessment and collection of a tax that is the subject of a timely petition for redetermination pending before the Court. Before the amendment of that section, the premature assessment and collection of such a tax could be enjoined only by a United States District Court. Now, however, a taxpayer with a case pending before the Court who is faced with this problem is not forced to seek relief in another forum if the tax which is prematurely assessed is the subject of a timely filed petition pending before the Court.

A proceeding to enjoin assessment or collection, pursuant to Code Section 6213(a), is not an independent action but rather is a collateral proceeding. Accordingly, this Rule provides that such a proceeding shall be commenced by motion. The Rule also directs that such a motion shall include as exhibits a copy of each notice of assessment and each collection notice in respect of which the motion is filed. The objective of

[1]New Rule 55 is effective as of July 1, 1990.

this requirement is to provide a record adequate to enable the Court to rule quickly on the motion without the need for an evidentiary hearing.

Because of the potential harm of a premature assessment or premature collection proceedings, the Court may monitor the Commissioner's compliance with any order granting a motion under this Rule. Thus, for example, the Court may direct that a report be filed within a specified period of time by the IRS official responsible for effecting the abatement of the assessment and the termination of the collection action.

Finally, in order to insure that motions filed under Rule 55 conform to the rules applicable to form and style, Rule 55 includes a cross-reference to Rule 50(a). The latter Rule not only provides that the Rules pertaining to captions, signing, and other matters of form and style of pleadings apply to all motions, but also includes cross-references to the relevant Rules in that regard.

Rule 55 is effective as of July 1, 1990.

RULE 56. MOTION FOR REVIEW OF JEOPARDY ASSESSMENT OR JEOPARDY LEVY[1]

(a) Commencement of Review: (1) *How Review Is Commenced:* Review of a jeopardy assessment or a jeopardy levy under Code Section 7429(b) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of a then pending action under Code Section 6213(a) which provides the jurisdictional nexus for review required by Code Section 7429(b)(2)(B). The motion shall be styled "Motion for Review of Jeopardy Assessment"or "Motion for Review of Jeopardy Levy", as may be appropriate. As to joinder of such motions, see Rule 54.

(2) *When Review Is Commenced:* The motion under subparagraph (1) shall be filed within the time provided by Code Section 7429(b)(1).

(b) Service of Motion: A motion filed with the Court pursuant to this Rule shall be served by the petitioner on counsel for the Commissioner (as specified in Rule 21(b)(1)) in such manner as may reasonably be expected to reach the Commissioner's counsel not later than the day on which the motion is received by the Court.

(c) Content of Motion: A motion filed pursuant to this Rule shall contain the following:

(1) A statement whether the petitioner contends that:

[1]New Rule 56 is effective for motions filed in respect of jeopardy assessments made and jeopardy levies issued on or after July 1, 1989.

(A) the making of the assessment in respect of which the motion is filed was not reasonable under the circumstances;

(B) the amount so assessed or demanded is not appropriate under the circumstances; or

(C) the levy in respect of which the motion is filed was not reasonable under the circumstances.

(2) As to each contention in paragraph (c)(1) of this Rule,

(A) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner; and

(B) clear and concise lettered statements of the facts on which the petitioner bases the assignments of error.

(3) As to the contention in paragraph (c)(1)(B) of this Rule, a statement of the amount, if any, that would be appropriate under the circumstances.

(4) A statement whether the petitioner requests an evidentiary or other hearing on the motion, and if so, the reasons why. For the place of hearing, see paragraph (e) of this Rule.

(5) A list identifying by caption and number all other dockets in which the motion could have been filed if more than one then pending action for the redetermination of a deficiency under Code Section 6213(a) provides the jurisdictional nexus for review required by Code Section 7429(b)(2)(B).

(6) A copy of—

(A) the written statement required to be furnished to the petitioner under Code Section 7429(a)(1), together with any notice or other document regarding the jeopardy assessment or jeopardy levy that may have been served on the petitioner by the Commissioner and in respect of which the motion is filed;

(B) the request for administrative review made by the petitioner under Code Section 7429(a)(2); and

(C) the determination made by the Commissioner under Code Section 7429(a)(3).

(7) A certificate showing service of the motion in accordance with paragraph (b) of this Rule.

(d) Response by Commissioner: (1) *Content:* The Commissioner shall file a written response to a motion filed pursuant to this Rule. The response shall contain the following:

(A) A specific admission or denial of each allegation in the motion, arranged in paragraphs that are designated to correspond to those of the motion to which they relate.

(B) A clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies.

(C) A statement whether the Commissioner requests a hearing on the motion, and if so, the reasons why.

(D) A copy of—

(i) the written notification to the Court required by Code Section 6861(c); and

(ii) any item required for consideration of the basis of the petitioner's motion, if that item has not been attached to the petitioner's motion.

(E) A certificate showing service of the response in accordance with subparagraph (2) of this paragraph.

(2) *Time for and Service of Response:* The response required by paragraph (d)(1) of this Rule shall be received by the Court not later than 10 days after the date on which the petitioner's motion is received by the Court. Said response shall be served by the Commissioner in such manner as may reasonably be expected to reach the petitioner or the petitioner's counsel (as specified in Rule 21(b)(2)) not later than the day on which the response is received by the Court.

(e) Place of Hearing: If required, a hearing on the motion filed pursuant to this Rule will ordinarily be held at the place of trial previously designated in accordance with paragraph (a) of Rule 140 unless otherwise ordered by the Court.

Note

Rule 56 is a new rule. It is intended to implement Code Section 7429, as amended by section 6237 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, 3741-3743. As amended, Code Section 7429 confers jurisdiction on the Court to review certain jeopardy assessments and jeopardy levies made after a timely petition for

the redetermination of a deficiency under Code Section 6213(a) has been filed with the Court. Before the amendment of that section, the Court did not have jurisdiction to review either a jeopardy assessment or a jeopardy levy, even though the assessment or levy related to the very deficiency which was the subject of a deficiency action then pending before the Court. Now, however, if a jeopardy assessment or a jeopardy levy is made after a timely petition for a redetermination of a deficiency has been filed with the Court, then the taxpayer is no longer required to seek redress in some other forum, but rather may seek review in the same court in which the related deficiency action is pending, i.e., this Court. In fact, the taxpayer may seek review in the Tax Court of all taxes and taxable periods included in the written statement required to be furnished to the taxpayer by the Commissioner under Code Section 7429(a)(1) if one or more of those taxes and taxable periods are in issue before the Court because of the taxpayer's timely action under Code Section 6213(a). See Code Section 7429(b)(2)(B).

A proceeding to review a jeopardy assessment or a jeopardy levy pursuant to Code Section 7429(b) is not an independent action but rather is a collateral proceeding. Accordingly, paragraph (a)(1) of the Rule provides that such a proceeding shall be commenced by motion.

Paragraph (a)(1) also provides that a motion for review shall bear the same docket number as that of a then pending action for the redetermination of a deficiency under Code Section 6213(a) which provides the jurisdictional nexus for review required by Code Section 7429(b)(2)(B). This Rule provision serves to incorporate the various statutory prerequisites to the exercise of the Court's jurisdiction, i.e., that a petition for the redetermination of a deficiency under Code Section 6213(a) has been timely filed with the Court before the making of the jeopardy assessment or jeopardy levy in respect of which the motion is filed, and that one or more of the taxes and taxable periods in issue before the Court because of the petition be included in the written statement required to be furnished to the taxpayer by the Commissioner under Code Section 7429(a)(1).

It is possible that there may be more than one pending action for the redetermination of a deficiency under Code Section 6213(a) which would provide the jurisdictional nexus for review required by Code Section 6213(a). For example, the taxpayer timely files a petition in respect of a notice of deficiency in which the Commissioner determined a deficiency in income tax for year x, and a separate petition in respect of a separate notice of deficiency in which the Commissioner determined a deficiency in income tax for year y. While those petitions are pending before the Court, the Commissioner makes a jeopardy assessment against the taxpayer for income taxes for years x, y, and z, and provides the taxpayer with a written statement of the information relied upon in making the assessment, as required by Code Section 7429(a)(1). A motion for review of the jeopardy assessment for all three years could be filed by the taxpayer in either the docket for the deficiency action for year x or in the docket for the deficiency action for year y. If the motion is filed in the docket for the deficiency action for year x, then paragraph (c)(5) of

the Rule requires the motion to specifically identify the docket for each year in which the motion also could have been filed. This information would enable the Court to more readily "shift" or "transfer" the motion to the other docket in which it could have been filed if, for example, the docket in which the motion is filed is dismissed for lack of jurisdiction because the notice of deficiency was invalid, or the petition in that docket was not timely filed.

By statute, judicial review of a jeopardy assessment or jeopardy levy must be completed within a very short period of time. It is imperative that the motion be clearly identified as a motion for review under Code Section 7429(b) so that the Court's docket room personnel can process it quickly. Accordingly, paragraph (a)(1) of the Rule provides that such a motion shall be styled "Motion for Review of Jeopardy Assessment" or "Motion for Review of Jeopardy Levy", as may be appropriate. If review is sought of both a jeopardy assessment and a jeopardy levy, and the making of both the assessment and the levy are the subject of the same written statement required by Code Section 7429(a)(1), then the motion should be styled "Motion for Review of Jeopardy Assessment and Jeopardy Levy". In this regard see Rule 54, which permits the joinder of such a pair of motions under Rule 56.

Paragraph (a)(2) of the Rule requires that a motion for review be filed within the time provided by Code Section 7429(b)(1). Under that section judicial review may be commenced within 90 days after the earlier of (1) the date the Commissioner notifies the taxpayer of the Commissioner's determination (as described in Code Section 7429(a)(3)) made in response to the taxpayer's request for review under Code Section 7429(a)(2), or (2) the 16th day after said request for review was made.

It is imperative that the Commissioner be promptly served with a copy of the motion for review. Accordingly, paragraph (b) of the Rule requires the petitioner to serve the motion directly on counsel for the Commissioner (as specified in Rule 21(b)(1)) in such manner as may reasonably be expected to reach the Commissioner's counsel not later than the day on which the motion is received by the Court. Thus, for example, if the petitioner mails the motion for review to the Court by overnight delivery, then paragraph (b) ordinarily would require that service also be made on the Commissioner's counsel by overnight delivery. Similarly, if the petitioner hand delivers the motion for review to the Court, then paragraph (b) ordinarily would require either that personal service also be made on the Commissioner's counsel or that service be made by overnight delivery for receipt on the day that the motion is hand delivered to the Court. A certificate showing service in accordance with paragraph (b) must be included in the motion. See *infra*.

Paragraph (c) of the Rule sets forth the required content of a motion for review. Subparagraph (1) is designed to identify which potential issues are in dispute and serves to correlate the relief sought by the petitioner with the Court's jurisdiction under Code Section 7429. Subparagraph (2) is designed to elicit, inter alia, the basis for each of the petitioner's contentions. Subparagraph (3) is designed to clarify and narrow disputes based on the appropriateness of the amounts of the

assessments, as distinct from disputes as to whether the assessments should be made. The detailed and numerous requirements of these three subparagraphs, together with the requirements of subparagraphs (4), (5), and (6), are established because the nature and short time frame of a proceeding under Code Section 7429 demand an immediate and clear record. Subparagraph (7) requires that the motion contain a certificate showing service of the motion on counsel for the Commissioner in accordance with paragraph (b) of the Rule.

Paragraph (d) of the Rule defines the requirements for the Commissioner's written response. Once again, because of the nature of the proceeding, the requirements for the content of the response, as set forth in subparagraph (1), are detailed and numerous. And because judicial review must be completed within a prescribed period, subparagraph (2) provides that the response must be received by the Court not later than 10 days after the date on which the petitioner's motion is received by the Court. Thus, the Commissioner may not simply mail the response to the Court by the tenth such day, but rather must have it actually delivered to the Court by that day. Although admittedly short, the period within which the Commissioner must submit the response is not as short as it may initially seem. By virtue of paragraph (b) of the Rule, the Commissioner should have received the petitioner's motion on the day on which it was received (and filed) by the Court. If there is a delay in the receipt of the motion by the Commissioner, then the Court may extend the due date for the Commissioner's response.

Paragraph (d) of the Rule contemplates that the Commissioner will serve the Commissioner's written response directly on the petitioner or counsel for the petitioner. Moreover, paragraph (d) requires that the response be served in such manner as may reasonably be expected to reach the petitioner or the petitioner's counsel not later than the day on which the response is received by the Court. Paragraph (d)(1)(v) requires that the response contain a certificate showing service in accordance with this requirement.

It is anticipated that motions for review of jeopardy assessments and jeopardy levies will generally require a hearing. Nevertheless, paragraphs (c)(4) and (d)(1)(iii) of the Rule are designed to elicit information on this matter from the parties, so that the Court may determine whether it is appropriate, in the particular case, to decide the motion on the motion papers. Paragraph (e) of the Rule provides that such hearings, if required, will ordinarily be held at the place of trial previously designated in accordance with paragraph (a) of Rule 140, unless otherwise ordered by the Court upon motion by a party or upon the Court's own motion. Also, the Court may order that a hearing on such a motion be held at one place without disturbing an extant determination that the trial be at another place; for example, this might be done where a courtroom is not available on short notice for the motion at the place where the trial is scheduled.

Rule 56 is effective for motions filed in respect of assessments made and jeopardy levies issued on or after July 1, 1989.

RULE 57. MOTION FOR REVIEW OF PROPOSED SALE OF SEIZED PROPERTY[1]

(a) Commencement of Review: (1) *How Review Is Commenced:* Review of the Commissioner's determination under Code Section 6863(b)(3)(B) that seized property may be sold shall be commenced by filing a motion with the Court. The movant shall place on the motion the same docket number as that of the then pending action under Code Section 6213(a) in respect of which the sale of seized property is stayed by virtue of Code Section 6863(b)(3)(A)(iii). If filed by the petitioner, the motion shall be styled "Motion to Stay Proposed Sale of Seized Property—Sec. 6863(b)(3)(C)". If filed by the Commissioner, the motion shall be styled "Motion to Authorize Proposed Sale of Seized Property—Sec. 6863(b)(3)(C)".

(2) *When Review Is Commenced:* (A) *Proposed Sale Not Scheduled:* If a date for a proposed sale has not been scheduled, then the Commissioner may file the motion under subparagraph (1) at any time.

(B) *Proposed Sale Scheduled:* (i) *In General:* If a date for a proposed sale has been scheduled, then the movant shall file the motion under subparagraph (1) not less than 15 days before the date of the proposed sale and not more than 20 days after receipt of the notice of sale prescribed by Code Section 6335(b).

(ii) *Motion Not Filed Within Prescribed Period:* If the motion under subparagraph (1) is filed less than 15 days before the date of the proposed sale or more than 20 days after receipt of the notice of sale prescribed by Code Section 6335(b), then an additional statement shall be included in the motion as provided by paragraph (c)(3) of this Rule. A motion not filed within the period prescribed by subparagraph (2)(B)(i) shall be considered dilatory unless the movant shows that there was good reason for not filing the motion within that period. As to the effect of the motion being dilatory, see paragraph (g)(4) of this Rule.

(b) Service of Motion: (1) *By the Petitioner:* A motion filed with the Court pursuant to this Rule shall be served by the

[1]New Rule 57 is effective for motions filed in respect of proposed sales of seized property on or after February 8, 1989.

petitioner on counsel for the Commissioner (as specified in Rule 21(b)(1)) in such manner as may reasonably be expected to reach the Commissioner's counsel not later than the day on which the motion is received by the Court.

(2) *By the Commissioner:* A motion filed with the Court pursuant to this Rule shall be served by the Commissioner on the petitioner or on the petitioner's counsel (as specified in Rule 21(b)(2)) in such manner as may reasonably be expected to reach the petitioner or the petitioner's counsel not later than the day on which the motion is received by the Court.

(c) **Content of Motion:** A motion filed pursuant to this Rule shall contain the following:

(1) The time and place of the proposed sale.

(2) A description of the property proposed to be sold, together with a copy of the notice of seizure prescribed by Code Section 6335(a) and the notice of sale prescribed by Code Section 6335(b).

(3) If the motion is filed less than 15 days before the date of the proposed sale or more than 20 days after receipt of the notice of sale prescribed by Code Section 6335(b), as the case may be, a statement of the reasons why review was not commenced within the prescribed period.

(4) A statement that the petitioner does not consent to the proposed sale.

(5) A statement whether the property proposed to be sold—

(A) is or is not likely to perish;

(B) is or is not likely to become greatly reduced in price or value by keeping; and

(C) is or is not likely to be greatly expensive to conserve or maintain.

(6) The movant's basis for each statement in subparagraph (5) that the movant expressed in the affirmative, together with any appraisal, affidavit, valuation report, or other document relied on by the movant to support each statement.

(7) A statement whether the movant requests an evidentiary or other hearing on the motion, and if so, the

reasons why. For the place of hearing, see paragraph (f) of this Rule.

(8) A certificate showing service of the motion in accordance with paragraph (b) of this Rule.

(d) Response to Motion: (1) *Content:* The petitioner or the Commissioner, as the case may be, shall file a written response to a motion filed pursuant to this Rule. The response shall contain the following:

(A) A specific admission or denial of each allegation in the motion arranged in paragraphs that are designated to correspond to those of the motion to which they relate.

(B) A clear and concise statement of every ground, together with the facts in support thereof, on which the responding party relies.

(C) A statement whether the responding party requests a hearing on the motion, and if so, the reasons why.

(D) A copy of—

(i) any appraisal, affidavit, valuation report, or other document relied on by the responding party; and

(ii) any item required for consideration of the basis of the movant's motion, if that item has not been attached to the movant's motion.

(E) A certificate showing service of the response in accordance with subparagraph (2) of this paragraph.

(2) *Time for and Service of Response:* The response required by paragraph (d)(1) of this Rule shall be received by the Court not later than 10 days after the date on which the movant's motion is received by the Court. This response shall be served in such manner as may reasonably be expected to reach the movant or the movant's counsel (as specified in Rule 21(b)(1) or Rule 21(b)(2), as the case may be) not later than the day on which the response is received by the Court.

(e) Effect of Signature: The provisions of Rule 33(b), relating to the effect of the signature of counsel or a party, shall apply to a motion filed pursuant to this Rule and to the response required by paragraph (d) of this Rule.

(f) Place of Hearing: If required, a hearing on a motion filed pursuant to this Rule will ordinarily be held at the place of trial previously designated in accordance with paragraph (a) of Rule 140 unless otherwise ordered by the

Court. For the manner in which the Court may dispose of such a motion, see paragraph (g)(3) of this Rule.

(g) **Disposition of Motion:** (1) *General:* A motion filed pursuant to this Rule may be disposed of in one or more of the following ways, in the discretion of the Court:

(A) The Court may—

(i) authorize, or decline to stay, the proposed sale; or

(ii) stay the proposed sale temporarily until the Court has had an adequate opportunity to consider the motion.

(B) The Court may stay the proposed sale until a specified date or event, or for a specified period, or until further application is made for a sale, or any combination of the foregoing.

(C) The Court may stay the proposed sale until specified undertakings or safeguards are effectuated.

(D) The Court may provide such other temporary, extended, or permanent relief as may be appropriate under the circumstances.

(2) *Evidence:* In disposing of a motion filed pursuant to this Rule, the Court may consider such appraisals, affidavits, valuation reports, and other evidence as may be appropriate, giving due regard to the necessity of acting on the motion within a brief period of time.

(3) *Disposition on Motion Papers or Otherwise:* The Court may dispose of a motion filed pursuant to this Rule on the motion papers, or after an evidentiary hearing or oral argument, or may require legal memoranda, or any combination of the foregoing that the Court deems appropriate. For the place of hearing, see paragraph (f) of this Rule.

(4) *Dilatory Motions:* The fact that a motion filed pursuant to this Rule is dilatory within the meaning of paragraph (a)(2)(B)(ii) of this Rule shall be considered by the Court in disposing of the motion.

Note

Rule 57 is a new rule. It is intended to implement Code Section 6863(b)(3)(C), which was added to the Internal Revenue Code of 1986 by section 6245(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, 3750-3751. Code Section 6863(b)(3)(C) confers jurisdiction on the Court to review the Commissioner's determination under Code Section 6863(b)(3)(B) that seized property may be sold

notwithstanding a stay under Code Section 6863(b)(3)(A)(iii). Before the addition of Code Section 6863(b)(3)(C), the Court did not have jurisdiction to review the Commissioner's determination that seized property may be sold, even though (1) the determination related to property seized pursuant to an assessment under Code Section 6851, 6852, or 6861 and (2) there was then pending in the Court an action, commenced under Code Section 6213(a), for the redetermination of a deficiency notice of which had been issued pursuant to Code Section 6851(b) or 6861(b). Now, however, if the taxpayer has commenced an action in the Tax Court and the Commissioner subsequently determines that seized property may be sold, then the taxpayer is no longer required to seek redress in some other forum, but rather may seek review in the same court in which the related action is pending, i.e., this Court. Under Code Section 6863(b)(3)(C), judicial review of the Commissioner's determination that seized property may be sold may be commenced not only by the taxpayer but also by the Commissioner.

A proceeding to review the Commissioner's determination that seized property may be sold is not an independent action but rather is a collateral proceeding. Accordingly, paragraph (a)(1) of the Rule provides that such a proceeding shall be commenced by filing a motion with the Court. See also Code Section 6863(b)(3)(C).

Paragraph (a)(1) also provides that a motion for review shall bear the same docket number as that of the then pending action under Code Section 6213(a) in respect of which the sale of seized property is stayed by virtue of Code Section 6863(b)(3)(A)(iii). This Rule provision serves to incorporate the various statutory prerequisites to the exercise of the Court's jurisdiction under Code Section 6863(b)(3)(C), i.e., that the Commissioner has made an assessment against the taxpayer under Code Section 6851, 6852, or 6861; that by virtue of such assessment the Commissioner has seized property belonging to the taxpayer; that the Commissioner has issued to the taxpayer a notice of deficiency; that the taxpayer has appealed the notice by commencing an action under Code Section 6213(a); and, lastly, that the Commissioner has determined under one of the present-law exceptions to the stay of sale that the seized property may now be sold.

Because of the time-sensitive nature of a proceeding to review the Commissioner's determination that seized property may be sold, judicial review should generally be completed within a brief time. It is therefore imperative that the motion be clearly identified as a motion for review under Code Section 6863(b)(3)(C) so that the Court's docket room personnel can process it quickly. Accordingly, paragraph (a)(1) of the Rule provides that if a petitioner files such a motion, it shall be styled "Motion to Stay Proposed Sale of Seized Property—Sec. 6863(b)(3)(C)". Similarly, if the Commissioner files such a motion, it shall be styled "Motion to Authorize Proposed Sale of Seized Property—Sec. 6863(b)(3)(C)".

Paragraph (a)(2) of the Rule addresses the temporal question of when review of a proposed sale of seized property may be commenced. If a proposed sale has not been scheduled, then the Commissioner may file a

motion for review at any time during the pendency of the underlying action. On the other hand, if a proposed sale has been scheduled, then, under the general rule of paragraph (a)(2)(ii)(A), the movant (whether the petitioner or the Commissioner) shall file a motion for review not less than 15 days before the date of the proposed sale and not more than 20 days after receipt of the notice of sale prescribed by Code Section 6335(b). In contrast, if a motion for review is not filed within this prescribed period, then by virtue of paragraph (a)(2)(ii)(B) the motion for review shall include an additional statement as provided by paragraph (c)(3) of the Rule. (Note that a motion that is not filed within the prescribed period is not untimely and therefore need not be accompanied by a motion for leave to file.) That paragraph, discussed further *infra*, requires that the movant include in the motion a statement of the reasons why review was not commenced within the period prescribed by paragraph (a)(2)(ii)(A). A motion not filed within the prescribed period is considered dilatory unless the movant shows that there was good reason for not filing the motion within this period. Thus, for example, if a motion is not filed within the period prescribed by paragraph (a)(2)(ii)(A) for a reason beyond the movant's control, the motion will not be considered dilatory. On the other hand, if a motion is not filed within the period prescribed by paragraph (a)(2)(ii)(A) because of strategic considerations, or because of the negligence of the movant (or of an agent or employee of the movant), then the motion will be considered dilatory. As to the consequence to the movant if a motion for review is considered dilatory, see paragraph (g)(4) of the Rule, discussed *infra*.

Because of the time-sensitive nature of a proceeding to review the Commissioner's determination that seized property may be sold, it is imperative that a copy of the motion for review be promptly served on the petitioner or on the Commissioner, as the case may be. Accordingly, if a petitioner files a motion for review, paragraph (b)(1) of the Rule requires the petitioner to serve the motion directly on counsel for the Commissioner (as specified in Rule 21(b)(1)) in such manner as may reasonably be expected to reach the Commissioner's counsel not later than the day on which the motion is received by the Court. Similarly, if the Commissioner files a motion for review, paragraph (b)(2) of the Rule requires the Commissioner to serve the motion directly on the petitioner or on the petitioner's counsel (as specified in Rule 21(b)(2)) in such manner as may reasonably be expected to reach the petitioner or the petitioner's counsel not later than the day on which the motion is received by the Court. Thus, for example, if a petitioner mails the motion for review to the Court by overnight delivery, then paragraph (b)(2) ordinarily would require that service also be made on the Commissioner's counsel by overnight delivery. Similarly, if the Commissioner hand delivers the motion for review to the Court, then paragraph (b)(2) ordinarily would require either that personal service also be made on the petitioner or on the petitioner's counsel or that service be made by overnight delivery for receipt on the day that the motion is hand delivered to the Court. A certificate showing service in accordance with paragraph (b) must be included in the motion. See *infra*.

Paragraph (c) of the Rule sets forth the content of a motion for review. The requirements are detailed and numerous because the time-sensitive nature of a proceeding under Code Section 6863(b)(3)(C) necessitates as complete and clear a record as can be presented promptly. Thus, for example, subparagraph (5) is designed to identify the issues in dispute by reference to the exceptions in Code Section 6863(b)(3)(B) to the stay of sale. Subparagraph (6) is designed to elicit the basis, including the documentary basis, for the movant's contentions as identified in subparagraph (5). Subparagraph (8) requires that the motion contain a certificate showing service of the motion in accordance with paragraph (b) of the Rule.

If a motion for review is filed less than 15 days before the date of the proposed sale or more than 20 days after receipt of the notice of sale, as the case may be, then paragraph (c)(3) of the Rule requires that the motion contain a statement of the reason or reasons why review was not commenced within the prescribed period. For example, a petitioner-movant might show that the notice of sale did not reach the movant until less than 15 days before the date of the proposed sale. Alternatively, if respondent is the movant, then respondent might show that the seized property is a commodity likely to spoil if it were to be held 15 days after it was seized.

Paragraph (d) of the Rule defines the requirements for the written response to be filed by the petitioner or the Commissioner, as the case may be. Because of the time-sensitive nature of the proceeding, the requirements for the content of the response, as set forth in subparagraph (1), are detailed and numerous. Subparagraph (2) requires that the response shall be received by the Court not later than 10 days after the date on which the movant's motion is received by the Court. Thus, the responding party may not simply mail the response to the Court by the tenth such day, but rather must have it actually delivered to the Court by that day. Although admittedly short, the period within which the responding party must submit the response is not as short as it may initially seem. By virtue of paragraph (b) of the Rule, the responding party should have received the movant's motion on the day on which it was received (and filed) by the Court. If there is a delay in the receipt of the motion by the responding party, then the Court may extend the due date.

Paragraph (d) of the Rule contemplates that the responding party will serve the written response directly on the movant or the movant's counsel (as specified in Rule 21(b)(1) or Rule 21(b)(2), as the case may be). Moreover, paragraph (d) requires that the response be served in such manner as may reasonably be expected to reach the movant or the movant's counsel not later than the day on which the response is received by the Court. Paragraph (d)(1)(v) requires that the response contain a certificate showing service in accordance with this requirement.

A motion for review of a proposed sale of seized property may or may not require a hearing. Paragraphs (c)(7) and (d)(1)(ii) of the Rule are therefore designed to elicit information on this matter from the parties, so that the Court may determine whether it is appropriate, in the

particular case, to decide the motion on the motion papers or to calendar the motion for hearing. See also paragraph (g)(3) of the Rule, discussed *infra*. Paragraph (f) of the Rule provides that such hearings, if required, will ordinarily be held at the place of trial previously designated in accordance with paragraph (a) of Rule 140, unless otherwise ordered by the Court upon motion by a party or upon the Court's own motion. Also, the Court may order that a hearing on such a motion be held at one place without disturbing an extant determination that the trial be at another place; for example, this might be done where a courtroom is not available on short notice for the motion to be heard at the place where the trial is scheduled.

Paragraph (e) of the Rule incorporates the provisions of Rule 33(b), relating to the effect of the signature of counsel or a party, and makes those provisions applicable to both a motion for review filed pursuant to the Rule and to the written response required by paragraph (d) of the Rule. As applicable herein, Rule 33(b) provides, in part, that the signature of counsel or a party constitutes a certificate that the signer has read the motion or response, 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. By virtue of the incorporation of Rule 33(b), a motion or response signed in violation of the provisions of that Rule may result in the imposition of sanctions on the signer, a represented party, or both. Such sanctions may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the motion or response, including reasonable counsel's fees.

Paragraph (g) of the Rule sets forth procedures applicable to the disposition of motions for review of proposed sales of seized property. Subparagraph (1) catalogues the various forms of relief that the Court may order in disposing of such a motion. The Rule makes clear that these forms of relief are not mutually exclusive. Under subparagraph (1)(D), the Court may stay a sale, where appropriate, in order to afford the disappointed party an opportunity to appeal. Subparagraph (2) describes the quality of evidence that the Court may consider in disposing of a motion for review. Basically, any evidence deemed by the Court to have probative value will be considered. This practical standard reflects the necessity of acting on the motion within a brief period of time. Subparagraph (3) vests the Court with discretion to dispose of a motion for review on the motion papers, or after an evidentiary hearing or oral argument, or to require legal memoranda, or any combination of the foregoing that the Court deems appropriate. Finally, if a motion is dilatory within the meaning of paragraph (a)(2)(B)(ii) of the Rule, subparagraph (4) requires that the Court consider that fact when disposing of the motion. Thus, for example, if the motion is dilatory because of strategic considerations, that fact may be ground to deny the motion.

Rule 57 is effective for motions filed in respect of proposed sales of seized property on or after February 8, 1989, i.e., the 90th day after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988. See section 6245(b), Pub. L. 100-647, 102 Stat. at 3751.

RULE 58. MISCELLANEOUS[1]

For reference in the Rules to other motions, see Rules 25(c) (extension of time), 40 (defenses made by motion), 41 (amendment of pleadings), 63 (substitution of parties), 71(c) (answers to interrogatories), 81(b) (depositions), 90(d) (requests for admission), 91(f) (stipulations), 121(a) (summary judgment), 123(c) (setting aside default or dismissal), 134 (continuances), 140(c) (place of trial), 141 (consolidation and separation), 151(c) (delinquent briefs), 157 (retention of official case file in estate tax case involving election under Code Section 6166), 161 (reconsideration), 162 (vacating or revising decision), 231 (reasonable litigation and administrative costs), 260 (enforcement of overpayment determination), 261 (redetermination of interest on deficiency), and 262 (modification of decision in estate tax case involving election under Code Section 6166).

Note

Former Rule 55 has been renumbered and amended and is now Rule 58. The renumbering was necessitated by the addition of three new rules in Title V, Rule 55 ("Motion to Restrain Assessment or Collection"), Rule 56 ("Motion to Review Jeopardy Assessment or Jeopardy Levy"), and Rule 57 ("Motion for Review of Proposed Sale of Seized Property").

Rule 58 has been amended by adding references to Rule 157 (motion to retain the case file in an estate tax case involving an election under Code Section 6166), Rule 260 (motion to enforce an overpayment determination), Rule 261 (motion to redetermine interest on a deficiency), and Rule 262 (motion to modify the decision in an estate tax case involving an election under Code Section 6166). In addition, Rule 58 has been amended by modifying the reference to Rule 231 to include motions for reasonable litigation and administrative costs.

The amendments to Rule 58 are effective as of July 1, 1990.

[1]The amendments are effective as of July 1, 1990.

TITLE VI

PARTIES

RULE 60. PROPER PARTIES; CAPACITY

(a) Petitioner: (1) *Deficiency or Liability Actions:* A case shall be brought by and in the name of the person against whom the Commissioner determined the deficiency (in the case of a notice of deficiency) or liability (in the case of a notice of liability), or by and with the full descriptive name of the fiduciary entitled to institute a case on behalf of such person. See Rule 23(a)(1). A case timely brought shall not be dismissed on the ground that it is not properly brought on behalf of a party until a reasonable time has been allowed after objection for ratification by such party of the bringing of the case; and such ratification shall have the same effect as if the case had been properly brought by such party. Where the deficiency or liability is determined against more than one person in the notice by the Commissioner, only such of those persons who shall duly act to bring a case shall be deemed a party or parties.

[1](2) *Other Actions:* For the person who may bring a case as a petitioner in a declaratory judgment action, see Rules 210(b)(11), 211, and 216. For the person who may bring a case as a petitioner in a disclosure action, see Rules 220(b)(5), 221, and 225. For the person who may bring a case as a petitioner in a partnership action, see Rules 240(c)(1)(B), 240(c)(2)(B), 241, and 245. For the person who may bring a case as a petitioner in an action for administrative costs, see Rule 271.

(b) Respondent: The Commissioner shall be named the respondent.

[1]**(c) Capacity:** The capacity of an individual, other than one acting in a fiduciary or other representative capacity, to engage in litigation in the Court shall be determined by the law of the individual's domicile. The capacity of a corporation to engage in such litigation shall be determined by the law under which it was organized. The capacity of a fiduciary or other representative to litigate in the Court

[1]The amendments are effective as of July 1, 1990.

shall be determined in accordance with the law of the jurisdiction from which such person's authority is derived.

[1](d) **Infants or Incompetent Persons:** Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may bring a case or defend in the Court on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may act by a next friend or by a guardian ad litem. Where a party attempts to represent himself or herself and, in the opinion of the Court there is a serious question as to such party's competence to do so, the Court, if it deems justice so requires, may continue the case until appropriate steps have been taken to obtain an adjudication of the question by a court having jurisdiction so to do, or may take such other action as it deems proper.

Note

Paragraph (a)(2) of Rule 60 is amended to reflect the Court's jurisdiction in respect of partnership and administrative costs actions. Paragraph (a)(2) is also amended to reflect the renumbering of the subparagraphs of Rule 210(b).

Paragraphs (c) and (d) of Rule 60 are amended to make the language gender neutral.

The amendments to Rule 60 are effective as of July 1, 1990.

RULE 61. PERMISSIVE JOINDER OF PARTIES

[2](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 and in disclosure actions, see Rules 215 and 226, respectively.

(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

[1]The amendments are effective as of July 1, 1990.

[2]The amendments are effective with respect to petitions filed after July 1, 1990.

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).

Note

Paragraph (a) of Rule 61 is amended to provide that in general, no person to whom a notice of deficiency or a notice of liability has been issued may join with any other such person in filing a petition in the Court. An exception is provided to the extent that joinder is permitted by Rule 34(a)(1). Thus, a joint petition is permitted to be filed by a husband and wife. Also, if a notice of deficiency or liability is directed to more than one person, then any two or more of the persons to whom the notice is directed may file a joint petition.

The amendment is intended to alleviate the undue administrative burden that prepetition joinder of petitioners in deficiency and liability cases has placed on the Court. This burden has been particularly acute whenever counsel seeks to enter an appearance or withdraw as to some, but not all, of the petitioners who have joined in the petition, or whenever a settlement has been reached as to some, but not all, of the petitioners.

The amendment is not intended to affect the joinder of an affiliated group of corporations in a single petition filed in respect of a notice of deficiency mailed to the common parent pursuant to section 1.1502-77(a), Income Tax Regs. The amendment is also not intended to affect the joinder of cofiduciaries in a single petition filed on behalf of the same estate. Finally, the amendment is not intended to affect the consolidation of cases under Rule 141(a).

The amendment to Rule 61(a) is effective with respect to petitions filed after July 1, 1990.

RULE 62. 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).

RULE 63. SUBSTITUTION OF PARTIES; CHANGE OR CORRECTION IN NAME

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

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

(c) **Successor Fiduciaries or Representatives:** On motion made where a fiduciary or representative is changed, the Court may order substitution of the proper successors.

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

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

TITLE VII

DISCOVERY

RULE 70. GENERAL PROVISIONS

[2](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 or things (Rules 72 and 73), by depositions upon consent of the parties (Rule 74), by depositions without consent of the parties in certain cases (Rule 75), or by depositions of expert witnesses (Rule 76). 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 Rules 74, 75, and 76. See Rules 91(a) and 100 regarding relationship of discovery to stipulations.

(2) *Time for Discovery:* Discovery shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38), and shall be completed, 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. Discovery by a deposition under Rules

[1]The amendment is effective as of July 1, 1990.

[2]The amendments are effective as of July 1, 1990.

75 and 76 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 shall be completed within the time provided by the preceding sentence. See Rules 75(a) and 76(c). Discovery of matters which are relevant only to the issue of a party's entitlement to reasonable litigation or administrative costs shall not be commenced, without leave of Court, before a motion for reasonable litigation or administrative costs has been noticed for a hearing, and shall be completed, unless otherwise authorized by the Court, no later than 45 days prior to 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 a 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 mean any party to any of the consolidated cases involving such common matter.

(b) Scope of Discovery: (1) The information or response sought through discovery may concern any matter not privileged and which is relevant to the subject matter involved in the pending case. 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. 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.

[1](2) The frequency or extent of use of the discovery methods set forth in paragraph (a) shall 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

[1]The amendments are effective as of July 1, 1990.

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 discovery is 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 upon its own initiative after reasonable notice or pursuant to a motion under Rule 103.

[1](c) **Party's Statements:** Upon request to the other party and without any showing except the assertion in writing that the requestor lacks and has no convenient means of obtaining a copy of a statement made by the requestor, a party shall be entitled to obtain a copy of any such statement which has a bearing on the subject matter of the case and is in the possession or control of another party to the case.

[1](d) **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, 74, 75, and 76, may be used at trial or in any proceeding in the case prior or subsequent to trial to the extent permitted by the rules of evidence. Such 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 trial.

[1](e) **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 be signed by at least one counsel of record. A party who is not represented by counsel shall sign the request, response, or objection. The signature shall 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

[1]The amendments are effective as of July 1, 1990.

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 for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (C) 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. If a request, response, or objection 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, and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If a certification is made in violation of this Rule, then the Court upon motion or upon its own initiative, may impose upon 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.

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

Note

Paragraphs (a) and (d) of Rule 70 have been amended in order to make conforming changes necessitated by the adoption of new Rule 76 dealing with the deposition of expert witnesses.

Paragraph (a)(2) of Rule 70 is amended to extend to the discovery of matters relevant only to the issue of a party's entitlement to reasonable administrative costs, the restrictions previously imposed on the discovery of matters relevant only to the issue of a party's entitlement to reasonable litigation costs.

Paragraphs (c) and (e)(1) of Rule 70 are amended to make the language gender neutral. Paragraph (e)(1) is also amended to correct a grammatical error.

Paragraphs (a)(3) and (e)(2) of Rule 70 are amended to make the language stylistically consistent.

The amendments of Rule 70 are effective as of July 1, 1990.

RULE 71. INTERROGATORIES

(a) Availability: Any party may, without leave of Court, serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by an officer or agent who shall furnish such information as is available to the party.

[1]**(b) Answers:** All answers shall be made in good faith and as completely as the answering party's information shall permit. However, the answering party is required to make reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer, unless such party states that such party has made reasonable inquiry and that information known or readily obtainable by such party is insufficient to enable such party to answer the substance of the interrogatory.

[1]**(c) Procedure:** Each interrogatory shall be answered separately and fully under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of the answer. The answers are to be signed by the person making them and the objections shall be signed by the party or the party's counsel. The party on whom the interrogatories have been served shall serve a copy of the answers, and objections if any, upon the propounding party within 45 days after service of the interrogatories. The Court may allow a shorter or longer time. The burden shall be on the party submitting the interrogatories to move for an order with respect to any objection or other failure to answer an interrogatory, and in that connection the moving party shall annex the interrogatories to the motion, with proof of service on the other party, together with the answers and objections, if any. Prior to moving for such an order, neither the interrogatories nor the response shall be filed with the Court.

[2]**(d) Experts:** (1) By means of written interrogatories in conformity with this Rule, a party may require any other

[1]The amendments are effective as of July 1, 1990.

[2]The amendment of subparagraph (1) are effective as of July 1, 1990. The amendment of subparagraph (2) is effective as of July 1, 1986, the effective date of the prior amendment of Rule 143(f).

party (A) to identify each person whom the other party expects to call as an expert witness at the trial of the case, giving the witness' name, address, vocation or occupation, and a statement of the witness' qualifications, and (B) to state the subject matter and the substance of the facts and opinions to which the expert is expected to testify, and give a summary of the grounds for each such opinion, or, in lieu of such statement to furnish a copy of a report of such expert presenting the foregoing information.

(2) For provisions regarding the submission and exchange of expert witness reports, see Rule 143(f). That Rule shall not serve to extend the period of time under paragraph (c) of this Rule within which a party must answer any interrogatory directed at discovering (A) the identity and qualifications of each person whom such party expects to call as an expert witness at the trial of the case and (B) the subject matter with respect to which the expert is expected to testify.

[1](e) **Option to Produce Business Records:** Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

Note

Paragraphs (b), (c), and (d)(1) of Rule 71 have been amended to make the language gender neutral.

Paragraph (d)(2) of Rule 71 has been amended by adding a new final sentence. This sentence is intended to make clear that a party cannot extend the time within which the party must respond to an interrogatory directed at discovering either (a) the identity and qualifications of each

[1]The amendments are effective as of July 1, 1990.

person whom that party expects to call as an expert at the trial of the case or (b) the subject matter with respect to which the expert is expected to testify by timely furnishing a copy of the expert witness report pursuant to Rule 143(f)(1). Rather, the party must respond to the interrogatory within the period provided by paragraph (c) of Rule 71. However, a party can respond to an interrogatory directed at discovering (a) the substance of the facts and opinions to which the expert is expected to testify and (b) the grounds for each such opinion, by furnishing a copy of the expert witness report pursuant to Rule 143(f)(1).

Paragraph (e) of Rule 71 is amended to make the language stylistically consistent.

The amendments of paragraphs (b), (c), (d)(1), and (e) are effective as of July 1, 1990. The amendment of paragraph (d)(2) represents a clarification of the existing rule. Accordingly, it is effective as of July 1, 1986, the effective date of the prior amendment of Rule 143(f) requiring any party who calls an expert witness to cause that witness to prepare a written report for submission to the Court and to the opposing party.

RULE 72. PRODUCTION OF DOCUMENTS AND THINGS

[1]**(a) Scope:** Any party may, without leave of Court, serve on any other party a request to:

(1) Produce and permit the party making the request, or someone acting on such party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible thing, to the extent that any of the foregoing items are in the possession, custody, or control of the party on whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

[1]**(b) Procedure:** The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. It shall specify a reasonable time, place, and manner of

[1]The amendments are effective as of July 1, 1990.

making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, then that part shall be specified. To obtain a ruling on an objection by the responding party, on a failure to respond, or on a failure to produce or permit inspection, the requesting party shall file an appropriate motion with the Court and shall annex thereto the request, with proof of service on the other party, together with the response and objections if any. Prior to moving for such a ruling, neither the request nor the response shall be filed with the Court.

(c) **Foreign Petitioners:** For production of records by foreign petitioners, see Code Section 7456(b).

RULE 73. EXAMINATION BY TRANSFEREES

[1](a) **General:** Upon application to the Court and subject to these Rules, a transferee of property of a taxpayer shall be entitled to examine before trial the books, papers, documents, correspondence, and other evidence of the taxpayer or of a preceding transferee of the taxpayer's property, but only if the transferee making the application is a petitioner seeking redetermination of such transferee's liability in respect of the taxpayer's tax liability (including interest, additional amounts, and additions provided by law). Such books, papers, documents, correspondence, and other evidence may be made available to the extent that the same shall be within the United States, will not result in undue hardship to the taxpayer or preceding transferee, and in the opinion of the Court is necessary in order to enable the transferee to ascertain the liability of the taxpayer or preceding transferee.

[1](b) **Procedure:** A petitioner desiring an examination permitted under paragraph (a) shall file an application with

[1]The amendments are effective as of July 1, 1990.

the Court, showing that such petitioner is entitled to such an examination, describing the documents and other materials sought to be examined, giving the names and addresses of the persons to produce the same, and stating a reasonable time and place where the examination is to be made. If the Court shall determine that the applicable requirements are satisfied, then it shall issue a subpoena, signed by a Judge, directed to the appropriate person and ordering the production at a designated time and place of the documents and other materials involved. If the person to whom the subpoena is directed shall object thereto or to the production involved, then such person shall file the objections and the reasons therefor in writing with the Court, and serve a copy thereof upon the applicant, within 10 days after service of the subpoena or on or before such earlier time as may be specified in the subpoena for compliance. To obtain a ruling on such objections, the applicant for the subpoena shall file an appropriate motion with the Court. In all respects not inconsistent with the provisions of this Rule, the provisions of Rule 72(b) shall apply where appropriate.

(c) Scope of Examination: The scope of the examination authorized under this Rule shall be as broad as is authorized under Rule 72(a), including, for example, the copying of such documents and materials.

RULE 74. DEPOSITIONS FOR DISCOVERY PURPOSES—UPON CONSENT OF PARTIES

(a) Depositions in Pending Cases: Upon 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 either of a party or a non-party witness. Such consent shall be set forth in a stipulation filed in duplicate with the Court, which shall contain the information required in Rule 81(d) and which otherwise shall be subject to the procedure provided in Rule 81(d). Unless the Court shall determine otherwise for good cause shown, the taking of such a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set.

[1](b) **Notice to Non-Party Witness:** A notice of deposition shall be served on a non-party witness. The notice shall state that the deposition is to be taken under Rule 74 and shall set forth the name of the party or parties seeking the deposition, the time and place proposed for the deposition, and the name of the officer before whom the deposition is to be taken. If the deposition is to be taken on written questions, then a copy of the written questions shall be annexed to the notice. 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.

[1](c) **Objection by Non-Party Witness:** Within 15 days after service of the notice of deposition, a non-party witness shall serve on the parties seeking the deposition any objections to the deposition. The burden shall be upon a party seeking the deposition to move for an order with respect to such objection or other failure of the non-party witness, and such party shall annex to any such motion the notice of deposition with proof of service thereof, together with a copy of the response and objections, if any.

(d) **Transcript:** A transcript shall be made of every deposition taken under this Rule, but the transcript and exhibits introduced in connection with the deposition shall not be filed with the Court. See Rule 81(h)(3).

(e) **Depositions Upon Written Questions:** Depositions under this Rule may be taken upon written questions rather than upon oral examination. 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 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 the notice of deposition rather than service of an application). With respect to taking the deposition, the procedure of Rule 84(c) shall apply.

(f) **Other Applicable Rules:** Depositions for discovery purposes under this Rule shall be governed by the provisions of the following Rules with respect to the matters to

[1]The amendment is effective as of July 1, 1990.

which they apply: Rule 81(e) (persons 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(b), (c), (d), and (e) (objections 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.

RULE 75. DEPOSITIONS FOR DISCOVERY PURPOSES—WITHOUT CONSENT OF PARTIES IN CERTAIN CASES

(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, without leave of Court, take a deposition for discovery purposes of a non-party witness in the circumstances described in paragraph (b) of this Rule. Unless the Court shall determine otherwise for good cause shown, the taking of such a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set.

[1]**(b) Availability:** The taking of a deposition of a non-party witness under this Rule is an extraordinary method of discovery and may be used only where a non-party witness can give testimony or possesses documents or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, or things practicably cannot be obtained through informal consultation or communication (Rule 70(a)(1)) or by a deposition taken with consent of the parties (Rule 74). If such requirements are satisfied, then a deposition may be taken under this Rule, for example, where a party is a member of a partnership and an issue in the case involves an adjustment with respect to such partnership, or a party is a shareholder of an electing small business corporation (as described in Code Section 1371(b) prior to the enactment of the Subchapter S Revision Act of

[1]The amendment is effective as of July 1, 1990.

1982), and an issue in the case involves an adjustment with respect to such corporation. See Title XXIV, relating to partnership actions, brought under provisions first enacted by the Tax Equity and Fiscal Responsibility Act of 1982.

(c) Notice: A party desiring to take a deposition under this Rule shall give notice in writing to every other party to the case and to the non-party witness to be deposed. The notice shall state that the deposition is to be taken under Rule 75 and shall 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, and the officer before whom the deposition is to be taken. If the deposition is to be taken on written questions, a copy of the questions shall be annexed to the notice.

[1](d) Objections: Within 15 days after service of the notice of deposition, a party or a non-party witness shall serve on the party seeking the deposition any objections to the deposition. 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 non-party 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 moving for such an order, neither the notice nor the responses shall be filed with the Court.

(e) Other Applicable Rules: Depositions for discovery purposes under this Rule shall be governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 74(d) (transcript), 74(e) (depositions upon written questions), 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(a), (b), (c), (d), and (e) (objections 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.

[1]The amendment is effective as of July 1, 1990.

Note

Paragraph (b) of Rule 75 is amended to provide a cross-reference to Title XXIV, the Rules dealing with so-called "TEFRA partnership" litigation. Paragraph (b) is also amended to make the language stylistically consistent.

Paragraph (d) of Rule 75 is amended to make the language gender neutral.

The amendments to Rule 75 are effective as of July 1, 1990.

RULE 76. DEPOSITION OF EXPERT WITNESSES[1]

(a) Availability: (1) *Depositions Upon Consent of Parties:* The deposition of an expert witness upon consent of all the parties to a case shall be governed by Rule 74 rather than this Rule, except that the provisions of paragraph (e) of this Rule shall apply to such a deposition.

(2) *Other Depositions:* The taking of a deposition of an expert witness without consent of all the parties to a case is an extraordinary method of discovery. Such a deposition may be taken only pursuant to an order of the Court.

(b) Scope of Deposition: The deposition of an expert witness under paragraph (a)(2) of this Rule shall be limited to (1) 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, (2) the opinion of the witness in respect of which the witness' expert testimony is relevant to the issue or issues in dispute, (3) the facts or data that underlie that opinion, and (4) the witness' analysis, showing how the witness proceeded from the facts or data to draw the conclusion that represents the opinion of the witness.

(c) When Deposition May Be Taken: A deposition of an expert witness under paragraph (a)(2) of this Rule may be taken only 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). The taking of such a deposition ordinarily will not be regarded as a ground for continuance.

(d) Procedure: (1) *In General:* A party desiring to depose an expert witness under paragraph (a)(2) of this Rule shall file a written motion and shall set forth therein the matters

[1]New Rule 76 is effective as of July 1, 1990.

specified in subparagraph (2). The Court shall take such action on the motion as it deems appropriate.

(2) *Content of Motion:* Any motion seeking an order authorizing the deposition of an expert witness under paragraph (a)(2) of this Rule shall set forth the following:

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

(B) a statement describing any books, papers, documents, 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 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 (g)); and

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

If the movant proposes to take the deposition of the expert witness on written questions, then the movant shall annex to the motion a copy of the questions to be propounded. The movant shall 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 state the position of each of these persons with respect to the motion, in accordance with Rule 50(a).

(3) *Disposition of Motion:* Any objection or other response to the motion for order to depose an expert witness under paragraph (a)(2) of this Rule shall be filed with the Court (along with a certificate of service) within 15 days after service of the motion. A hearing on the motion will be held only if directed by the Court. If the Court approves the taking of a deposition, then it will issue an order which will

include 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 videotaped, then the Court's order will so state.

(e) Use of Deposition for Other Than Discovery Purposes: (1) *Use as Expert Witness Report:* Upon 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(f)(1). Unless the Court shall determine otherwise for good cause shown, the taking of a deposition of an expert witness will not serve to extend the date under Rule 143(f)(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 governed by the provisions of Rule 81(i).

(f) 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.

(g) Expenses: (1) *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 be borne by the parties as set forth in subparagraph (2).

(2) *Allocation of Costs, Etc.:* The party taking the deposition shall 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 pay the cost for any copies of the deposition transcript that they might order.

(3) *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 fees, charges, and expenses that the witness would otherwise be entitled to under subparagraph (2) and to pay any other party such expenses, including attorney's fees, that the Court deems reasonable under the circumstances.

(h) **Other Applicable Rules:** The deposition of an expert witness under this Rule shall be governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 74(d) (transcript) and 74(e) (depositions upon written questions); Rule 81(c) (designation of person to testify), 81(e) (person before whom deposition taken), 81(f) (taking of deposition), 81(h) (execution, form, and return of deposition), and 81(j) (videotape depositions); 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.

Note

Rule 76 is a new rule. It authorizes the deposition of an expert witness without the consent of all of the parties to a case, subject to the conditions prescribed by the Rule.

In *Estate of Van Loben Sels v. Commissioner*, 82 T.C. 64 (1984), the Court held that Rule 75 ("Depositions for Discovery Purposes—Without Consent of Parties in Certain Cases") does not permit the deposition of an expert witness. The Court's experience of the past several years suggests, however, that the time has come to permit the deposition of

expert witnesses under certain circumstances. It is expected that such depositions will not only enhance trial preparation and hence the presentation of evidence at trial, but will also increase the number of settlements in cases requiring the assistance of experts.

Paragraph (a) of Rule 76 differentiates between the deposition of expert witnesses upon consent of all of the parties to a case and the deposition of expert witnesses without consent of all of the parties to a case. In general, the provisions of Rule 74 ("Depositions for Discovery Purposes—Upon Consent of Parties"), rather than the provisions of Rule 76, govern the taking of consensual depositions of expert witnesses. On the other hand, the provisions of Rule 76 govern the taking of non-consensual depositions of expert witnesses.

The deposition of an expert witness pursuant to Rule 76 is an extraordinary method of discovery. Accordingly, and in order to prevent any abuse under the Rule, such a deposition may be taken only pursuant to an order of the Court.

Paragraph (b) is intended to make clear that a deposition of an expert witness under Rule 76 is available only for the purpose of deposing the witness in his or her capacity as an expert. Thus, an expert who was also a fact witness could not be deposed under the Rule with regard to that expert's fact testimony. However, facts that underlie the opinion of the witness in respect of which the witness' expert testimony is relevant to the issue in dispute are within the scope of a deposition under Rule 76.

An expert witness may be deposed under Rule 76 before the witness has prepared a written report. However, under paragraph (c) an expert witness may not be deposed before either a notice of trial has been issued or the case has been assigned to a Judge or Special Trial Judge of the Court. If a case has not been calendared for trial or assigned to a judicial officer, a party must file a motion for assignment as a predicate for the motion required by paragraph (d) of the Rule. The two motions may be filed concurrently. However, they must be separately stated and may not be joined together. See Rule 54.

Also under paragraph (c), an expert witness may not be deposed within 45 days of the date set for the call of the case from a trial calendar. The 45-day period may be reduced or enlarged by order of the Court. See Rules 25(c) and 70(a)(2). In any event, the taking of a deposition under Rule 76 will not ordinarily be grounds for a continuance.

As previously indicated, the deposition of an expert witness under Rule 76 is an extraordinary method of discovery and may be taken only pursuant to an order of the Court. Whether to issue such an order is a matter solely within the discretion of the Judge or Special Trial Judge who is responsible for the case. Discretion may be exercised either sua sponte (see para. (f)) or pursuant to a motion filed by a party (see para. (d)).

A party who files a motion for an order to depose an expert witness under Rule 76 must include in the motion the matters set forth in paragraph (d)(2). That party must also serve a copy of the motion on (1) the expert witness whose deposition is sought and (2) each other party, or counsel for each other party. Any objection or other response to the

motion must be filed with the Court within 15 days after service of the motion.

The Court will ordinarily order the deposition of an expert witness only if it is satisfied that the deposition will serve one or more of the following purposes: —to encourage the reciprocal exchange of information between or among the parties; —to promote the settlement of disputed issues; —to assist the Court in the factfinding process; —to facilitate the exposition of the opinion of an expert witness in situations where the opinion of such a witness is not readily reducible to a written report; and —to minimize the improper use of an expert witness at trial as an overzealous advocate. See *Messing v. Commissioner*, 48 T.C. 502 (1967). On the other hand, the Court will not permit the deposition of an expert witness if such deposition will unjustifiably increase the cost of litigation or unjustifiably delay the trial of the case.

Because the deposition of an expert witness under Rule 76 may be taken only pursuant to the Court's order, it will not be necessary for the moving party to serve any subpoena on the expert witness if that party's motion is granted. Rather, any order authorizing the taking of a deposition will direct the witness to appear at a time, date, and place designated therein. Willful disobedience of the Court's order is, of course, punishable as contempt. See Rule 13(d).

Rule 76 is principally intended to authorize a new method of discovery. However, under paragraph (e), which applies to consensual depositions of expert witnesses under Rule 74 as well as to non-consensual depositions under Rule 76, the deposition transcript may also serve as the expert witness report required by Rule 143(f)(1) if the Court so orders upon written motion by the proponent of the expert witness. This might be appropriate where the opinion of an expert witness is not readily reducible to a written report. However, unless the Court determines otherwise for good cause shown, the mere possibility that the Court might order that the deposition transcript serve as the expert witness report will not serve to extend the date under Rule 143(f)(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 required by that Rule. Finally, paragraph (e)(2) provides that any other use of a deposition of an expert witness, including use at the trial or in any other proceeding in the case, is governed by the provisions of Rule 81(i).

Paragraph (f) is intended to make clear that the filing of a motion by a party for an order to depose an expert witness is not a predicate to an order directing the taking of such a deposition. This paragraph emphasizes that it is within the Court's discretion to order sua sponte the deposition of an expert witness. It is not anticipated that the Court will exercise this discretion frequently. Nevertheless, if the Court so orders, then the costs, expenses, fees, and charges relating to the deposition will be allocated by the Court in its order as it deems appropriate under the particular facts and circumstances of the case.

Under paragraph (g) the parties may allocate the costs, expenses, fees, and charges relating to the deposition on any basis agreeable to them and the expert witness. If there is not such a stipulation, paragraph (g)

generally allocates such costs, expenses, fees, and charges to the party taking the deposition. Although the moving party may request that they be allocated in some other manner (see paragraph (d)(2)(F)), the Court ordinarily will not regard any such request with favor.

Under paragraph (g)(2), the costs, expenses, fees, and charges relating to the deposition specifically include a reasonable fee for the expert witness. Such a fee will typically exceed the fee to which the witness would otherwise be entitled under Rule 148(a). Although the fee is to be determined with regard to the expert's usual and customary charge, it must be reasonable in amount. Whether or not the fee is computed on an hourly basis, allowance shall be made for the time spent attending the deposition (including the time spent traveling to and from the place of deposition) and for the time spent preparing for the deposition. The latter shall not, however, include any part of the time spent in formulating the opinion in respect of which the witness' expert testimony is relevant to the issue in dispute.

Certain provisions of Rule 74, as well as many of the procedural Rules applicable to depositions to preserve evidence under Title VIII, have been made applicable to depositions under Rule 76, as set forth in paragraph (h).

Rule 76 is effective as of July 1, 1990.

TITLE VIII

DEPOSITIONS

RULE 80. GENERAL PROVISIONS[1]

(a) General: On complying with the applicable requirements, depositions to perpetuate evidence may be taken in a pending case before trial (Rule 81), or in anticipation of commencing a case in this Court (Rule 82), or in connection with the trial (Rule 83). Depositions under this Title may be taken only for the purpose of making testimony or any document or thing available as evidence in the circumstances herein authorized by the applicable Rules. Depositions for discovery purposes may be taken only in accordance with Rules 74, 75, and 76.

(b) Other Applicable Rules: 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 relating to tender of fees

[1]The amendments are effective as of July 1, 1990.

and other amounts to the witness to be deposed, see Rule 148(b).

Note

Paragraph (a) of Rule 80 is amended to reflect the addition of Rule 76, relating to the deposition of expert witnesses.

Paragraph (b) of Rule 80 is amended to include a cross-reference to Rule 148(b), relating to tender of fees and other amounts to the witness to be deposed.

The amendments of Rule 80 are effective as of July 1, 1990.

RULE 81. DEPOSITIONS IN PENDING CASE[1]

(a) Depositions to Perpetuate Testimony: A party to a case pending in the Court, who desires to perpetuate testimony or to preserve any document or thing, shall file an application pursuant to these Rules for an order of the Court authorizing such party to take a deposition for such purpose. Such depositions shall be taken only where there is a substantial risk that the person or document or thing involved will not be available at the trial of the case, and shall relate only to testimony or document or thing which is not privileged and is 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 be signed by the party seeking the deposition or such party's counsel, and shall 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 the party expects to elicit from each of those persons;

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

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

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

[1]The amendments are generally effective as of July 1, 1990. However, the amendments of paragraph (e)(2) setting forth an additional means by which a foreign deposition may be taken are effective as of January 12, 1990.

(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 videotape the deposition, then the application shall so state, and shall show the name and address of the videotape operator and of the operator's employer. (The videotape 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 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 Appendix I.

(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 be filed with the Clerk of the Court. The applicant shall serve a copy of the application on each of the other parties to the case, as well as on such other persons who are to be examined pursuant to the application, and shall file with the Clerk a certificate showing such service. Such other parties or persons shall 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 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 determine 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 include 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 videotaped, 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 designate with reasonable particularity the matters on which examination is requested. The organization so named shall 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 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 hereinabove provided. Such a stipulation shall be filed with the Court in duplicate, and shall contain the same information as is required in items (A), (F), (G), (I), and (J) of Rule 81(b)(1), but shall 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 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 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.

[1](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

[1]The amendments are generally effective as of July 1, 1990. However, the amendments setting forth an additional means by which a foreign deposition may be taken are effective as of January 12, 1990.

is held, either by the law thereof or by the law of the United States, or (B) before a person commissioned by the Court, and a person so commissioned shall 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. A commission, a letter rogatory, or a letter of request shall be issued on application and notice and on terms that are just and appropriate. The party seeking to take a foreign deposition shall 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 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, 23 U.S.T. 2555, T.I.A.S. No. 7444. 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 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 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 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 first put the witness on oath (or affirmation) and shall personally, or by someone acting under such officer's direction and in such 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 proceed as permitted at trial. All objections made at the time of examination shall be noted by the officer upon the deposition. Evidence objected to, unless privileged, shall 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 be excluded from the room in which, and during the time that, the testimony of another witness is being taken; and if such person remains in the room or within hearing of the examination after such request has been made, such person shall not thereafter be permitted to testify, except by the

consent of the party who requested such person's exclusion or by permission of the Court.

(g) Expenses: (1) *General:* The party taking the deposition shall pay all the expenses, fees, and charges of the witness whose deposition is taken by such 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 pay for the original of the deposition; and, upon payment of reasonable charges therefor, the officer shall 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 other party the reasonable expenses incurred by such other party and such 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 because of such failure does not attend, and if another party attends in person or by attorney because such party expects the deposition of that witness to be taken, then the Court may order the former party to pay to such other party the reasonable expenses incurred by such other party and such 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 be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance, which the witness desires to make, shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall 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 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(c).

(2) *Form:* The deposition shall 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, the names of counsel present and whom they represent. The pages of the deposition shall be securely fastened. Exhibits shall be carefully marked, and when practicable annexed to, and in any event returned with, the deposition, unless, upon motion to the Court, a copy shall 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 execute and attach to the deposition a certificate in accordance with Form 7 shown in Appendix I.

(3) *Return of Deposition:* The deposition and exhibits shall not be filed with the Court. Unless otherwise directed by the Court, the officer shall deliver the original deposition and exhibits to the party taking the deposition or such party's counsel, who shall 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 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(c).

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

(j) Videotape Depositions: (1) *General:* By stipulation of the parties or upon order of the Court, a deposition to perpetuate testimony to be taken upon oral examination may be recorded by videotape. 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 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 then identify himself or herself and swear the witness on camera. At the conclusion of the deposition, the operator shall 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 length of the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on camera by the operator. The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute, and second of each tape of the deposition.

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

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

(5) *Use:* A videotape 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 videotape in evidence shall provide all necessary equipment for viewing the videotape and personnel to operate such equipment. At a trial or hearing, that part of the audio portion of a videotape deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The videotape shall be marked as an exhibit and, subject to the provisions of Rule 143(d)(2), shall remain in the custody of the Court.

Note

Paragraphs (a), (b)(1), (c), (e)(2), (f)(2), (g), (h)(1) and (3), (i), and (j)(2) and (4) of Rule 81 are amended to make the language gender neutral.

Paragraphs (b)(1)(j), (b)(2), (e)(3), (g), (i), and (j)(3) of Rule 81 are amended to make the language stylistically consistent.

Paragraph (e)(2) also is amended to set forth an additional means by which a foreign deposition may be taken, i.e., a letter of request issued in accordance with the provisions of the Hague Convention of 18 March 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444.

The amendments of Rule 81(e)(2) setting forth an additional means by which a foreign deposition may be taken reflect existing law and practice. Accordingly, those amendments are effective as of January 12, 1990. The remaining amendments of Rule 81 are effective as of July 1, 1990.

RULE 82. DEPOSITIONS BEFORE COMMENCEMENT OF CASE[1]

A person who desires to perpetuate testimony or to preserve any document or thing regarding any matter that may be cognizable in this Court may file an application with the Court to take a deposition for such purpose. The application shall be entitled in the name of the applicant, shall otherwise be in the same style and form as apply to a motion filed with the Court, and shall show the following: (1) The facts showing that the applicant expects to be a party to a case cognizable in this Court but is at present unable to bring it or cause it to be brought. (2) The subject matter of the expected action and the applicant's interest therein. (3) All matters required to be shown in an application under paragraph (b)(1) of Rule 81 except item (H) thereof. Such an application will be entered upon a special docket, and service thereof and pleading with respect thereto will proceed subject to the requirements otherwise applicable to a motion. A hearing on the application may be required by the Court. If the Court is satisfied that the perpetuation of the testimony or the preservation of the document or thing may prevent a failure or delay of justice, then it will make an order authorizing the deposition and including such other terms and conditions as it may deem appropriate consistently with these Rules. If the deposition is taken, and if thereafter the expected case is commenced in this Court, then the deposition may be used in that case subject to the Rules which would apply if the deposition had been taken after commencement of the case.

[1]The amendments are effective as of July 1, 1990.

RULE 83. DEPOSITIONS AFTER COMMENCEMENT OF TRIAL

Nothing in these Rules shall preclude the taking of a deposition after trial has commenced in a case, upon approval or direction of the Court. The Court may impose such conditions to the taking of the deposition as it may find appropriate and, with respect to any aspect not provided for by the Court, Rule 81 shall govern to the extent applicable.

RULE 84. DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Use of Written Questions: A party may make an application to the Court to take a deposition, otherwise authorized under Rules 81, 82, or 83, upon written questions rather than oral examination. The provisions of those Rules shall apply in all respects to such a deposition except to the extent clearly inapplicable or otherwise provided in this Rule. Unless there is special reason for taking the deposition on written questions rather than oral examination, the Court will deny the application, without prejudice to seeking approval of the deposition upon oral examination. The taking of depositions upon written questions is not favored, except when the deposition is to be taken in a foreign country, in which event the deposition must be taken on written questions unless otherwise directed by the Court for good cause shown.

[1]**(b) Procedure:** An application under paragraph (a) hereof shall have the written questions annexed thereto. With respect to such application, the 15-day period for filing objections prescribed by paragraph (b)(2) of Rule 81 is extended to 20 days, and within that 20-day period the objecting or responding party shall also file with the Court any cross-questions which such party may desire to be asked at the taking of the deposition. The applicant shall then file any objections to the cross-questions, as well as any redirect questions, within 15 days after service on the applicant of the cross-questions. Within 15 days after service of the redirect questions on the other party, the

[1]The amendments are effective as of July 1, 1990.

other party shall file with the Court any objections to the redirect questions, as well as any recross questions which the other party may desire to be asked. No objection to a written question will be considered unless it is filed with the Court within such applicable time. An original and five copies of all questions and objections shall be filed with the Clerk of the Court, who will make service thereof on the opposite party. The Court for good cause shown may enlarge or shorten the time in any respect.

(c) Taking of Deposition: The officer taking the deposition shall propound all questions to the witness in their proper order. The parties and their counsel may attend the taking of the deposition but shall not participate in the deposition proceeding in any manner.

(d) Execution and Return: The execution and return of the deposition shall conform to the requirements of paragraph (h) of Rule 81.

RULE 85. OBJECTIONS, ERRORS, AND IRREGULARITIES

(a) As to Initiating Deposition: All errors and irregularities in the procedure for obtaining approval for the taking of a deposition are waived, unless made in writing within the time for making objections or promptly where no time is prescribed.

(b) As to Disqualification of Officer: Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived, unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to Use: In general, an objection may be made at the trial or hearing to use of a deposition, in whole or in part as evidence, for any reason which would require the exclusion of the testimony as evidence if the witness were then present and testifying. However, objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are waived by failure to make them before or during the taking of the deposition, if the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) As to Manner and Form: Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might have been obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(e) As to Errors by Officer: Errors or irregularities in the manner in which testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the presiding officer, are waived unless a motion to correct or suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. See also Rule 143(c).

TITLE IX

ADMISSIONS AND STIPULATIONS

RULE 90. REQUESTS FOR ADMISSION

[1]**(a) Scope and Time of Request:** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters which are not privileged and are relevant to the subject matter involved in the pending action, but only if such 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 must be commenced and completed within the same period provided in Rule 70(a)(2) for commencement and completion of discovery.

(b) The Request: The request may, without leave of Court, be served by any party to a pending case. Each matter of

[1]The amendments are effective as of July 1, 1990.

which an admission is requested shall be separately set forth. Copies of documents shall 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 serve a copy thereof on the other party, and shall file the original with proof of service with the Court.

[1]**(c) Response to Request:** Each matter is deemed admitted unless, within 30 days after service of the request or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon 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 be signed by the party or the party's counsel, and the original thereof, with proof of service on the other party, shall be filed with the Court. A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify an answer or deny only a part of a matter, such party shall 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 party states that such party has made reasonable inquiry and that the information known or readily obtainable by such party is insufficient to enable such 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 party may, subject to the provisions of paragraph (g) of this Rule, deny the matter or set forth reasons why such 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.

[2]**(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

[1]The amendments are effective as of July 1, 1990.

[2]The amendments of subparagraph (1) are effective as of July 1, 1990.

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 for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (C) 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. If a request, response, or objection 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, and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If a certification is made in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon 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.

[1](e) **Motion to Review:** The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall 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 order, the Court may determine that final disposition of the request shall be made at some later time which may be more appropriate for disposing of the question involved.

[1](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 orders made in the case by the Court, withdrawal or modification may be permitted when the presentation of the merits of the case will be subserved

[1]The amendments are effective as of July 1, 1990.

thereby, and the party who obtained the admission fails to satisfy the Court that the withdrawal or modification will prejudice such party in prosecuting such party's case or defense 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 party for any other purpose, nor may it be used against such party in any other proceeding.

[1]**(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 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, or (2) the admission sought was of no substantial importance, or (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 enforcements, see Title X.

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 are relevant to the pending case, regardless of whether such 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 fairly should not be in dispute. Where the

[1]The amendment is effective as of July 1, 1990.

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 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 matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which 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.

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

(c) Filing: Executed stipulations prepared pursuant to this Rule, and related exhibits, shall be filed by the parties at or before commencement of the trial of the case, unless the Court in the particular case shall otherwise specify. A stipulation when 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 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 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 justice requires. A stipulation and the admissions therein shall be 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.

[1]**(f) Noncompliance by a Party:** (1) *Motion to Compel Stipulation:* If, after the date of issuance of trial notice in a case, a party has refused or failed to confer with an adversary 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 any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than 45 days prior to 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 (A) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (B) set forth in express language the specific stipulation which 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; (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; and (E) show proof

[1]The amendments of subparagraphs (1) and (2) are effective as of July 1, 1990.

of service of a copy of the motion on opposing counsel or the other parties.

(2) *Procedure:* Upon the filing of such a motion, an order to show cause as moved shall be issued forthwith, unless the Court shall direct otherwise. The order to show cause will be served by the Clerk of the Court, 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 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 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 a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where 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 set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall 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 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 entered accordingly.

(4) *Matters Considered:* Opposing claims of evidence will not be weighed under this Rule unless such 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 interests of justice a matter ought not be deemed stipulated.

RULE 92. CASES CONSOLIDATED FOR TRIAL

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

TITLE X

GENERAL PROVISIONS GOVERNING DISCOVERY, DEPOSITIONS, AND REQUESTS FOR ADMISSION

RULE 100. APPLICABILITY[1]

The Rules in this Title apply according to their terms to written interrogatories (Rule 71), production of documents or things (Rule 72), examination by transferees (Rule 73), depositions (Rules 74, 75, 76, 81, 82, 83, and 84), and requests for admission (Rule 90). Such procedures may be used in anticipation of the stipulation of facts required by Rule 91, but the existence of such procedures or their use does not excuse failure to comply with the requirements of that Rule. See Rule 91(a)(2).

Note

Rule 100 has been amended in order to make a conforming change necessitated by the adoption of new Rule 76 dealing with the deposition of expert witnesses. An orthographic change has also been made.

The amendments of Rule 100 are effective as of July 1, 1990.

RULE 101. SEQUENCE, TIMING, AND FREQUENCY

Unless the Court orders otherwise for the convenience of the parties and witnesses and in the interests of justice, and subject to the provisions of the Rules herein which apply more specifically, the procedures set forth in Rule 100 may

[1]The amendments are effective as of July 1, 1990.

be used in any sequence, and the fact that a party is engaged in any such method or procedure shall not operate to delay the use of any such method or procedure by any other party. However, none of these methods or procedures shall be used in a manner or at a time which shall delay or impede the progress of the case toward trial status or the trial of the case on the date for which it is noticed, unless in the interests of justice the Court shall order otherwise. Unless the Court orders otherwise under Rule 103, the frequency of use of these methods or procedures is not limited.

RULE 102. SUPPLEMENTATION OF RESPONSES[1]

A party who has responded to a request for discovery (under Rules 71, 72, 73, 74, 75, or 76) or to a request for admission (under Rule 90) in a manner which was complete when made, is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any matter directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which such person is expected to testify, and the substance of such person's testimony. In respect of the requirement to furnish reports of expert witnesses, see Rule 143(f)(1).

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that (A) the response was incorrect when made, or (B) the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

[1]The amendments are effective as of July 1, 1990, except that the last amendment of subparagraph (1) is effective as of July 1, 1986, the effective date of the prior amendment of Rule 143(f).

Note

Rule 102 has been amended in order to make conforming changes necessitated by (1) the adoption of new Rule 76 dealing with the deposition of expert witnesses and (2) the prior amendment of Rules 71(d)(2) and 143(f) dealing with expert witness reports. Changes have also been made to make the language gender neutral.

The amendments of Rule 102 are effective as of July 1, 1990, except that the last amendment of subparagraph (1) is effective as of July 1, 1986, the effective date of the prior amendment of Rule 143(f).

RULE 103. PROTECTIVE ORDERS[1]

(a) Authorized Orders: Upon motion by a party or any other affected person, and for good cause shown, the Court may make any order which 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.

[1]The amendments are effective with respect to motions for protective orders filed after July 1, 1990.

(10) That documents or records be impounded by the Court to insure their availability for purpose of review by the parties prior to trial and use at the trial.

If a discovery request has been made, then the movant shall 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.

Note

Paragraph (a) of Rule 103 is amended to require that if a discovery request has been made, then the movant shall attach as an exhibit to a motion for a protective order a copy of any discovery request in respect of which the motion is filed. This requirement is designed to facilitate the Court's disposition of the motion.

Paragraph (b) of Rule 103 is amended to make the language stylistically consistent.

The amendments are effective with respect to motions for protective orders filed after July 1, 1990.

RULE 104. ENFORCEMENT ACTION AND SANCTIONS[1]

(a) Failure to Attend Deposition or to Answer Interrogatories or Respond to Request for Inspection or Production: If a party, or an officer, director, or managing agent of a party, or a person designated in accordance with Rule 74(b), 75(c), or 81(c) to testify on behalf of a party fails (1) to appear before the officer who is to take such person's deposition pursuant to Rule 74, 75, 76, 81, 82, 83, or 84, or (2) to serve answers or objections to interrogatories submitted under Rule 71, after proper service thereof, or (3) to serve a written response to a request for production or inspection submitted under Rule 72 or 73 after proper service of the request, then the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraph

[1]The amendments are effective as of July 1, 1990.

(b) or (c) of this Rule. If any person, after being served with a subpoena or having waived such service, willfully fails to appear before the officer who is to take such person's deposition or refuses to be sworn, or if any person willfully fails to obey an order requiring such person to answer designated interrogatories or questions, then such failure may be considered contempt of court. The failure to act described in this paragraph (a) may not be excused on the ground that the deposition sought, or the interrogatory submitted, or the production or inspection sought, is objectionable, unless the party failing to act has theretofore raised the objection, or has applied for a protective order under Rule 103, with respect thereto at the proper time and in the proper manner, and the Court has either sustained or granted or not yet ruled on the objection or the application for the order.

(b) Failure to Answer: If a person fails to answer a question or interrogatory propounded or submitted in accordance with Rule 71, 74, 75, 76, 81, 82, 83, or 84, or fails to respond to a request to produce or inspect or fails to produce or permit the inspection in accordance with Rule 72 or 73, or fails to make a designation in accordance with Rule 74(b), 75(e), or 81(c), the aggrieved party may, within the time for completion of discovery under Rule 70(a)(2), move the Court for an order compelling an answer, response, or compliance with the request, as the case may be. When taking a deposition on oral examination, the examination may be completed on other matters or the examination adjourned, as the proponent of the question may prefer, before applying for such order.

(c) Sanctions: If a party or an officer, director, or managing agent of a party or a person designated in accordance with Rule 74(b), 75(c), or 81(c) fails to obey an order made by the Court with respect to the provisions of Rule 71, 72, 73, 74, 75, 76, 81, 82, 83, 84, or 90, then the Court may make such orders as to the failure as are just, and among others the following:

(1) An order that the matter regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the case in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the case or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of the foregoing orders or in addition thereto, the Court may treat as a contempt of the Court the failure to obey any such order, and the Court may also require the party failing to obey the order or counsel advising such party, or both, to pay the reasonable expenses, including counsel's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(d) Evasive or Incomplete Answer or Response: For purposes of this Rule and Rules 71, 72, 73, 74, 75, 76, 81, 82, 83, 84, and 90, an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

Note

Rule 104 has been amended in order to make conforming changes necessitated by the adoption of new Rule 76 dealing with the deposition of expert witnesses. Changes have also been made to make the language gender neutral and stylistically consistent.

The amendments of Rule 104 are effective as of July 1, 1990.

TITLE XI

PRETRIAL CONFERENCES

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 the call of the calendar at such time and place as may be practicable and appropriate.

[1]**(c) Cases Not Calendared:** If a case is not listed on a trial calendar, the Chief Judge, in the exercise of discretion, upon motion of either party or sua sponte, may list such case for a pretrial conference upon a calendar in the place designated for trial, or may assign 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 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, 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 the party requesting such pretrial conference has in good faith attempted without success to obtain such stipulation from such party's adversary. Nor will any pretrial conference be held where 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.

TITLE XII

DECISION WITHOUT TRIAL

RULE 120. JUDGMENT ON THE PLEADINGS

(a) General: After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be filed and

[1]The amendments are effective as of July 1, 1990.

served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Such motion shall be disposed of before trial unless the Court determines otherwise.

(b) Matters Outside Pleadings: If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and shall be disposed of as provided in Rule 121, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 121.

RULE 121. SUMMARY JUDGMENT

[1]**(a) General:** Either party may move, with or without supporting affidavits, 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.

(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, 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, if any, show that there is no genuine issue 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

[1]The amendment is effective as of July 1, 1990.

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.

[1]**(d) Form of Affidavits; Further Testimony; Defense Required:** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The Court may permit affidavits to be supplemented or opposed by answers to interrogatories, depositions, further affidavits, 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 as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

[1]**(e) When Affidavits Are Unavailable:** If it appears from the affidavits of a party opposing the motion that such party cannot for reasons stated present by affidavit facts essential to justify such party's opposition, then the Court may deny the motion or may order a continuance to permit affidavits to be obtained or other steps to be taken or may make such other order as is just. If it appears from the affidavits of a party opposing the motion that such party's only legally available method of contravening the facts set forth in the supporting affidavits of the moving party is through cross-examination of such affiants or the testimony of third parties from whom affidavits cannot be secured, then such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits are genuinely disputed.

[1]The amendments are effective as of July 1, 1990.

[1](f) **Affidavits Made in Bad Faith:** If it appears to the satisfaction of the Court at any time that any of the affidavits 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 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.

RULE 122. SUBMISSION WITHOUT TRIAL

(a) General: Any case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way) may be submitted at any time by motion of the parties filed with the Court. The parties need not wait for the case to be calendared for trial and need not appear in Court. The Chief Judge will assign such a case to a Judge or Special Trial Judge, who will fix a time for filing briefs or for oral argument.

(b) Burden of Proof: The fact of submission of a case, under paragraph (a) of this Rule, does not alter the burden of proof, or the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof.

RULE 123. DEFAULT AND DISMISSAL

[1](a) **Default:** If any party has failed to plead or otherwise proceed as provided by these Rules or as required by the Court, then such party may be held in default by the Court either on motion of another party or on the initiative of the Court. Thereafter, the Court may enter a decision against the defaulting party, upon such terms and conditions as the Court may deem proper, or may impose such sanctions (see, e.g., Rule 104) as the Court may deem appropriate. The Court may, in its discretion, conduct hearings to ascertain whether a default has been committed, to determine the

[1]The amendments are effective as of July 1, 1990.

decision to be entered or the sanctions to be imposed, or to ascertain the truth of any matter.

[1](b) **Dismissal:** For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for other cause which the Court deems sufficient, the Court may dismiss a case at any time and enter a decision against the petitioner. The Court may, for similar reasons, decide against any party any issue as to which such party has the burden of proof, and such decision shall be treated as a dismissal for purposes of paragraphs (c) and (d) of this Rule.

(c) **Setting Aside Default or Dismissal:** For reasons deemed sufficient by the Court and upon motion expeditiously made, the Court may set aside a default or dismissal or the decision rendered thereon.

(d) **Effect of Decision on Default or Dismissal:** A decision rendered upon a default or in consequence of a dismissal, other than a dismissal for lack of jurisdiction, shall operate as an adjudication on the merits.

RULE 124. VOLUNTARY BINDING ARBITRATION[2]

(a) **Availability:** The parties may move that any factual issue in controversy be resolved through voluntary binding arbitration. Such a motion may be made at any time after a case is at issue and before trial. Upon the filing of such a motion, the Chief Judge will assign the case to a Judge or Special Trial Judge for disposition of the motion and supervision of any subsequent arbitration.

(b) **Procedure:** (1) *Stipulation Required:* The parties shall attach to any motion filed under paragraph (a) a stipulation executed by each party or counsel for each party. Such stipulation shall include the matters specified in subparagraph (2).

(2) *Content of Stipulation:* The stipulation required by subparagraph (1) shall include the following:

(A) a statement of the issues to be resolved by the arbitrator;

[1]The amendments are effective as of July 1, 1990.

[2]New Rule 124 is effective as of July 1, 1990.

(B) an agreement by the parties to be bound by the findings of the arbitrator in respect of the issues to be resolved;

(C) the identity of the arbitrator or the procedure to be used to select the arbitrator;

(D) the manner in which payment of the arbitrator's compensation and expenses, as well as any related fees and costs, is to be allocated among the parties;

(E) a prohibition against ex parte communication with the arbitrator; and

(F) such other matters as the parties deem to be appropriate.

(3) *Order by Court:* The arbitrator will be appointed by order of the Court, which order may contain such directions to the arbitrator and to the parties as the Judge or Special Trial Judge considers to be appropriate.

(4) *Report by Parties:* The parties shall promptly report to the Court the findings made by the arbitrator and shall attach to their report any written report or summary that the arbitrator may have prepared.

Note

Rule 124 is a new rule. It expressly authorizes the parties to resolve any factual issue in dispute through voluntary binding arbitration. Although the Rule is new, the use of this particular technique at the Court is not. In recent years an increasing number of parties have requested that they be permitted to resolve factual issues through voluntary binding arbitration, and the Court has consistently permitted them to do so under its existing authority.

Notwithstanding the fact that voluntary binding arbitration is already a part of Tax Court practice, adoption of Rule 124 is designed to fulfill two objectives. First, the Rule is intended to encourage the use of voluntary binding arbitration as a dispute-resolution technique by informing litigants of its availability. Second, the Rule is intended to standardize the basic procedure and to set forth the minimum requirements that must be satisfied as a predicate to an order authorizing the use of voluntary binding arbitration in a specific case. However, the Rule is not intended to be unduly restrictive or to discourage innovative and imaginative approaches to arbitration, nor is it intended to preclude voluntary non-binding arbitration.

Resort to voluntary binding arbitration is particularly appropriate in valuation cases. The Court has repeatedly stated that such cases should be resolved by the parties by way of settlement or other procedures short of trial or otherwise submitting matters for Court opinions. See, e.g.,

Symington v. Commissioner, 87 T.C. 892, 904-905 (1986). Voluntary binding arbitration represents one such procedure, and the Court encourages its use.

Although arbitration of valuation cases is particularly appropriate, the availability of that technique is not limited to such cases. Nor is its availability limited to other factual issues the proper resolution of which may typically demand expert testimony. Rather, Rule 124 applies without limitation to any factual issue in dispute.

Rule 124 contemplates that voluntary binding arbitration will be supervised by the Court. Accordingly, the arbitration procedure is initiated by the filing of a joint, or agreed, motion. If the affected docket is not already within the jurisdiction of a judicial officer, then such a motion will automatically be assigned by the Chief Judge to a Judge or Special Trial Judge for disposition. Accordingly, the parties need not accompany their motion by a separate motion for assignment if the case is pending in the general docket. If the motion is granted, the Court will appoint the arbitrator by order and will provide therein such directions to the arbitrator and to the parties that the Court deems necessary or appropriate. The arbitrator will formally signify the arbitrator's acceptance of the arbitrator's employment under the terms of the order.

The Court will not consider a motion under Rule 124 unless the parties attach to their motion a jointly executed stipulation. Although the parties may tailor the stipulation to include such matters as they deem appropriate under the particular circumstances of their case, they must, at a minimum, set forth those matters which are essential to both the success and the integrity of the arbitration process. Five such matters are specifically enumerated in paragraph (b)(2) of the Rule and include an agreement to be bound by the findings of the arbitrator in respect of the issues to be resolved and a prohibition against ex parte communication with the arbitrator.

The arbitration process is concluded by the filing of a report by the parties. The report shall set forth the findings made by the arbitrator and shall include as an attachment any written report or summary that the arbitrator may have prepared. If no other disputed issues remain in the case, then the Court will either enter a decision or direct the filing of a Rule 155 computation.

Rule 124 is effective as of July 1, 1990.

TITLE XIII

CALENDARS AND CONTINUANCES

RULE 130. MOTIONS AND OTHER MATTERS

[1]**(a) Calendars:** If a hearing is to be held on a motion or other matter, apart from a trial on the merits, then such

[1]The amendment is effective as of July 1, 1990.

hearing ordinarily will be held at Washington, D.C., on a motion calendar called on Wednesday throughout the year, unless the Court, on its own motion or on the motion of a party, shall direct otherwise. As to hearings at other places, see Rule 50(b)(2). The parties will be given notice of the place and time of hearing.

(b) Failure to Attend: The Court may hear a matter ex parte where a party fails to appear at such a hearing. With respect to attendance at such hearings, see Rule 50(c).

RULE 131. REPORT CALENDARS

On a calendar specifically set for the purpose or on a trial calendar, and after notice to the parties of the time and place, any case at issue may be listed and called, first, for report as to whether the case is to be tried or otherwise disposed of, and if the latter, for report as to its status; and, secondly, if it is to be tried, for report on the status of preparations for trial, with particular reference to the stipulation requirements of Rule 91. With respect to any case on such a calendar, the Court may consider other matters and take such action as it deems appropriate.

RULE 132. TRIAL CALENDARS[1]

(a) General: Each case, when at issue, will be placed upon a calendar for trial at the place designated in accordance with Rule 140. The Clerk shall notify the parties of the place and time for which the calendar is set.

(b) Standing Pre-Trial Order: In order to facilitate the orderly and efficient disposition of all cases on a trial calendar, at the direction of the trial judge, the Clerk shall include with the notice of trial a Standing Pre-Trial Order or other instructions for trial preparation. Unexcused failure to comply with any such order may subject a party or a party's counsel to sanctions. See, e.g., Rules 104, 123, and 202.

(c) Calendar Call: Each case appearing on a trial calendar will be called at the time and place scheduled. At the call, counsel or the parties shall indicate their estimate of the

[1]The amendments are effective as of July 1, 1990.

time required for trial. The cases for trial will thereupon be tried in due course, but not necessarily in the order listed.

Note

Paragraph (a) of Rule 132 is amended by deleting the last sentence therefrom.

Rule 132 is also amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b).

Paragraph (b) of Rule 132 is added to reflect existing practice whereby the trial judge (whether a Judge or Special Trial Judge) may direct the Clerk to include with the notice of trial a pre-trial order or other instructions for trial preparation. Such an order is designed to facilitate the orderly and efficient disposition of all cases on a trial calendar. The unexcused failure to comply with a pre-trial order may subject a party or party's counsel to sanctions. See, for example, Rules 104, 123, and 202.

The amendments of Rule 132 are effective as of July 1, 1990.

RULE 133. SPECIAL OR OTHER CALENDARS

Special or other calendars may be scheduled by the Court, upon motion or at its own initiative, for any purpose which the Court may deem appropriate. The parties involved shall be notified of the place and time of such calendars.

RULE 134. CONTINUANCES

A case or matter scheduled on a calendar may be continued by the Court upon motion or at its own initiative. A motion for continuance shall inform the Court of the position of the other parties with respect thereto, either by endorsement thereon by the other parties or by a representation of the moving party. A motion for continuance based upon the pendency in a court of a related case or cases shall 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 case, and shall identify all issues common to any such related case. 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 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).

TITLE XIV

TRIALS

RULE 140. PLACE OF TRIAL

[1](a) **Designation of Place of Trial:** The petitioner, at the time of filing the petition, shall file a designation of place of trial showing the place at which the petitioner would prefer the trial to be held. If the petitioner has not filed such designation, the Commissioner, at the time the answer is filed, shall file a designation showing the place of trial preferred by the Commissioner. The parties shall be notified of the place at which the trial will be held. For a list of places at which the Court has held trial sessions, see Appendix IV.

(b) Form: Such designation shall be set forth on a paper separate from the petition or answer and shall consist of an original and two copies. See Form 4, Appendix I.

[2](c) **Motion to Change Place of Trial:** If a party desires a change in the designation of the place of trial, then such party shall file a motion to that effect, stating fully the reasons therefor. Such motions, made after the notice of the time of trial has been issued, 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.

Note

Paragraph (a) of Rule 140 is amended to make the language gender neutral.

Paragraph (c) of Rule 140 is amended to provide that a motion to change the place of trial, made after the notice of trial has been issued, 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. On the other hand, the amendment eliminates any suggestion that a motion to change the place of trial, made after the

[1]The amendments are effective as of July 1, 1990.

[2]The amendment is effective with respect to motions to change place of trial filed in respect of cases the notice of trial for which is issued after July 1, 1990.

notice of trial has been issued, is untimely in the sense that it must be accompanied by a motion for leave to file.

Paragraph (c) of Rule 140 is also amended to make the language gender neutral and stylistically consistent.

The amendments to Rule 140 are generally effective as of July 1, 1990. However, the temporal amendments of Rule 140(c) are effective with respect to motions to change place of trial filed in respect of cases the notice of trial for which is issued after July 1, 1990.

RULE 141. CONSOLIDATION; SEPARATE TRIALS

[1](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 or 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 or 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).

[1]The amendment as to the caption is effective as of January 12, 1990. The amendment deleting the cross-reference is effective as of July 1, 1990.

Note

Paragraph (a) of Rule 141 is amended to require that 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. Thus, for example, if a party seeks to consolidate Docket Nos. 1219-88, 25157-87, and 16175-87, the caption of the motion to consolidate should include the names and docket numbers of the three cases and they should be arranged, in columnar fashion, in the following order—Docket Nos. 16175-87, 25157-87, 1219-88. In addition, paragraph (a) is amended to require that the caption of all documents subsequently filed in consolidated cases shall, unless otherwise ordered, include all of the docket numbers arranged in chronological order, but need only include the name of the oldest case with an appropriate indication of other parties. The proper arrangement of docket numbers, both in motions to consolidate and in documents subsequently filed in consolidated cases, enables the Court to more efficiently process and record such papers.

Paragraph (a) of Rule 141 is also amended to delete the cross-reference to Rule 61(a). That Rule, as amended, generally prohibits the joinder of parties. Moreover, it deals only with *prepetition* joinder. The continued inclusion of the cross-reference might have occasioned some confusion.

The amendments of Rule 141(a) generally reflect the Court's existing practice and accordingly are effective as of January 12, 1990. The amendment deleting the cross-reference to Rule 61(a) is effective as of July 1, 1990.

RULE 142. BURDEN OF PROOF

[1](a) **General:** The burden of proof shall be upon the petitioner, except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter, increases in deficiency, and affirmative defenses, pleaded in the answer, it shall be upon the respondent. As to affirmative defenses, see Rule 39.

(b) **Fraud:** In any case involving the issue of fraud with intent to evade tax, the burden of proof in respect of that issue is on the respondent, and that burden of proof is to be carried by clear and convincing evidence. Code Section 7454(a).

[2](c) **Foundation Managers; Trustees; Organization Managers:** In any case involving the issue of the knowing conduct

[1]The amendment is effective as of July 1, 1990.

[2]The amendments as to trustees are effective as of January 12, 1990, for dockets involving taxable years beginning after December 31, 1977. The amendments as to organization managers are effective as of January 12, 1990, for dockets involving taxable years beginning after December 22, 1987.

of a foundation manager as set forth in the provisions of Code Section 4941, 4944, or 4945, or the knowing conduct of a trustee as set forth in the provisions of Code Section 4951 or 4952, or the knowing conduct of an organization manager as set forth in the provisions of Code Section 4912 or 4955, the burden of proof in respect of such issue is on the respondent, and such burden of proof is to be carried by clear and convincing evidence. Code Section 7454(b).

(d) Transferee Liability: The burden of proof is on the respondent to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax. Code Section 6902(a).

(e) Accumulated Earnings Tax: Where the notice of deficiency is based in whole or in part on an allegation of accumulation of corporate earnings and profits beyond the reasonable needs of the business, the burden of proof with respect to such allegation is determined in accordance with Code Section 534. If the petitioner has submitted to the respondent a statement which is claimed to satisfy the requirements of Code Section 534(c), the Court will ordinarily, on timely motion filed after the case has been calendared for trial, rule prior to the trial on whether such statement is sufficient to shift the burden of proof to the respondent to the limited extent set forth in Code Section 534(a)(2).

Note

Paragraph (a) of Rule 142 is amended to make the language gender neutral.

Paragraph (c) of Rule 142, as well as the heading of that paragraph, is amended to reflect amendments made to Code Section 7454(b) by the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, 92 Stat. 11, and the Revenue Act of 1987, Pub. L. 100- 203, 101 Stat. 1330-382.

The amendment of Rule 142(a) is effective as of July 1, 1990. As to trustees, the amendments of Rule 142(c) are effective as of January 12, 1990, for dockets involving taxable years beginning after December 31, 1977. See section 4(f) of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, 92 Stat. 24. As to organization managers, the amendments of Rule 142(c) are effective as of January 12, 1990, for dockets involving taxable years beginning after December 22, 1987. See sections 10712(c)(6) and (d) and 10714(b) and (e) of the Revenue Act of 1987, Pub. L. 100-203, 101 Stat. 1330-467, 1330-468, 1330-471, 1330-472.

RULE 143. EVIDENCE

[1](a) **General:** Trials before the Court will be conducted in accordance with the rules of evidence applicable in trials without a jury in the United States District Court for the District of Columbia. See Code Section 7453. To the extent applicable to such trials, those rules include the rules of evidence in the Federal Rules of Civil Procedure and any rules of evidence generally applicable in the Federal courts (including the United States District Court for the District of Columbia). Evidence which is relevant only to the issue of a party's entitlement to reasonable litigation or administrative costs shall not be introduced during the trial of the case (other than a case commenced under Title XXVI of these Rules, relating to actions for administrative costs). As to claims for reasonable litigation or administrative costs and their disposition, see Rules 231 and 232. As to evidence in an action for administrative costs, see Rule 274 (and that Rule's incorporation of the provisions of Rule 177(b)).

(b) Ex Parte Statements: Ex parte affidavits, statements in briefs, and unadmitted allegations in pleadings do not constitute evidence. As to allegations in pleadings not denied, see Rules 36(c) and 37(c) and (d).

(c) Depositions: Testimony taken by deposition shall not be treated as evidence in a case until offered and received in evidence. Error in the transcript of a deposition may be corrected by agreement of the parties, or by the Court on proof it deems satisfactory to show an error exists and the correction to be made, subject to the requirements of Rules 81(h)(1) and 85(e). As to the use of a deposition, see Rule 81(i).

(d) Documentary Evidence: (1) *Copies:* A clearly legible copy of any book, record, paper, or document may be offered directly in evidence in lieu of the original, where there is no objection, or where the original is available but admission of a copy is authorized by the Court; however, unless impractical, the Court may require the submission of the original. Where the original is admitted in evidence, a clearly legible copy may be substituted later for the original

[1]The amendments are effective as of July 1, 1990.

or such part thereof as may be material or relevant, upon leave granted in the discretion of the Court.

[1](2) *Return of Exhibits:* Exhibits may be disposed of as the Court deems advisable. A party desiring the return at such party's expense of any exhibit belonging to such party, shall, within 90 days after the decision of the case by the Court has become final, make written application to the Clerk, suggesting a practical manner of delivery. If such application is not timely made, the exhibits in the case will be destroyed.

[2](e) **Interpreters:** The parties ordinarily will be expected to make their own arrangements for obtaining and compensating interpreters. However, the Court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation, which compensation shall be paid by one or more of the parties or otherwise as the Court may direct.

[3](f) **Expert Witness Reports:** (1) Unless otherwise permitted by the Court upon timely request, any party who calls an expert witness shall cause that witness to prepare a written report for submission to the Court and to the opposing party. The report shall set forth the qualifications of the expert witness and shall state the witness' opinion and the facts or data on which that opinion is based. The report shall set forth in detail the reasons for the conclusion, and it will be 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. Additional direct testimony with respect to the report may be allowed to clarify or emphasize matters in the report, to cover matters arising after the preparation of the report, or otherwise at the discretion of the Court. If not furnished earlier, each party who calls any expert witness shall furnish to 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

[1]The amendments are effective as of July 1, 1990.

[2]The amendment is effective as of July 1, 1990.

[3]The amendments are generally effective as of July 1, 1990; however, the amendment that redefines the time by which an expert witness report must be submitted to the Court and furnished to each other party is effective for cases the trial of which is scheduled to commence after July 1, 1990.

prepared pursuant to this subparagraph. An expert witness' testimony will be excluded altogether for failure to comply with the provisions of this paragraph, unless the failure is shown to be due to good cause and unless the failure does not unduly prejudice the opposing party, such as by significantly impairing the opposing party's ability to cross-examine the expert witness or by denying the opposing party the reasonable opportunity to obtain evidence in rebuttal to the expert witness' testimony.

(2) The Court ordinarily will not grant a request to permit an expert witness to testify without a written report where the expert witness' testimony is based on third-party contacts, comparable sales, statistical data, or other detailed, technical information. The Court may grant such a request, for example, where the expert witness testifies only with respect to industry practice or only in rebuttal to another expert witness.

(3) For circumstances under which the transcript of the deposition of an expert witness may serve as the written report required by subparagraph (1), see Rule 76(e)(1).

Note

Paragraph (a) of Rule 143 is amended to prohibit the introduction of evidence relevant only to the issue of reasonable administrative costs at the trial of the case (other than a case commenced under Title XXVI of the Court's Rules, relating to actions for administrative costs). Paragraph (a) is also amended to clarify the cross-reference to Rules 231 and 232 and to provide a cross-reference to Rule 274 (and that Rule's incorporation of the provisions of Rule 177(b)).

Paragraphs (d)(2) and (e) of Rule 143 are amended to make the language gender neutral.

Paragraph (f)(1) of Rule 143 is amended to increase from 15 days to 30 days before the call of the trial calendar on which the case shall appear the time by which a party must submit to the Court and furnish to each other party a copy of all expert witness reports prepared pursuant to this paragraph. (A document that is required to be furnished or submitted ordinarily is not to be filed or received into evidence at the time of furnishing or submitting, unless the Court orders that the document be filed or received into evidence at that time.) Experience has shown that 15 days is not a sufficient period of time to permit thorough consideration of an expert witness report. A 30-day period (note Rule 25(a)(2)(C) as to method of computing time) will permit more adequate trial preparation. It is also anticipated that the increased period will occasion additional settlements.

Paragraph (f)(1) is amended to make the language gender neutral and to make a stylistic change.

Paragraph (f)(2) is amended to make orthographic changes.

Paragraph (f)(3) is new. It provides a cross reference to Rule 76(e)(1) for circumstances under which the transcript of the deposition of an expert witness may serve as the written report required by paragraph (f)(1) of Rule 143.

The amendments of Rule 143 are generally effective as of July 1, 1990. However, the amendment of Rule 143(f) that redefines the time by which an expert witness report must be submitted to the Court and furnished to each other party is effective for cases the trial of which is scheduled to commence after July 1, 1999.

RULE 144. EXCEPTIONS UNNECESSARY[1]

Formal exceptions to rulings or orders of the Court are unnecessary. It is sufficient that a party at the time the ruling or order of the Court is made or sought, makes known to the Court the action which such party desires the Court to take or such party's objection to the action of the Court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice such party.

RULE 145. EXCLUSION OF PROPOSED WITNESSES[1]

(a) Exclusion: At the request of a party, the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses and it may make the order on its own motion. This Rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of such party's cause.

(b) Contempt: Among other measures which the Court may take in the circumstances, it may punish as for a contempt (1) any witness who remains within hearing of the proceedings after such exclusion has been directed, that fact being noted in the record; and (2) any person (witness,

[1]The amendments are effective as of July 1, 1990.

counsel, or party) who willfully violates instructions issued by the Court with respect to such exclusion.

RULE 146. DETERMINATION OF FOREIGN LAW[1]

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or otherwise admissible. The Court's determination shall be treated as a ruling on a question of law.

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, 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 Section 7456(a).

(b) Production of Documentary Evidence: A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but 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, or tangible things.

[1](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

[1]The amendments are effective as of July 1, 1990.

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.

[1](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), or the executed stipulation pursuant to Rule 81(d), or the service of the notice of deposition pursuant to Rule 74(b) or 75(c), 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, 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(c) or 75(d). 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 Rule 81(b)(2). As to availability of protective orders, see Rule 103; and, as to enforcement of such subpoenas, see Rule 104.

[1]The amendment of subparagraph (1) is effective with respect to subpoenas served after July 1, 1990.

(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) or 75(c) or 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), 81(e)(2), and 84(a).

[1](e) **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.

Note

Paragraphs (c) and (e) of Rule 147 are amended to make the language gender neutral.

Paragraph (d)(1) of Rule 147 is amended to increase from 10 days to 15 days the period within which a person to whom a subpoena for taking deposition has been directed may serve written objections to compliance with the subpoena. The amendment is intended to conform this period to the 15-day period set forth in Rules 74(c) and 75(d) for serving written objections to a deposition.

The amendments of Rule 147(c) and (e) are effective as of July 1, 1990. The amendment of Rule 147(d)(1) is effective with respect to subpoenas served after July 1, 1990.

RULE 148. FEES AND MILEAGE

(a) **Amount:** Any witness summoned to a hearing or trial, or whose deposition is taken, shall receive the same fees and mileage as witnesses in the United States District Courts.

[2](b) **Tender:** No witness, other than one for the Commissioner, shall be required to testify until the witness shall have been tendered the fees and mileage to which the witness is entitled according to law. With respect to witnesses for the Commissioner, see Code Section 7457(b)(1).

(c) **Payment:** The party at whose instance a witness appears shall be responsible for the payment of the fees and mileage to which that witness is entitled.

[1]The amendment is effective as of July 1, 1990.
[2]The amendments are effective as of July 1, 1990.

RULE 149. FAILURE TO APPEAR OR TO ADDUCE EVIDENCE[1]

(a) Attendance at Trials: The unexcused absence of a party or a party's counsel when a case is called for trial will not be ground for delay. The case may be dismissed for failure properly to prosecute, or the trial may proceed and the case be regarded as submitted on the part of the absent party or parties.

(b) Failure of Proof: Failure to produce evidence, in support of an issue of fact as to which a party has the burden of proof and which has not been conceded by such party's adversary, may be ground for dismissal or for determination of the affected issue against that party. Facts may be established by stipulation in accordance with Rule 91, but the mere filing of such stipulation does not relieve the party, upon whom rests the burden of proof, of the necessity of properly producing evidence in support of facts not adequately established by such stipulation. As to submission of a case without trial, see Rule 122.

RULE 150. RECORD OF PROCEEDINGS

(a) General: Hearings and trials before the Court shall be stenographically reported or otherwise recorded, and a transcript thereof shall be made if, in the opinion of the Court or the Judge presiding at a hearing or trial, a permanent record is deemed appropriate. Transcripts shall be supplied to the parties and other persons at such charges as may be fixed or approved by the Court.

(b) Stenographic Transcript as Evidence: Whenever the testimony of a witness at a trial or hearing which was stenographically reported or otherwise recorded is admissible in evidence at a later trial or hearing, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

RULE 151. BRIEFS

(a) General: Briefs shall be filed after trial or submission of a case, except as otherwise directed by the presiding

[1]The amendments are effective as of July 1, 1990.

Judge. In addition to or in lieu of briefs, the presiding Judge may permit or direct the parties to make oral argument or file memoranda or statements of authorities.

[1](b) **Time for Filing Briefs:** Briefs may be filed simultaneously or seriatim, as the presiding Judge directs. The following times for filing briefs shall prevail in the absence of any different direction by the presiding Judge:

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

(2) *Seriatim Briefs:* Opening brief 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 except on leave granted by the Court. A motion for extension of time for filing any brief shall be made prior to the due date and shall recite that the moving party has advised such party's adversary and whether or not such adversary objects to the motion. As to the effect of extensions of time, see Rule 25(c).

[1](c) **Service:** Each brief will be served by the Clerk promptly upon the opposite party after it is filed, except where it bears a notation that it has already been served by the party submitting it, and except that, in the event of simultaneous briefs, such brief will not be served until the corresponding brief of the other party has been filed, unless the Court directs otherwise. Delinquent briefs will not be accepted unless accompanied by a motion setting forth reasons deemed sufficient by the Court to account for the delay. In the case of simultaneous briefs, the Court may refuse to receive a delinquent brief from a party after such party's adversary's brief has been served upon such party.

(d) **Number of Copies:** A signed original and two copies of each brief, plus an additional copy for each person to be served, shall be filed.

[1](e) **Form and Content:** All briefs shall 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

[1]The amendments are effective as of July 1, 1990.

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 be complete and shall 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, 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 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).

RULE 152. ORAL FINDINGS OF FACT OR OPINION

[1]**(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 7443A(b)(2) or (3) 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 be recorded in the transcript of the trial. The pages of the

[1]The amendments are generally effective as of July 1, 1990, except that the amendment revising the statutory reference is effective as of October 22, 1986.

transcript that contain such findings of fact or opinion (or a written summary thereof) shall be served by the Clerk upon all parties.

[1](c) **Citation:** Opinions stated orally in accordance with paragraph (a) of this Rule shall not be cited or relied upon as precedent. However, such opinions (including findings of fact) may be referred to for purposes of the application of the doctrine of res judicata, collateral estoppel, or law of the case.

Note

Paragraph (a) of Rule 152 is amended to reflect the enactment of Code Section 7443A by Section 1556(a) of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085, 2754-2755. Provisions pertaining to the authority of Special Trial Judges to make the decision of the Court are now set forth in Code Section 7443A(b) and (c), rather than in Section 7456(d). See Section 1556(b)(1) of that Act, 100 Stat. at 2755.

Paragraph (a) is also amended to make the language gender neutral.

Paragraph (c) of Rule 152 is amended to correct a typographical error.

The amendments of Rule 152(a) and (c) are generally effective as of July 1, 1990. However, the amendment of Rule 152(a) revising the statutory reference is effective as of October 22, 1986, the date of enactment of the Tax Reform Act of 1986. See Section 1556(c)(1) of that Act, 100 Stat. at 2755.

TITLE XV

DECISION[2]

RULE 155. COMPUTATION BY PARTIES FOR ENTRY OF DECISION

[3](a) **Agreed Computations:** Where the Court has filed or stated its opinion determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount of the deficiency, liability, or overpayment to be entered as the decision. If the parties are in agreement as to the amount of

[1]The amendment is effective as of July 1, 1990.

[2]For statutory provisions relating to entry, date, and finality of decision, see Code Sections 7459, 7463(b), and 7481.

[3]The amendments are effective as of July 1, 1990.

the deficiency or overpayment to be entered as the decision pursuant to the findings and conclusions of the Court, then they, or either of them, shall file promptly with the Court an original and two copies of a computation showing the amount of the deficiency, liability, or overpayment and that there is no disagreement that the figures shown are in accordance with the findings and conclusions of the Court. In the case of an overpayment, the computation shall also include the amount and date of each payment made by the petitioner. The Court will then enter its decision.

[1](b) **Procedure in Absence of Agreement:** If, however, the parties are not in agreement as to the amount of the deficiency, liability, or overpayment to be entered as the decision in accordance with the findings and conclusions of the Court, then either of them may file with the Court a computation of the deficiency, liability, or overpayment believed by such party to be in accordance with the Court's findings and conclusions. In the case of an overpayment, the computation shall also include the amount and date of each payment made by the petitioner. The Clerk will serve upon the opposite party a notice of such filing accompanied by a copy of such computation. If the opposite party fails to file objection, accompanied or preceded by an alternative computation, then, on or before a date specified in the Clerk's notice, the Court may enter decision in accordance with the computation already submitted. If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, then the parties may, at the Court's discretion, be afforded an opportunity to be heard in argument thereon and the Court will determine the correct deficiency, liability, or overpayment and will enter its decision accordingly.

(c) **Limit on Argument:** Any argument under this Rule will be confined strictly to consideration of the correct computation of the deficiency, liability, or overpayment resulting from the findings and conclusions made by the Court, and no argument will be heard upon or consideration given to the issues or matters disposed of by the Court's findings and conclusions or to any new issues. This Rule is

[1]The amendments are effective as of July 1, 1990.

not to be regarded as affording an opportunity for retrial or reconsideration.

Note

Paragraphs (a) and (b) of Rule 155 are amended to provide that in the case of an overpayment, every computation for entry of decision, whether agreed or unagreed, shall include the amount and date of each payment made by the petitioner. This requirement is intended to provide a factual predicate to help resolve any later dispute that might arise involving the Commissioner's failure to refund the determined overpayment and interest. In this regard see Rule 260, which sets forth the procedures governing a proceeding to enforce an overpayment determination. Of course, the amount of payments made by the petitioner is also directly relevant to the computation of the overpayment and the determination thereof under Code Section 6512(b)(1).

Paragraphs (a) and (b) are also amended to make the language stylistically consistent.

Paragraph (b) is also amended to make the language gender neutral.

The amendments of Rule 155(a) and (b) are effective as of July 1, 1990.

RULE 156. ESTATE TAX DEDUCTION DEVELOPING AT OR AFTER TRIAL[1]

If the parties in an estate tax case are unable to agree under Rule 155, or under a remand, upon a deduction involving expenses incurred at or after the trial, then any party may move to reopen the case for further trial on that issue.

RULE 157. MOTION TO RETAIN FILE IN ESTATE TAX CASE INVOLVING SECTION 6166 ELECTION[2]

In any estate tax case in which the time for payment of an amount of tax imposed by Code Section 2001 has been extended under Code Section 6166, the petitioner shall, after the decision is entered but before it becomes final, move the Court to retain the Court's official case file pending the commencement of any supplemental proceeding under Rule 262.

[1]The amendment is effective as of July 1, 1990.

[2]New Rule 157 is effective with respect to cases for which the Court's decision has not yet become final before July 1, 1990.

Note

Rule 157 is a new rule. It is intended to complement Rule 262 by alerting the Court to the necessity of preserving its entire official case file for such use as may be necessary in a proceeding to modify a decision in an estate tax case pursuant to Code Section 7481(d). The Court's Records Retention, Retirement, and Destruction Schedule is such that the entire case file might not be available at the time such a proceeding is commenced if the need to preserve it is not brought to the Court's attention in a timely fashion. Relatively few estate tax cases involve elections under Code Section 6166 and as a practical matter the Court lacks space to indefinitely warehouse all estate tax case files. Accordingly, Rule 157 provides that in any estate tax case involving an election under Code Section 6166 the petitioner shall move the Court to retain the Court's official case file pending the commencement of any supplemental proceeding under Rule 262. Such a motion should be filed after the Court enters its decision in the deficiency action but before the date the decision becomes final within the meaning of Code Section 7481.

Although Rule 157 places the responsibility of filing the requisite motion on the petitioner, the Rule does not preclude the Commissioner from filing such a motion, nor does it preclude the parties from filing a joint motion.

Rule 157 is effective with respect to cases for which the Court's decision has not yet become final before July 1, 1990.

TITLE XVI

POST-TRIAL PROCEEDINGS

RULE 160. HARMLESS ERROR

No error in either the admission or exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a decision or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of a case will disregard any error or defect which does not affect the substantial rights of the parties.

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 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 (or a written summary thereof) have been served, unless the Court shall otherwise permit.

RULE 162. MOTION TO VACATE OR REVISE DECISION

Any motion to vacate or revise a decision, with or without a new or further trial, shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit.

RULE 163. NO JOINDER OF MOTIONS UNDER RULES 161 AND 162

Motions under Rules 161 and 162 shall be made separately from each other and not joined to or made part of any other motion.

TITLE XVII

SMALL TAX CASES

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 to small tax cases as defined in Rule 171. See Code Section 7463 (Appendix II). Except as otherwise provided in these Small Tax Case Rules, the other rules of practice of the Court are applicable to such cases.

RULE 171. SMALL TAX CASE DEFINED[1]

The term "small tax case" means a case in which:

(a) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds—

(1) $10,000 for any one taxable year in the case of income taxes,

[1]The amendments are effective as of July 1, 1990.

(2) $10,000 in the case of estate taxes,

(3) $10,000 for any one calendar year in the case of gift taxes, or

(4) $10,000 for any one taxable period or, if there is no taxable period, for any taxable event in the case of excise taxes under Code Chapter 41, 42, 43, or 44 (taxes on certain organizations and persons dealing with them) or under Code Chapter 45 (windfall profit tax);

(b) The petitioner has made a request in accordance with Rule 172 to have the proceedings conducted under Code Section 7463; and

(c) The Court has not entered an order in accordance with Rule 172(c) or Rule 173, discontinuing the proceedings in the case under Code Section 7463.

RULE 172. ELECTION OF SMALL TAX CASE PROCEDURE[1]

With respect to classification of a case as a small tax case under Code Section 7463, the following shall apply:

(a) A petitioner who wishes to have the proceeding in the case conducted under Code Section 7463 may so request at the time the petition is filed. See Rule 175.

(b) A petitioner may, at any time after the petition is filed and before trial, request that the proceedings be conducted under Code Section 7463.

(c) If such request is made in accordance with the provisions of this Rule 172, 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, at any time before the trial commences, enter an order directing that the small tax case designation shall be removed and that the proceedings shall not be conducted under the Small Tax Case Rules. If no such order is entered, then the petitioner will be considered to have exercised the petitioner's option and the Court shall be deemed to have concurred therein, in accordance with Code Section 7463, at the commencement of the trial.

[1]The amendments are effective as of July 1, 1990.

RULE 173. DISCONTINUANCE OF PROCEEDINGS

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section 7463, and that the case be tried under the Rules of Practice other than the Small Tax Case Rules, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed $10,000 and (2) the Court finds that justice requires the discontinuance of the proceedings under Code Section 7463, taking into consideration the convenience and expenses for both parties that would result from the order.

RULE 174. REPRESENTATION[1]

A petitioner in a small tax case may appear without representation or may be represented by any person admitted to practice before the Court. As to representation, see Rule 24.

RULE 175. PLEADINGS

(a) Petition: (1) *Form and Content:* The petition in a small tax case shall be substantially in accordance with Form 2 shown in Appendix I, or shall, in the alternative, comply with the requirements of Rule 34(b), and contain additionally (A) the location of the office of the Internal Revenue Service which issued the deficiency notice, (B) the taxpayer identification number (e.g., social security number) of each petitioner, and (C) a request that the proceedings be conducted under Code Section 7463.

[1](2) *Filing Fee:* The fee for filing a petition shall be $60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information the inability to make such payment.

(3) *Verification Not Required:* The petition need not be verified, unless the Court directs otherwise.

[1]The amendment is effective as of July 1, 1990.

(b) Answer: No answer is required to be filed in a small tax case, except where there is an issue on which the Commissioner bears the burden of proof or where the Court otherwise directs. Where an answer is filed, the provisions of Rule 36 shall apply. In a case where no answer is filed, the allegations of error and facts relating thereto set forth in the petition shall be deemed denied.

(c) Reply: A reply to the answer shall not be filed unless the Court, on its own motion or upon motion of the Commissioner, shall otherwise direct. Any reply shall conform to the requirements of Rule 37(b). In the absence of a requirement of a reply, the provisions of the second sentence of Rule 37(c) shall not apply and the affirmative allegations of the answer will be deemed denied.

RULE 176. PRELIMINARY HEARINGS[1]

If, in a small tax case, it becomes necessary to hold a hearing on a motion or other preliminary matter, the parties may submit their views in writing and may, but shall not ordinarily be required to, appear personally at such hearing. However, if the Court deems it advisable for the petitioner or the petitioner's counsel to appear personally, the Court will so notify the petitioner or the petitioner's counsel and will make every effort to schedule such a hearing at a place convenient to them.

RULE 177. TRIAL

[1](a) Place of Trial: At the time of filing the petition, the petitioner may, in accordance with Form 4 in Appendix I or by other separate writing, designate the place where the petitioner would prefer the trial to be held. If the petitioner has not filed such a designation, then the Commissioner shall, within 30 days after the date of service of the petition, file a designation showing the place of trial preferred by the Commissioner. The Court will make every effort to conduct the trial at the location most convenient to that designated where suitable facilities are available.

(b) Conduct of Trial and Evidence: Trials of small tax cases will be conducted as informally as possible consistent

[1]The amendments are effective as of July 1, 1990.

with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible.

(c) **Briefs:** Neither briefs nor oral arguments will be required in small tax cases, but the Court on its own motion or upon request of either party may permit the filing of briefs or memorandum briefs.

RULE 178. TRANSCRIPTS OF PROCEEDINGS

The hearing in, or trial of, a small tax case shall be stenographically reported or otherwise reported but a transcript thereof need not be made unless the Court otherwise directs.

RULE 179. NUMBER OF COPIES OF PAPERS

Only an original and two conformed copies of any paper need be filed in a small tax case. An additional copy shall be filed for each additional docketed case which has been, or is requested to be, consolidated.

TITLE XVIII

SPECIAL TRIAL JUDGES

RULE 180. ASSIGNMENT

The Chief Judge may from time to time designate a Special Trial Judge (see Rule 3(d)) 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.

RULE 181. POWERS AND DUTIES[1]

Subject to the specifications and limitations in orders designating Special Trial Judges and in accordance with the applicable provisions of these Rules, Special Trial Judges have and shall exercise the power to regulate all proceedings in any matter before them, including the conduct of trials, pretrial conferences, and hearings on motions, and to do all acts and take all measures necessary or proper for the

[1]The amendments are effective as of July 1, 1990.

efficient performance of their duties. They may require the production before them of evidence upon all matters embraced within their assignment, including the production of all books, papers, vouchers, documents, and writings applicable thereto, and they have the authority to put witnesses on oath and to examine them. Special Trial Judges may rule upon the admissibility of evidence, in accordance with provisions of Code Sections 7453 and 7463, and may exercise such further and incidental authority, including ordering the issuance of subpoenas, as may be necessary for the conduct of trials or other proceedings.

RULE 182. CASES INVOLVING $10,000 OR LESS

Except as otherwise directed by the Chief Judge, the following procedure shall be observed in small tax cases (as defined in Rule 171) and in all other 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 $10,000:

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

(b) Other Cases Involving $10,000 or Less: Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, 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 $10,000 shall, as soon after such trial as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge.

(c) Decision: The Chief Judge may authorize the Special Trial Judge to make the decision of the Court in any small

[1]The amendment is effective as of July 1, 1990.

tax case (as defined in Rule 171) and in any other 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 $10,000, subject to such conditions and review as the Chief Judge may provide.

RULE 183. CASES INVOLVING MORE THAN $10,000[1]

Except in cases subject to the provisions of Rule 182 or as otherwise provided, the following procedure shall be observed in cases tried before a Special Trial Judge:

(a) **Trial and Briefs:** A Special Trial Judge shall conduct the trial of any such case assigned for such purpose. After such trial, the parties shall submit their briefs in accordance with the provisions of Rule 151. Unless otherwise directed, no further briefs shall be filed.

(b) **Special Trial Judge's Report:** After all the briefs have been filed by all the parties or the time for doing so has expired, the Special Trial Judge shall submit a report, including findings of fact and opinion, to the Chief Judge, and the Chief Judge will assign the case to a Judge or Division of the Court.

(c) **Action on the Report:** The Judge to whom or the Division to which the case is assigned may adopt the Special Trial Judge's report or may modify it or may reject it in whole or in part, or may direct the filing of additional briefs or may receive further evidence or may direct oral argument, or may recommit the report with instructions. Due regard shall be given to the circumstance that the Special Trial Judge had the opportunity to evaluate the credibility of witnesses, and the findings of fact recommended by the Special Trial Judge shall be presumed to be correct.

[1]The amendments are effective as of July 1, 1990.

TITLE XIX

APPEALS

RULE 190. HOW APPEAL TAKEN[1]

(a) General: Review of a decision of the Court by a United States Court of Appeals is obtained by filing a notice of appeal and the required filing fee with the Clerk of the Tax Court within 90 days after the decision is entered. If a timely notice of appeal is filed by one party, then any other party may take an appeal by filing a notice of appeal within 120 days after the Court's decision is entered. Code Section 7483. For other requirements governing such an appeal, see Rules 13 and 14 of the Federal Rules of Appellate Procedure. A suggested form of the notice of appeal is contained in Appendix I. See Code Section 7482(a).

(b) Dispositive Orders: (1) *Entry and Appeal:* A dispositive order, including (A) an order granting or denying a motion to restrain assessment or collection, made pursuant to Code Section 6213(a), and (B) an order granting or denying a motion for review of a proposed sale of seized property, made pursuant to Code Section 6863(b)(3)(C), shall be entered upon the record of the Court and served forthwith by the Clerk. Such an order shall be treated as a decision of the Court for purposes of appeal.

(2) *Stay of Proceedings:* Unless so ordered, proceedings in the Tax Court shall not be stayed by virtue of any order entered under Code Section 6213(a) that is or may be the subject of an appeal pursuant to Code Section 7482(a)(3) or any order entered under Code Section 6863(b)(3)(C) that is or may be the subject of an appeal.

(c) Venue: For the circuit of the Court of Appeals to which the appeal is to be taken, see Code Section 7482(b).

(d) Interlocutory Orders: For provisions governing appeals from interlocutory orders, see Rule 193.

[1]The amendments are generally effective as of July 1, 1990. However, paragraph (b)(1) and the filing fee amendment to paragraph (a) are effective as of January 12, 1990.

Note

Rule 190 is amended by amending paragraph (a), by redesignating former paragraph (b) as paragraph (c), and by inserting new paragraphs (b) and (d).

Paragraph (a) of Rule 190 is amended to provide that the required filing fee accompany the notice of appeal whenever a party seeks review of a decision of the Court by a United States Court of Appeals. For provisions relating to the fee for filing a notice of appeal, see Rules 3(e), 13, and 14 of the Federal Rules of Appellate Procedure. See also Section 1913, 28 U.S.C. Paragraph (a) also is amended to make the language stylistically consistent.

Paragraph (b) of Rule 190 deals with dispositive orders. Subparagraph (l) thereof is declarative of existing practice regarding the appeal of such orders. It provides that a dispositive order shall be entered upon the record of the Court and served forthwith by the Clerk. It also provides that such an order shall be treated as a decision of the Court for purposes of appeal. Paragraph (a) of the Rule sets forth the procedure governing the appeal of a decision of the Court. Historically, the Court has entered dispositive orders upon its records and they have been treated as decisions for purposes of appeal. Paragraph (b)(1) now reflects this practice.

Paragraph (b)(1) also defines a dispositive order to include (1) an order granting or denying a motion to restrain assessment or collection, made pursuant to Code Section 6213(a) (see Code Section 7482(a)(3) and Rule 55 and the Note thereto) and (2) an order granting or denying a motion for review of a proposed sale of seized property, made pursuant to Code Section 6863(b)(3)(C) (see Rule 57 and the Note thereto). Dispositive orders also include orders granting motions for summary judgment, orders of dismissal for lack of jurisdiction, and orders of dismissal and decision. By virtue of the amendments made to Code Section 7481(c) and (d) by Sections 6246(a) and 6247(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, 3751-3752, orders redetermining the interest due on deficiencies assessed under Code Section 6215 and orders disposing of motions to modify decisions in estate tax cases in which elections under Code Section 6166 have been made to extend the time for payment of estate tax are also dispositive orders. (For procedures governing supplemental proceedings to redetermine interest on deficiencies and to modify decisions in estate tax cases involving elections under Code Section 6166, see Rules 261 and 262, respectively.) Of course, the scope of review on appeal of dispositive orders entered pursuant to Code Section 7481(c) and (d) is limited to the matters determined in those orders.

Unlike subparagraph (1), subparagraph (2) of paragraph (b) deals only with two specific types of dispositive orders, i.e., those granting or denying motions to restrain assessment or collection made pursuant to Code Section 6213(a) and those granting or denying motions for the review of proposed sales of seized property. Subparagraph (2) provides that neither the entry nor the appeal of such orders shall serve to automatically stay proceedings related to the redetermination of the

deficiency. Of course, such proceedings may be stayed by order in appropriate circumstances.

In order to avoid confusion, paragraph (d) has been added to provide a cross-reference to Rule 193, relating to appeals from interlocutory orders. It is Rule 193, rather than Rule 190, that sets forth the procedures governing appeals from interlocutory orders.

The amendments to Rule 190 are generally effective as of July 1, 1990. However, paragraph (b)(1) and the filing fee amendment to paragraph (a) of the Rule are effective as of January 12, 1990.

RULE 191. PREPARATION OF THE RECORD ON APPEAL[1]

The Clerk will prepare the record on appeal and forward it to the Clerk of the Court of Appeals pursuant to the notice of appeal filed with the Court, in accordance with Rules 10 and 11 of the Federal Rules of Appellate Procedure. In addition, at the time the Clerk forwards the record on appeal to the Clerk of the Court of Appeals, the Clerk shall forward to each of the parties a copy of the index to the record on appeal.

RULE 192. BOND TO STAY ASSESSMENT AND COLLECTION

The filing of a notice of appeal does not stay assessment or collection of a deficiency redetermined by the Court unless, on or before the filing of the notice of appeal, a bond is filed with the Court in accordance with Code Section 7485. For forms of bonds, see Appendix I; for forms of power of attorney used with United States Bonds as collateral, see Appendix I.

RULE 193. APPEALS FROM INTERLOCUTORY ORDERS

(a) General: For the purpose of seeking the review of any order of the Tax Court which is not otherwise immediately appealable, a party may request the Court to include, or the Court on its own motion may include, a statement in such order that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order

[1]The amendment is effective as of July 1, 1990.

may materially advance the ultimate termination of the litigation. Any such request by a party shall be made by motion which shall set forth with particularity the grounds therefor and note whether there is any objection thereto. Any order by a Judge or Special Trial Judge of the Tax Court which includes the above statement shall be entered upon the records of the Court and served forthwith by the Clerk. See Code Section 7482(a)(2). For appeals from interlocutory orders generally, see Rules 5 and 14 of the Federal Rules of Appellate Procedure.

(b) Venue: For the circuit of the Court of Appeals to which an appeal from an interlocutory order may be taken, see Code Section 7482(a)(2)(B) and 7482(b).

(c) Stay of Proceeding: Unless so ordered, proceedings in the Tax Court shall not be stayed by virtue of any interlocutory order that is or may be the subject of an appeal. See Code Section 7482(a)(2)(A).

TITLE XX

PRACTICE BEFORE THE COURT

RULE 200. ADMISSION TO PRACTICE AND PERIODIC REGISTRATION FEE

[1]**(a) Qualifications:** (1) *General:* An applicant for admission to practice before the Court must establish to the satisfaction of the Court that the applicant is of good moral character and repute and is possessed of the requisite qualifications to represent others in the preparation and trial of cases. In addition, the applicant must satisfy the further requirements of this Rule 200.

(2) *Attorneys:* An attorney at law may be admitted to practice upon filing with the Admissions Clerk a completed application accompanied by a fee of $25 and a current certificate from the Clerk of the appropriate court, showing that the applicant has been admitted to practice before and is a member in good standing of the Bar of the Supreme Court of the United States, or of the highest or appropriate court of any State or of the District of Columbia, or any

[1]The amendments are effective as of July 1, 1990.

commonwealth, territory, or possession of the United States. A current court certificate is one executed within 90 calendar days preceding the date of the filing of the application.

(3) *Other Applicants:* An applicant, not an attorney at law, must file with the Admissions Clerk a completed application accompanied by a fee of $25. In addition, such an applicant, as a condition of being admitted to practice, must give evidence of the applicant's qualifications satisfactory to the Court by means of a written examination given by the Court, and the Court may require such person, in addition, to give similar evidence by means of an oral examination. Any person who has thrice failed to give such evidence by means of such written examination shall not thereafter be eligible to take another examination for admission.

(b) Application: An application for admission to practice before the Court must be on the form provided by the Court. Application forms and other necessary information will be furnished upon request addressed to the Admissions Clerk, United States Tax Court, 400 Second St., N.W., Washington, D.C. 20217.

[1]**(c) Sponsorship:** An applicant for admission by examination must be sponsored by at least two persons theretofore admitted to practice before this Court, and each sponsor must send a letter of recommendation directly to the Admissions Clerk of the Court, where it will be treated as a confidential communication. The sponsor shall send this letter promptly after the applicant has been notified that he or she has passed the written examination required by paragraph (d). The sponsor shall state fully and frankly the extent of the sponsor's acquaintance with the applicant, the sponsor's opinion of the moral character and repute of the applicant, and the sponsor's opinion of the qualifications of the applicant to practice before this Court. The Court may in its discretion accept such an applicant with less than two such sponsors.

[1]**(d) Written Examinations:** Written examinations, for applicants other than attorneys at law, will be held no less often than every two years. By public announcement at least six months prior to the date of the examination, the

[1]The amendments are effective as of July 1, 1990.

Court will announce the time and place of such examination. The Court will notify each applicant, whose application is in order, of the time and place at which the applicant is to be present for examination, and the applicant must present that notice to the examiner as authority for taking such an examination.

(e) **Checks and Money Orders:** Where the application fee is paid by check or money order, it shall be made payable to the order of the "Clerk, United States Tax Court."

(f) **Admission:** Upon approval of an application for admission and satisfaction of the other applicable requirements, an applicant will be admitted to practice before the Court upon taking and subscribing the oath or affirmation prescribed by the Court. Such an applicant shall thereupon be entitled to a certificate of admission.

(g) **Change of Address:** Each person admitted to practice before the Court shall promptly notify the Admissions Clerk of any change in office address for mailing purposes. See also Rule 21(b)(4) regarding the filing of a separate notice for each docket number in which such person has entered an appearance.

(h) **Corporations and Firms Not Eligible:** Corporations and firms will not be admitted to practice or recognized before the Court.

(i) **Periodic Registration Fee:** (1) Each practitioner admitted to practice before the Court shall pay a periodic registration fee. The frequency and amount of such fee shall be determined by the Court, except that such amount shall not exceed $30 per calendar year. The Clerk of the Court shall maintain an Ineligible List containing the names of all practitioners failing to comply with the provisions of this Rule. No practitioner shall be permitted to commence a case in the Court or enter an appearance in a pending case while on the Ineligible List. The name of any practitioner appearing on the Ineligible List shall not be removed from the List until the currently due registration fee has been paid and all arrearages have been made current. The periodic registration fee must be paid by all persons admitted to practice before the Court, whether or not engaged in private practice. As to forms of payment, see Rule 11.

(2) The fees described in Rule 200(i)(1) shall be used by the Court to employ independent counsel to pursue disciplinary matters.

Note

Paragraphs (a) and (d) of Rule 200 are amended to make the language gender neutral and to make an orthographic change.

Paragraph (c) of Rule 200 is amended in order to facilitate the admission of non-attorney applicants to the bar of the Court. Henceforth, such applicants need be sponsored by only two, rather than three, members of the Court's bar. This reduction in the number of sponsors conforms the Court's sponsorship requirement to that of most other courts. Moreover, the sponsors' letters of recommendation should not be furnished until after the applicant has been notified that he or she has passed the written examination required by paragraph (a)(3) of Rule 200. As a result, the applicant will need to solicit sponsors only if he or she passes that examination.

The amendments are effective as of July 1, 1990.

RULE 201. CONDUCT OF PRACTICE BEFORE THE COURT[1]

(a) General: Practitioners before the Court shall carry on their practice in accordance with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association.

(b) Statement of Employment: The Court may require any practitioner before it to furnish a statement, under oath, of the terms and circumstances of his or her employment in any case.

RULE 202. DISQUALIFICATION, SUSPENSION, OR DISBARMENT

[1]**(a) General:** The Court may deny admission to its Bar to, or suspend, or disbar, any person who in its judgment does not possess the requisite qualifications to represent others, or who is lacking in character, integrity, or proper professional conduct. Upon the conviction of any practitioner admitted to practice before this Court for a criminal violation of any provision of the Internal Revenue Code or for any crime involving moral turpitude, or where any

[1]The amendments are effective as of July 1, 1990.

practitioner has been suspended or disbarred from the practice of his or her profession in any State or the District of Columbia, or any commonwealth, territory, or possession of the United States, the Court may, in the exercise of its discretion, forthwith suspend such practitioner from the Bar of this Court until further order of Court; but otherwise no person shall be suspended for more than 60 days or disbarred until such person has been afforded an opportunity to be heard. A Judge of the Court may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any trial or hearing.

[1](b) **Disciplinary Proceedings:** (1) *Referral to Counsel:* When misconduct or allegations of misconduct which, if substantiated, would warrant discipline of a practitioner shall come to the attention of the Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules (see paragraph (a) of this Rule), the Court, in its discretion, may refer the matter to counsel to the Court (appointed pursuant to the provisions of paragraph (d) of this Rule) for investigation and the prosecution of a formal disciplinary proceeding or the formation of such other recommendation as may be appropriate.

(2) *Investigation and Recommendation:* If counsel concludes after investigation and review that a formal disciplinary proceeding should not be initiated against the practitioner because sufficient evidence is not present, or because there is pending another proceeding against the practitioner, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, then counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefor.

(3) *Initiation of Proceedings:* To initiate formal disciplinary proceedings, the Court shall enter an order (or, where counsel is appointed, such counsel shall obtain an order of the Court upon a showing of probable cause) requiring the practitioner to show cause within 30 days after service of

[1]The amendments of subparagraphs (2) and (4) are effective as of July 1, 1990.

that order upon that practitioner, why the practitioner should not be disciplined.

(4) *Hearing:* Upon the practitioner's answer to the order to show cause, if any issue of fact is raised or the practitioner wishes to be heard in mitigation, then this Court shall set the matter for prompt hearing before one or more Judges of this Court. However, if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, then the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge.

(5) *Right to Counsel:* In all proceedings conducted under the provisions of this Rule, the practitioner shall have the right to be represented by counsel.

(c) Reinstatement: (1) *After Disbarment or Suspension:* A practitioner suspended for 60 days or less shall be automatically reinstated at the end of the period of suspension. A practitioner suspended for more than 60 days or disbarred may not resume practice until reinstated by order of this Court.

[1](2) *Hearing on Application:* A petition for reinstatement by a disbarred or suspended practitioner under this Rule shall be filed with the Court. Upon receipt of the petition, the Court may promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more Judges of this Court. However, if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, then the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge. The Judge or Judges assigned to the matter shall, as promptly as the Court's business shall permit, schedule a hearing at which the practitioner shall have the burden of demonstrating by clear and convincing evidence that the practitioner has the moral qualifications, competency, and learning in the law required for admission to practice before this Court and that the practitioner's resumption of such practice will not be detrimental to the integrity and standing of the Bar or to the administration of justice, or subversive of the public interest.

[1]The amendments are effective as of July 1, 1990.

(3) *Successive Petitions:* No petition for reinstatement under this Rule shall be filed within 1 year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.

[1](d) **Presentation to the Court:** When counsel is to be appointed pursuant to this Rule to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a practitioner, this Court shall appoint as counsel to the Court a member of the Bar of this Court who is a resident of or who practices in the same Federal judicial circuit (see 28 U.S.C. Section 41), except the Federal Circuit, as the Federal judicial circuit which includes the practitioner's place of residence or practice. The practitioner may move to disqualify a person so appointed for cause, for example, if such person is or has been engaged as an adversary of the practitioner in any matter. Counsel, once appointed, may not resign unless permission to do so is given by the Court.

(e) **Jurisdiction:** Nothing contained in this Rule shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Code Section 7456.

TITLE XXI

DECLARATORY JUDGMENTS[2]

Prefatory Note

Title XXI is amended to delete all references to and procedures involving declaratory judgment actions relating to exchanges described in Section 367(a)(1) of the Internal Revenue Code of 1954. Section 7477 of the Internal Revenue Code of 1954, which provided the jurisdictional basis for such actions, was repealed by Section 131(e)(1) of the Tax Reform Act of 1984, Pub. L. 98-369, 98 Stat. 494, 664. The repeal applies generally to transfers or exchanges after December 31, 1984, in tax years ending after that

[1]The amendment is effective as of July 1, 1990.

[2]The amendments are generally effective as of July 1, 1990. However, the amendment to the lead-in language of Rule 215(a) is effective with respect to petitions filed after July 1, 1990.

date. No cases commenced pursuant to Section 7477 of the Internal Revenue Code of 1954 are pending in the Court and no new cases are expected.

The amendments to Title XXI, as described in the foregoing paragraph, have necessitated the relettering and renumbering of certain of the subdivisions of the Rules in this Title, and of cross-references to these subdivisions.

In addition to the foregoing, Title XXI is amended to make the language gender neutral. Moreover, paragraph (b)(1) of Rule 210 is amended to update the statutory reference. Also, paragraph (b) of Rule 211 is amended to make the language stylistically consistent. Also, paragraphs (c)(2)(G), (d)(8) (formerly (e)(8)), and (e)(8) (formerly (f)(8)) of Rule 211 are amended to require inclusion of counsel's Tax Court bar number. Also, the final flush language of paragraph (e), formerly paragraph (f), of Rule 211 is amended to make clear that a claim for reasonable administrative costs is not to be included in the petition in an exempt organization action. Also, the lead-in language of Rule 215(a) is modified in light of the changes being made to Rule 61(a). Finally, Rule 217 is amended to make the language stylistically consistent.

The amendments to Title XXI are generally effective as of July 1, 1990. However, the amendment to the lead-in language of Rule 215(a) is effective with respect to petitions filed after July 1, 1990.

RULE 210. GENERAL

[1](a) **Applicability:** The Rules of this Title XXI set forth the special provisions which apply to declaratory judgment actions, relating to the qualification of retirement plans, the status of certain governmental obligations, and the initial or continuing qualification of certain exempt organizations or the initial or continuing classification of certain private foundations. 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.

[1](b) **Definitions:** As used in the Rules in this Title—

[1]The amendments are effective as of July 1, 1990.

(1) "Retirement plan" has the meaning provided by Code Section 7476(c).

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

(3) "Exempt organization" is an organization described in Code Section 501(c)(3) which is exempt from tax under Code Section 501(a) or is an organization described in Code Section 170(c)(2).

(4) "Private foundation" is an organization described in Code Section 509(a).

(5) "Private operating foundation" is an organization described in Code Section 4942(j)(3).

(6) 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.

(7) A "determination" means—

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

(B) A determination as to whether prospective governmental obligations are described in Code Section 103(a); or

(C) 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.

(8) 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.

(9) "Action for declaratory judgment" is either a retirement plan action, a governmental obligation 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 with respect to the initial or continuing qualification of a retirement plan.

(B) A "governmental obligation action" means an action for declaratory judgment provided for in Code Section 7478 with respect to the status of certain prospective governmental obligations.

(C) An "exempt organization action" means a declaratory judgment action provided for in Code Section 7428 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) "Administrative record" includes 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 protests, all pertinent returns filed with the Internal Revenue Service, and the notice of determination by the Commissioner. In addition—

(A) In the case of a determination relating to a retirement plan, the administrative record shall include the retirement plan and any related trust instruments, any written modifications thereof made by the applicant during the proceedings in respect of the request for determination before the Internal Revenue Service, and all written comments (and related correspondence) submitted to the Internal Revenue Service in those proceedings (see Section 3001(b) of the Employee Retirement Income Security Act of 1974; 29 U.S.C. sec. 1201(b)).

(B) In the case of a determination relating to an exempt organization or a private foundation or a private operating foundation, the administrative record shall include the charter or articles of incorporation or association, or trust indenture or agreement, and any similar or related documents of the organization and any modifications thereof.

(11) "Party" includes a petitioner and the respondent Commissioner of Internal Revenue. In a retirement plan

action, an intervenor is also a party. In an exempt organization action, only the organization may be a petitioner, and in a governmental obligation action, only the prospective issuer may be a petitioner.

(12) "Declaratory Judgment" is the decision of the Court in a retirement plan action, a governmental obligation action, or an exempt organization action.

[1](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 a request for determination as to status of prospective governmental obligations) 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 plan. See Code Section 7476(a)(2)(B).

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

(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 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 by Code Section 7476(b)(5) with respect to a retirement plan action, or the period specified in Code Section 7478(b)(3) with respect to a governmental obligation action, or the period specified

[1]The amendments of subparagraphs (2) and (3) are effective as of July 1, 1990.

by Code Section 7428(b)(3) with respect to an exempt organization action. See Code Section 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 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.

RULE 211. COMMENCEMENT OF ACTION FOR DECLARATORY JUDGMENT

(a) Commencement of Action: An action for declaratory judgment shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to form of pleadings.

[1]**(b) Contents of Petition:** Every petition shall be entitled "Petition for Declaratory Judgment (Retirement Plan)" or "Petition for Declaratory Judgment (Governmental Obligation)" or "Petition for Declaratory Judgment (Exempt Organization)", as the case may be. Each such petition shall contain the allegations described in paragraph (c), (d), or (e) of this Rule.

[1]**(c) Petition in Retirement Plan Action:** The petition in a retirement plan action shall contain:

(1) *All Petitions:* All petitions in retirement plan actions shall contain the following:

(A) The petitioner's name and address, and the name and principal place of business, or principal office or agency of the employer at the time the petition is filed; and

[1]The amendments are effective as of July 1, 1990.

(B) The office of the Internal Revenue Service with which the request for determination, if any, was filed and the date of such filing.

(2) *Employer Petitions:* In addition to including the information described in paragraph (c)(1) of this Rule, a petition filed by an employer shall also contain:

(A) A separate numbered paragraph stating that the employer has complied with the requirements of the regulations issued under Code Section 7476(b)(2) with respect to notice to other interested parties;

(B) A separate numbered paragraph stating that the employer has exhausted the employer's administrative remedies within the Internal Revenue Service;

(C) A separate numbered paragraph stating that the retirement plan has been put into effect in accordance with Code Section 7476(b)(4);

(D) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify—

(i) the date of the notice of the Commissioner's determination,

(ii) a copy of such notice of determination,

(iii) in a separate numbered paragraph, a clear and concise assignment of each error, set forth in a separate lettered subparagraph, which the employer alleges to have been committed by the Commissioner in the determination, and

(iv) a statement of facts upon which the petitioner relies to support each such claim;

(E) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, separate numbered paragraphs stating that—

(i) the requested determination is of the type described in Code Section 7476(a)(1) or (2),

(ii) no determination has been made by the Commissioner in response thereto, and

(iii) the retirement plan does qualify;

(F) An appropriate prayer for relief; and

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

(3) *Petitions Filed by Plan Administrators:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by a plan administrator shall contain:

(A) The name, address, and principal place of business, or principal office or agency, of the employer who is required to contribute under the plan; and

(B) In separate numbered paragraphs, the statements or information required in the case of employer petitions in paragraph (c)(2) of this Rule.

(4) *Employee Petitions:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employee shall also contain:

(A) A separate numbered paragraph setting forth a statement that the employee has qualified as an interested party in accordance with the regulations issued under Code Section 7476(b)(1);

(B) In separate numbered paragraphs, the statements described in subparagraph (2)(B) and (C) of paragraph (c) of this Rule;

(C) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify, a copy of such notice of determination, and in separate numbered paragraphs, the statements described in subparagraph (2)(D)(i), (iii), and (iv) of paragraph (c) of this Rule,

(D) Where the Commissioner has issued a notice of determination that a retirement plan does qualify, a copy of such notice of determination, and in separate numbered paragraphs, the date of such notice of determination, and a clear and concise statement of each ground, set forth in a separate lettered subparagraph, upon which the employee relies to assert that such plan does not qualify and the facts to support each ground;

(E) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, a statement, in a separate numbered paragraph, as to whether the retirement plan qualifies--

(i) if the employee alleges that the retirement plan does qualify, such paragraph shall also include the statements described in paragraph (c)(2)(E) of this Rule, or

(ii) if the employee alleges that the retirement plan does not qualify, in addition to the statements described in paragraph (c)(2)(E) of this Rule, such paragraph shall also include a clear and concise statement of each ground, in a separate lettered subparagraph, upon which the employee relies to support the allegation that such plan does not qualify and the facts replied upon to support each ground; and

(F) In separate numbered paragraphs, the statements described in paragraph (c)(2)(F) and (G) of this Rule.

(5) *Petitions Filed by the Pension Benefit Guaranty Corporation:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by the Pension Benefit Guaranty Corporation shall also contain in separate numbered paragraphs the statements described in paragraph (c)(4)(B), (C), (D), (E), and (f) of this Rule.

[1](d) **Petition in Governmental Obligation Action:** The petition in a governmental obligation action shall contain:

(1) The petitioner's name and address;

(2) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing;

(3) A statement that the petitioner is a prospective issuer of governmental obligations described in Code Section 103(a) which has adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations;

(4) A statement that the petitioner has exhausted its administrative remedies;

(5) Where the Commissioner has issued a determination—

(A) the date of the notice of determination;

(B) a copy of such notice of determination;

[1]The amendments are effective as of July 1, 1990.

(C) in a separate numbered paragraph, a clear and concise statement of each error, in separate lettered subparagraphs, which the petitioner alleges to have been committed by the Commissioner in the determination; and

(D) a statement of facts upon which the petitioner relies to support each such claim,

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating—

(A) that no such determination has been made by the Commissioner; and

(B) that the prospective governmental obligations are described in Code Section 103(a);

(7) An appropriate prayer for relief; and

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

[1](e) **Petition in Exempt Organization Action:** The petition in an exempt organization action shall contain:

(1) The petitioner's name and principal place of business or principal office or agency,

(2) The date upon which the request for determination, if any, was mailed to the Internal Revenue Service, and the office to which it was mailed,

(3) A statement that the petitioner is an exempt organization or a private foundation or a private operating foundation, as the case may be, the qualification or classification of which is at issue;

(4) A statement that the petitioner has exhausted its administrative remedies within the Internal Revenue Service;

(5) Where the Commissioner has issued a determination—

(A) the date of the notice of determination;

(B) a copy of such notice of determination;

(C) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination is erroneous; and

(D) a statement of facts upon which petitioner relies to support each of such reasons,

[1]The amendments are effective as of July 1, 1990.

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating that—

(A) no such determination has been made by the Commissioner; and

(B) the organization is qualified under Code Section 501(c)(3) or 170(c)(2), or should be classified with respect to Code Section 509(a) or 4942(j)(3) in the manner set forth by the petitioner in its request for determination;

(7) An appropriate prayer for relief; and

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

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

[1](f) Service: For the provisions relating to service of the petition and other papers, see Rule 21.

RULE 212. DESIGNATION OF PLACE FOR SUBMISSION TO THE COURT[2]

At the time of filing a petition for a declaratory judgment, a designation of place for submission to the Court shall be filed in accordance with Rule 140. In addition to including in the designation the information specified in Rule 140, the petitioner shall also include the date on which the petitioner expects the action will be ready for submission to the Court and the petitioner's estimate of the time required therefor. In cases involving a revocation or involving the status of a governmental obligation, the Commissioner shall, at the time the answer is filed, also set forth in a separate statement the date on which the Commissioner expects the action will be ready for submission to the Court and an estimate of the time required therefor. After the action becomes at issue (see Rule 214), it will ordinarily, without any further request by the Court for information as to readiness for submission, be placed on a calendar for submission to the Court. See Rule 217(b).

[1]The amendment is effective as of July 1, 1990.

[2]The amendments are effective as of July 1, 1990.

RULE 213. OTHER PLEADINGS

(a) Answer: (1) *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 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.

[1](2) *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 of the petition. If the Commissioner shall be without 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 statement shall 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 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.

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

[1]The amendments are effective as of July 1, 1990.

(4) *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.

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

(1) *Time to Reply or Move:* The petitioner shall have 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 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.

[1](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 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. 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 specify the reasons for such 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 paragraph (a)(2) of this Rule shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

(3) *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 admitted.

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[1]The amendments are effective as of July 1, 1990.

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

RULE 214. JOINDER OF ISSUE IN ACTION FOR DECLARATORY JUDGMENT

An action for declaratory judgment shall be deemed at issue upon the filing of the reply or at the expiration of the time for doing so.

RULE 215. JOINDER OF PARTIES[1]

(a) Joinder in Retirement Plan Action: The joinder of parties in retirement plan actions shall be subject to the following requirements:

(1) *Permissive Joinder:* Any person who, under Code Section 7476(b)(1), is entitled to commence an action for declaratory judgment with respect to the qualification of a retirement plan may join in filing a petition with any other such person in such an action with respect to the same plan. If the Commissioner has issued a notice of determination with respect to the qualification of the plan, then any person joining in the petition must do so within the period specified in Code Section 7476(b)(5). If more than one petition is filed with respect to the qualification of the same retirement plan, then see Rule 141 (relating to the possibility of consolidating the actions with respect to the plan).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment with respect to the qualification of a retirement plan may move to have joined in the action any employer who established or maintains the plan, plan administrator, or any person in whose absence complete relief cannot be accorded among those already parties. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue (see Rule 214). Such motion shall be served on the parties to the action (other than the movant). See Rule 21(b). The movant shall cause personal service to be made on each person sought to be joined by a United States marshal or by a deputy marshal, or by any other person who is not a

[1]The amendments are generally effective as of July 1, 1990. However, the amendment to the lead-in language of paragraph (a) is effective with respect to petitions filed after July 1, 1990.

party and is not less than 18 years of age, who shall make a return of service, see Form 13, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If the motion is granted, such person will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory judgment and that such person has not been joined, then the Court may, on its own motion or on the motion of any party or any such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in the absent person's absence, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

(b) Joinder of Parties in Exempt Organization and in Governmental Obligation Actions: Joinder of parties is not permitted in an exempt organization action or in a governmental obligation action. See Code Sections 7428(b)(1) and 7478(b)(1). With respect to consolidation of actions, see Rule 141.

RULE 216. INTERVENTION IN RETIREMENT PLAN ACTIONS

(a) Who May Intervene: The Pension Benefit Guaranty Corporation and, if entitled to intervene pursuant to the provisions of Section 3001(c) of the Employee Retirement Income Security Act of 1974, the Secretary of Labor, or either of them, shall be permitted to intervene in a retirement plan action in accordance with the provisions of Code Section 7476.

[1](b) **Procedure:** If either of the persons mentioned in paragraph (a) of this Rule desires to intervene, then such person shall file a pleading, either a petition in intervention or an answer in intervention, not later than 30 days after joinder of issue (see Rule 214) unless the Court directs otherwise. All new matters of claim or defense in a pleading in intervention shall be deemed denied.

RULE 217. DISPOSITION OF ACTIONS FOR DECLARATORY JUDGMENT

[1](a) **General:** Disposition of an action for declaratory judgment, which does not involve either a revocation or the status of a governmental obligation, will ordinarily be made on the basis of the administrative record, as defined in Rule 210(b)(10). Only with the permission of the Court, upon 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 may be made on the basis of the administrative record alone only where the parties agree that such record contains all the relevant facts and that such 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.

[2](b) **Procedure:** (1) *Disposition on the Administrative Record:* The Court expects that, within 30 days after service of the answer, the parties will 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 file with the Court the entire administrative record, as defined in Rule 210(b)(10), appropriately certified as to its genuineness by the Commissioner or by an official

[1]The amendment is effective as of July 1, 1990.

[2]The amendments of subparagraphs (1) are effective as of July 1, 1990.

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. Except in a case involving a revocation or the status of a governmental obligation, the Court's decision will be based upon the assumption that the facts as represented in the administrative record as so stipulated or so certified are true and upon any additional facts as found by the Court if the Court deems that a trial is necessary. In the case of a revocation or a governmental obligation action, the Court may, upon the basis of the evidence presented, make findings of fact which differ from the administrative record. In the case of a governmental obligation action, see the last sentence of paragraph (a) of this Rule. See subparagraph (3) of this paragraph.

(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 action may be submitted at any time by notice of the parties filed with the Court in accordance with Rule 122.

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

[1](c) **Burden of Proof:** The burden of proof in declaratory judgment actions shall be as follows:

(1) *Retirement Plan Actions:* (A) *Parties Petitioner:* In all cases, the burden of proof shall be upon the petitioner as to jurisdictional requirements. The burden of proof shall be upon the petitioner, and upon any party joining or intervening on the petitioner's side, as to those grounds set forth in the respondent's notice of determination that a retirement plan does not qualify. If the respondent has determined that a retirement plan does qualify, then the petitioner, and any party joining or intervening on the petitioner's side, shall bear the burden of proof as to every ground on which each such party relies to sustain such party's position that such plan does

[1]The amendments are effective as of July 1, 1990.

not qualify. If the Commissioner has failed to issue a notice of determination, then—

(i) the petitioner who contends that the retirement plan does qualify, and any party joining or intervening on the petitioner's side, shall bear the burden of proof as to the jurisdictional requirements described in Rule 210(c) and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that the notice of determination has been issued by the Commissioner; but

(ii) the petitioner who contends that the retirement plan does not qualify, and any party joining or intervening on the petitioner's side, shall bear the burden of proof as to the matters set forth in subparagraph (1)(A)(i) of this paragraph (c) and also as to the grounds and supporting facts on which each such party relies for such party's claim that the plan does not qualify.

(B) *Parties Respondent:* The burden of proof shall be upon the respondent, and upon any party joining or intervening on the respondent's side, as to any ground not stated in the notice of determination upon which either relies to sustain the respondent's determination that a retirement plan does not qualify. If the respondent has not issued a notice of determination, then the respondent, and any party joining or intervening on the respondent's side, shall bear the burden of proof as to every ground upon which either relies to sustain the position that such plan does not qualify. See also subparagraph (1)(A)(ii) of this paragraph (c).

(2) *Other Actions:* (A) *Petitioner:* The burden of proof shall be upon the petitioner as to jurisdictional requirements and as to the grounds set forth in the notice of determination. If the Commissioner has failed to issue a notice of determination, then the burden of proof shall be on the petitioner with respect to jurisdictional requirements, and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that no notice of determination has been issued by the Commissioner.

(B) *Respondent:* The burden of proof shall be upon the respondent as to any ground upon which the respondent

relies and which is not stated in the notice of determination. If the respondent has not issued a notice of determination, then the respondent shall bear the burden of proof as to every ground relied upon to sustain the respondent's position, other than those matters as to which the burden is on the petitioner under subparagraph (2)(A) of this paragraph (c) where such a notice is not issued.

RULE 218. PROCEDURE IN ACTIONS HEARD BY A SPECIAL TRIAL JUDGE OF THE COURT[1]

(a) Where Special Trial Judge Is to Make the Decision: When an action for declaratory judgment is assigned to a Special Trial Judge who is authorized in the order of assignment to make the decision, the opinion and proposed decision of the Special Trial Judge shall be submitted to and approved by the Chief Judge or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) Where Special Trial Judge Is Not to Make the Decision: Where an action for declaratory judgment is assigned to a Special Trial Judge who is not authorized in the order of assignment to make the decision, the procedure provided in Rule 183 shall be followed.

TITLE XXII

DISCLOSURE ACTIONS

RULE 220. GENERAL

(a) Applicability: The Rules of this Title XXII set forth the special provisions which apply to the three types of disclosure actions relating to written determinations by the Internal Revenue Service and their background file documents, as authorized by Code Section 6110. They consist of (1) actions to restrain disclosure, (2) actions to obtain additional disclosure, and (3) actions to obtain disclosure of identity in the case of third party contacts. Except as otherwise provided in this Title, the other Rules of Practice

[1]The amendments are effective as of July 1, 1990.

and Procedure of the Court, to the extent pertinent, are applicable to such disclosure actions.

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

(1) A "written determination" means a ruling, determination letter, or technical advice memorandum. See Code Section 6110(b)(1).

(2) A "prior written determination" is a written determination issued pursuant to a request made before November 1, 1976.

(3) A "background file document" has the meaning provided in Code Section 6110(b)(2).

(4) A "notice of intention to disclose" is the notice described in Code Section 6110(f)(1).

(5) "Party" includes a petitioner, the respondent Commissioner of Internal Revenue, and any intervenor under Rule 225.

[1](6) A "disclosure action" is either an "additional disclosure action," an "action to restrain disclosure," or a "third party contact action," as follows:

(A) An "additional disclosure action" is an action to obtain disclosure within Code Section 6110(f)(4).

(B) An "action to restrain disclosure" is an action within Code Section 6110(f)(3) or (h)(4) to prevent any part or all of a written determination, prior written determination, or background file document from being opened to public inspection.

(C) A "third party contact action" is an action to obtain disclosure of the identity of a person to whom a written determination pertains in accordance with Code Section 6110(d)(3).

(7) "Third party contact" means the person described in Code Section 6110(d)(1) who has communicated with the Internal Revenue Service.

(c) Jurisdictional Requirements: The Court does not have jurisdiction of a disclosure action under this Title 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 Sections 6110(f)(2)(A) and (4)(A).

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[1]The amendments are effective as of July 1, 1990.

[1](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 Sections 6110(f)(2)(B) and (3)(A)(iii).

[1](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.

(d) Form and Style of Papers: All papers filed in a disclosure action shall be prepared in the form and style set forth in Rule 23, except that whenever any party joins or intervenes in the action, 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. In the case of anonymous parties, see Rule 227.

RULE 221. COMMENCEMENT OF DISCLOSURE ACTION

(a) Commencement of Action: A disclosure action shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to the form of pleadings.

[1]The amendments are effective as of July 1, 1990.

[1](b) **Contents of Petition:** Every petition shall be entitled "Petition for Additional Disclosure" or "Petition to Restrain Disclosure" or "Petition to Disclose Identity." Subject to the provisions of Rule 227, dealing with anonymity, each petition shall contain the petitioner's name and address, an appropriate prayer for relief, and the signature, mailing address, and telephone number of the petitioner or the petitioner's counsel, as well as counsel's Tax Court bar number. In addition, each petition shall contain the allegations described in paragraph (c), (d), or (e) of this Rule.

(c) **Petition in Additional Disclosure Action:** The petition in an additional disclosure action shall contain:

(1) A brief description (including any identifying number or symbol) of the written determination, prior written determination, or background file document, as to which petitioner seeks additional disclosure. A copy of any such determination or document, as it is then available to the public, shall be appended.

(2) The date of the petitioner's request to the Internal Revenue Service for additional disclosure, with a copy of such request appended.

(3) A statement of the Commissioner's disposition of the request, with a copy of the disposition appended.

(4) A statement that the petitioner has exhausted all administrative remedies available within the Internal Revenue Service.

(5) In separate lettered subparagraphs, a clear and concise statement identifying each portion of the written determination, prior written determination, or background file document as to which petitioner seeks additional disclosure together with any facts and reasons to support disclosure. See Rule 229 with respect to the burden of proof in an additional disclosure action.

[2](d) **Petition in Action to Restrain Disclosure:** The petition in an action to restrain disclosure shall contain:

(1) A statement that the petitioner is (A) a person to whom the written determination pertains, or (B) a successor in interest, executor, or other person authorized by law to act for or on behalf of such person, or (C) a person who has a direct interest in maintaining the confidential-

[1]The amendments are effective as of July 1, 1990.

[2]The amendments of subparagraphs (1) and (7) are effective as of July 1, 1990.

ity of the written determination or background file document or portion thereof, or (D) in the case of a prior written determination, the person who received such prior written determination.

(2) A statement that the Commissioner has issued a notice of intention to disclose with respect to a written determination or a background file document, stating the date of mailing of the notice of intention to disclose and appending a copy of it to the petition, or, in the case of a prior written determination, a statement that the Commissioner has issued public notice in the Federal Register that the determination is to be opened to public inspection, and stating the date and citation of such publication in the Federal Register.

(3) A brief description (including any identifying number or symbol) of the written determination, prior written determination, or background file document, as to which petitioner seeks to restrain disclosure.

(4) The date of petitioner's request to the Internal Revenue Service to refrain from disclosure, with a copy of such request appended.

(5) A statement of the Commissioner's disposition of the request, with a copy of such disposition appended.

(6) A statement that petitioner has exhausted all administrative remedies available within the Internal Revenue Service.

(7) In separate lettered subparagraphs, a clear and concise statement identifying each portion of the written determination, prior written determination, or background file document as to which the petitioner seeks to restrain disclosure, together with any facts and reasons to support the petitioner's position. See Rule 229 with respect to the burden of proof in an action to restrain disclosure.

(e) **Petition in Third Party Contact Action:** The petition in a third party contact action shall contain:

(1) A brief description (including any identifying number or symbol) of the written determination to which the action pertains. There shall be appended a copy of such determination, and the background file document (if any) reflecting the third party contact, as then available to the public.

(2) The date of the first day that the written determination was open to public inspection.

(3) A statement of the disclosure sought by the petitioner.

(4) A clear and concise statement of the impropriety alleged to have occurred or the undue influence alleged to have been exercised with respect to the written determination or on behalf of the person whose identity is sought, and the public interest supporting any other disclosure. See Rule 229 with respect to the burden of proof in a third party contact action.

(f) **Service:** For the provisions relating to service of the petition and other papers, see Rule 21.

(g) **Anonymity:** With respect to anonymous pleading, see Rule 227.

Note

Paragraphs (b) and (d)(7) of Rule 221 are amended to make the language gender neutral. Paragraph (b) is also amended to require inclusion of counsel's Tax Court bar number.

The amendments of Rule 221 are effective as of July 1, 1990.

RULE 222. DESIGNATION OF PLACE OF HEARING[1]

At the time of filing a petition in a disclosure action, a designation of a place of hearing shall be filed in accordance with Rule 140. In addition, the petitioner shall include the date on which the petitioner believes the action will be ready for submission to the Court and the petitioner's estimate of the time required therefor. The Commissioner shall, at the time the answer is filed, also set forth in a separate statement the date on which the Commissioner expects the action will be ready for submission to the Court and an estimate of the time required therefor. An intervenor shall likewise furnish such information to the Court in a separate statement filed with the intervenor's first pleading in the case. After the action is at issue (see Rule 224), it will ordinarily, without any further request by the Court for

[1]The amendments are effective as of July 1, 1990.

information as to readiness for submission, be placed on a calendar for submission to the Court. See also Rule 229.

RULE 223. OTHER PLEADINGS

[1](a) Answer: (1) *Time to Answer or Move:* The Commissioner shall have 30 days from the date of service of the petition within which to file an answer or move with respect to the petition, or, in an action for additional disclosure, to file an election not to defend pursuant to Code Section 6110(f)(4)(B), in which event the Commissioner shall be relieved of the obligation of filing an answer or any subsequent pleading. With respect to intervention when the Commissioner elects not to defend, see Rule 225.

(2) *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. 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.

(3) *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.

(b) Reply: Each petitioner may file a reply or move with respect to the answer within 20 days from the date of service of the answer. 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

[1]The amendments of subparagraphs (1) and (2) are effective as of July 1, 1990.

allegations in the answer will be deemed denied. Any new material contained in the reply shall be deemed denied.

RULE 224. JOINDER OF ISSUE

A disclosure action shall be deemed at issue upon the filing of the reply or at the expiration of the time for doing so.

RULE 225. INTERVENTION[1]

(a) Who May Intervene: The persons to whom notice is required to be given by the Commissioner pursuant to Code Section 6110(d)(3), (f)(3)(B), or (f)(4)(B) shall have the right to intervene in the action as to which the notice was given. The Commissioner shall append a copy of the petition to any such notice.

(b) Procedure: If a person desires to intervene, then such person shall file an initial pleading, which shall be a petition in intervention or an answer in intervention, not later than 30 days after mailing by the Commissioner of the notice referred to in paragraph (a) of this Rule. In an action for additional disclosure where the Commissioner elects not to defend pursuant to Code Section 6110(f)(4)(B), the Commissioner shall mail to each person, to whom the Commissioner has mailed the notice referred to in paragraph (a) of this Rule, a notice of the Commissioner's election not to defend, and any such person desiring to intervene shall have 30 days after such mailing within which to file a petition in intervention or an answer in intervention. The initial pleading of an intervenor, whether a petition or answer, shall show the basis for the right to intervene and shall include, to the extent appropriate, the same elements as are required for a petition under Rule 221 or an answer under Rule 223. An intervenor shall otherwise be subject to the same rules of procedure as apply to other parties. With respect to anonymous intervention, see Rule 227.

[1]The amendments are effective as of July 1, 1990.

RULE 226. JOINDER OF PARTIES[1]

The joinder of parties in a disclosure action shall be subject to the following requirements:

(a) Commencement of Action: Any person who meets the requirements for commencing such an action may join with any other such person in filing a petition with respect to the same written determination, prior written determination, or background file document. But see Code Sections 6110(f)(3)(B) and (h)(4).

(b) Consolidation of Actions: If more than one petition is filed with respect to the same written determination, prior written determination, or background file document, then see Rule 141 with respect to the consolidation of the actions.

Note

Rule 226 is amended to modify the lead-in language in light of the changes being made to Rule 61(a). Paragraphs (a) and (b) of Rule 226 are amended to make the language stylistically consistent.

The amendments of Rule 226 are generally effective as of July 1, 1990. However, the amendment of the lead-in language of the Rule is effective with respect to petitions filed after July 1, 1990.

RULE 227. ANONYMOUS PARTIES

(a) Petitioners: A petitioner in an action to restrain disclosure relating to either a written determination or a prior written determination may file the petition anonymously, if appropriate.

(b) Intervenors: An intervenor may proceed anonymously, if appropriate, in any disclosure action.

[2]**(c) Procedure:** A party who proceeds pursuant to this Rule shall be designated as "Anonymous." In all cases where a party proceeds anonymously pursuant to paragraph (a) or (b) of this Rule, such party shall set forth in a separate paper such party's name and address and the reasons why such party seeks to proceed anonymously. Such separate paper shall be filed with such party's initial pleading. Anonymity, where appropriate, shall be preserved

[1]The amendments are generally effective as of July 1, 1990. However, the amendment of the lead-in language of the Rule is effective with respect to petitions filed after July 1, 1990.

[2]The amendments are effective as of July 1, 1990.

to the maximum extent consistent with the proper conduct of the action. See Rule 13(d), relating to contempt of Court. With respect to confidential treatment of pleadings and other papers, see Rule 228.

Note

Paragraph (c) of Rule 227 is amended to make the language gender neutral and to revise the cross-reference to Rule 13(d), relating to contempt of Court.

The amendments to Rule 227(c) are effective as of July 1, 1990.

RULE 228. CONFIDENTIALITY

(a) Confidentiality: The petition and all other papers submitted to the Court in any disclosure action shall be placed and retained by the Court in a confidential file and shall not be open to inspection unless otherwise permitted by the Court.

(b) Publicity of Court Proceedings: On order of the Court, portions or all of the hearings, testimony, evidence, and reports in any action under this Title may be closed to the public or to inspection by the public, to the extent deemed by the Court to be appropriate in order to preserve the anonymity, privacy, or confidentiality of any person involved in an action within Code Section 6110. See Code Section 6110(f)(6).

RULE 229. BURDEN OF PROOF

The burden of proof shall be upon the petitioner as to the jurisdictional requirements described in Rule 220(c). As to other matters, the burden of proof shall be determined consistently with Rule 142(a), subject to the following:

(a) In an action for additional disclosure, the burden of proof as to the issue of whether disclosure should be made shall be on the Commissioner and on any other person seeking to deny disclosure. See Code Section 6110(f)(4)(A).

(b) In an action to restrain disclosure, the burden of proof as to the issue of whether disclosure should be made shall be upon the petitioner.

(c) In a third party contact action, the burden of proof shall be on the petitioner to establish that one could reasonably conclude that an impropriety occurred or undue influence was exercised with respect to the written determination by or on behalf of the person whose identity is sought.

RULE 229A. PROCEDURE IN ACTIONS HEARD BY A SPECIAL TRIAL JUDGE OF THE COURT[1]

(a) Where Special Trial Judge Is to Make the Decision: If a disclosure action is assigned to a Special Trial Judge who is authorized in the order of assignment to make the decision, then the opinion and proposed decision of the Special Trial Judge shall be submitted to and approved by the Chief Judge, or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) Where Special Trial Judge Is Not to Make the Decision: If a disclosure action is assigned to a Special Trial Judge who is not authorized in the order of assignment to make the decision, then the procedure provided in Rule 183 shall be followed.

TITLE XXIII

CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS

Prefatory Note

Title XXIII of the Court's Rules of Practice and Procedure is amended to conform to the amendments to Code Section 7430 made by Section 6239(a) of the Technical and Miscellaneous Revenue Act of 1988 ("TAMRA"), Pub. L. 100-647, 102 Stat. 3342, 3743-3746.

Code Section 7430 provides for the recovery of reasonable litigation costs and administrative costs. Title XXIII of the Court's Rules of Practice and Procedure, relating to claims for litigation and administrative costs, sets forth procedures for the recovery of reasonable administrative costs, as well

[1]The amendments are effective as of July 1, 1990.

as reasonable litigation costs, as part of a deficiency, liability, revocation, or partnership action. On the other hand, Title XXVI of the Court's Rules of Practice and Procedure, relating to actions for administrative costs, sets forth procedures for the recovery of reasonable administrative costs in an independent action solely for administrative costs under Code Section 7430(f)(2). Thus, the recovery of administrative costs (and litigation costs) is a collateral matter when a recovery is sought in the context of an ongoing deficiency, liability, revocation, or partnership action. The impetus for a deficiency, etc., action is relief from a determined or threatened tax liability, rather than the recovery of administrative (and litigation) costs. In contrast, the recovery of administrative costs is the very purpose and objective of an action for administrative costs under Code Section 7430(f)(2).

Title XXIII is also amended to conform to the amendments to Code Section 7430 made by Section 1551 of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085, 2752-2753. Finally, Title XXIII is amended to make certain orthographic and stylistic changes and to make the language gender neutral.

Except as otherwise provided, the amendments to Title XXIII are generally effective with respect to proceedings commencing after November 10, 1988, the date of enactment of the Technical and Miscellaneous Revenue Act of 1988. See Section 6239(d), Pub. L. 100-647, 100 Stat. at 3746.

RULE 230. GENERAL[1]

(a) Applicability: The Rules of this Title XXIII set forth the special provisions which apply to claims for reasonable litigation and administrative costs authorized by Code Section 7430. 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 claims for reasonable litigation and administrative costs. See Title XXVI for

[1]The amendments are generally effective with respect to proceedings commenced after November 10, 1988. However, the amendment of paragraph (b)(6) is effective with respect to partnership actions either commenced on or after September 1, 1988, or pending as of September 1, 1988, and commenced after February 28, 1983. Also, the amendments to make the language stylistically consistent are effective as of July 1, 1990.

Rules relating to separate actions for administrative costs, authorized by Code Section 7430(f)(2).

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

(1) "Reasonable litigation costs" include the items described in Code Section 7430(c)(1).

(2) A "deficiency action" is an action to redetermine a deficiency determined by the Commissioner in income, gift, or estate tax or in the taxes under Code Chapter 41, 42, 43, or 44 (relating to the excise taxes on certain organizations and persons dealing with them), or in the tax under Code Chapter 45 (relating to the windfall profit tax), or in any other taxes which are the subject of a notice of deficiency by the Commissioner.

(3) A "liability action" is an action to redetermine fiduciary or transferee liability determined by the Commissioner.

(4) A "partnership action" is an action for readjustment of partnership items under Code Section 6226 or adjustment of partnership items under Code Section 6228.

(5) A "revocation action" is an action for declaratory judgment involving the revocation of a determination that an organization is described in Code Section 501(c)(3).

(6) In the case of a partnership action, the term "party" includes the partner who filed the petition, the tax matters partner, and each person who satisfies the requirements of Code Section 6226(c) and (d) or 6228(a)(4). See Rule 247(a).

(7) "Attorney's fees" include fees paid or incurred for the services of an individual (whether or not an attorney) who is authorized to practice before the Court or before the Internal Revenue Service. For the procedure for admission to practice before the Court, see Rule 200.

(8) "Reasonable administrative costs" means the items described in Code Section 7430(c)(2).

(9) "Administrative proceeding" means any procedure or other action before the Internal Revenue Service.

(10) "Court proceeding" means the deficiency, liability, partnership, or revocation action brought in this Court and in which the claim for reasonable litigation costs or reasonable administrative costs is made.

Note

Paragraph (a) of Rule 230 is amended to include claims for reasonable administrative costs within the ambit of Title XXIII and the other pertinent Rules of Practice and Procedure of the Court, and to provide a cross-reference to Title XXVI for rules relating to separate actions for administrative costs, authorized by Code Section 7430(f)(2).

Paragraph (b), the definitional paragraph of Rule 230, is amended to define "reasonable litigation costs" by referencing Code Section 7430(c)(1), see paragraph (b)(1); to define "attorney's fees" by including fees paid or incurred for the services of an individual (whether or not an attorney) who is authorized to practice before the Internal Revenue Service, see paragraph (b)(7); and to define three additional terms, namely, "reasonable administrative costs", "administrative proceedings", and "Court proceedings", see paragraph (b)(8), (9) and (10), respectively. All of these amendments are necessitated by the amendments to Code Section 7430 made by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100- 647, 102 Stat. 3342. Also, in the case of a partnership action the term "party" is amended to reflect the prior amendment of that term in Rule 247(a). See paragraph (b)(6) of the Rule. For the prior amendment and Note to Rule 247, see 90 T.C. 1371-1372. Finally, amendments of paragraph (b)(2) of the Rule make the language stylistically consistent.

The amendment of Rule 230(a), and all of the amendments of Rule 230(b) except for the amendment of paragraph (b)(6) and the stylistic amendments, are effective with respect to proceedings commenced after November 10, 1988. The amendment of paragraph (b)(6) is effective with respect to partnership actions either commenced on or after September 1, 1988, or pending as of September 1, 1988, and commenced after February 28, 1983. The amendments to make the language stylistically consistent are effective as of July 1, 1990.

RULE 231. CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS[1]

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

[1]The amendments are generally effective with respect to proceedings commenced after November 10, 1988. However, the amendments to paragraph (b)(4) and (5) that relate to the amendments to Code Section 7430 made by the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085, are effective with respect to claims for amounts paid after September 30, 1986, in proceedings commenced after December 31, 1985; and the stylistic amendments to paragraph (a)(2) are effective as of July 1, 1990.

(2) *Unagreed Cases:* Where a party has substantially prevailed and wishes to claim reasonable litigation or administrative costs, and there is no agreement as to that party's entitlement to such costs, a claim shall 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 (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 be in writing and shall contain the following:

(1) A statement that the moving party is a party to a deficiency or liability action, a partnership action, or a revocation action, and that any such action 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 in the Court proceeding, including a stipulation in the form prescribed by paragraph (c) of this Rule as to any settled issues;

(4) A clear and concise statement of each reason why the moving party alleges that the position of the Commissioner in the Court proceeding, and if the claim includes a claim for administrative costs, in the administrative proceeding, was not substantially justified, and a statement of the facts on which the moving party relies to support each of such reasons;

(5) 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 be supported by an affidavit executed by the moving party and not by counsel for the moving party;

(6) A statement that the moving party has exhausted the administrative remedies available to such party within the Internal Revenue Service;

(7) 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;

(8) A statement of the specific litigation and administrative costs for which the moving party claims an award, supported by an affidavit in the form prescribed in paragraph (d) of this Rule;

(9) 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)(3) regarding the circumstances in which the Court will direct a hearing); and

(10) 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 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 binding upon the parties unless otherwise permitted by the Court or agreed upon by those parties.

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

Note

The title of Rule 231 is amended to indicate that the Rule applies to claims for administrative costs as well as to claims for litigation costs.

Paragraphs (a) through (d) of Rule 231 are amended to provide that the procedures applicable to claims for litigation costs are equally applicable to claims for administrative costs.

Paragraph (b) of Rule 231, which sets forth the required content of a motion for an award of reasonable litigation or administrative costs, reflects amendments made to Code Section 7430 by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342. Although these amendments principally affect the recovery of administrative costs, they also affect the recovery of litigation costs. Thus, for example, paragraph (b)(7) of the Rule now provides that a motion for the recovery of costs shall include 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. See Code Section 7430(b)(4).

Paragraph (b) of the Rule also reflects amendments made to Code Section 7430 by the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085. Accordingly, paragraph (b)(4) has been amended to restate the applicable standard by which the Commissioner's position is judged, i.e., "not substantially justified". In addition, paragraph (b)(5) has been added to incorporate the applicable net worth requirement that one must satisfy in order to qualify as a prevailing party.

As originally enacted, the net worth requirement of Code Section 7430 was expressed in terms of the requirements of Section 504(b)(1)(B) of title 5, United States Code, as in effect on October 22, 1986 (the date of enactment of the Tax Reform Act of 1986). See Code Section 7430(c)(2)(A)(iii) before amendment by the Technical and Miscellaneous Revenue Act of 1988. Now, however, the net worth requirement of Code Section 7430 is expressed in terms of the requirements of Section 2412(d)(2)(B) of title 28, United States Code, also as in effect on October 22, 1986. See Code Section 7430(c)(4)(A)(iii) after amendment by the Technical and Miscellaneous Revenue Act of 1988.

The amendments to Rule 231 are generally effective with respect to proceedings commenced after November 10, 1988. However, the amendments to paragraph (b)(4) and (5) that relate to the amendments to Code Section 7430 made by the Tax Reform Act of 1986 are effective with respect to claims for amounts paid after September 30, 1986, in proceedings commenced after December 31, 1985.

RULE 232. DISPOSITION OF CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS[1]

(a) General: A motion for reasonable litigation or administrative costs may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take such action as it deems appropriate, on such prior notice, if any, which it may consider reasonable. The action of the Court may be taken without written response or hearing.

(2) The Court may take action after directing that a written response be filed. In that event, the motion shall be served upon the Commissioner, who shall file such response within 60 days after service of the motion.

(3) After receiving the Commissioner's response, the Court may direct a hearing, which will be held at a location that serves the convenience of the parties and the Court. A motion for reasonable litigation or administrative costs ordinarily will be disposed of without a hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(b) Conference Required: If the Court directs the Commissioner to file a written response, then counsel for the Commissioner and the moving party or counsel for the moving party shall confer prior to the date for filing such response and attempt to reach an agreement as to each of the allegations by the moving party. The Court expects that, at such conference, the moving party or counsel for the moving party shall make available to counsel for the Commissioner substantially the same information relating to any claim for attorney's fees which, in the absence of an agreement, the moving party would be required to file with the Court pursuant to paragraph (d) of this Rule.

(c) Response by the Commissioner: If the Court directs the Commissioner to file a written response, then such response shall specifically state:

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[1]The amendments are generally effective with respect to proceedings commenced after November 10, 1988. However, (1) the amendments of paragraphs (c) and (e) that relate to the amendments of Code section 7430 made by the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085, are effective with respect to claims for amounts paid after September 30, 1986, in proceedings commenced after December 31, 1985, and (2) the amendments that involve gender neutral language or stylistic consistency are effective as of July 1, 1990.

(1) Whether the Commissioner agrees that the moving party has substantially prevailed;

(2) Whether the Commissioner agrees that the position of the Commissioner was not substantially justified;

(3) Whether the Commissioner agrees that the moving party meets the net worth requirements, if applicable, as provided by law;

(4) Whether the Commissioner agrees that the moving party has exhausted the administrative remedies available to such party within the Internal Revenue Service;

(5) Whether the Commissioner agrees that the moving party has not unreasonably protracted the Court proceeding and (if the claim includes a claim for administrative costs) the administrative proceeding;

(6) Whether the Commissioner agrees that the amounts of costs claimed are reasonable; and

(7) The basis for the Commissioner's disagreeing with any such allegations by the moving party.

If the Commissioner agrees with the moving party's request for a hearing, or if the Commissioner requests a hearing, then such response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing.

(d) Additional Affidavit: Where the Commissioner's response indicates that the Commissioner and the moving party are unable to agree as to the amount of attorney's fees which is reasonable, counsel for the moving party shall, within 30 days after service of the Commissioner's response, file an additional affidavit which shall include:

(1) A detailed summary of the time expended by each individual for whom fees are sought, including a description of the nature of the services performed during each period of time summarized. Each such individual is expected to maintain contemporaneous, complete, and standardized time records which accurately reflect the work done by such individual. Where the reasonableness of the hours claimed becomes an issue, counsel is expected to make such time records available for inspection by the Court or by counsel for the Commissioner upon request.

(2) The customary fee for the type of work involved. Counsel shall provide specific evidence of the prevailing community rate for the type of work involved as well as specific evidence of counsel's actual billing practice during the time period involved. Counsel may establish the prevailing community rate by affidavits of other counsel with similar qualifications reciting the precise fees they have received from clients in comparable cases, by evidence of recent fees awarded by the courts or through settlement to counsel of comparable reputation and experience performing similar work, or by reliable legal publications.

(3) A description of the fee arrangement with the client. If any part of the fee is payable only on condition that the Court award such fee, the description shall specifically so state.

(4) The preclusion of other employment by counsel, if any, due to acceptance of the case.

(5) Any time limitations imposed by the client or by the circumstances.

(6) Any other problems resulting from the acceptance of the case.

(7) The professional qualifications and experience of each individual for whom fees are sought.

(8) The nature and length of the professional relationship with the client.

(9) Awards in similar cases, if any.

(10) Any other information counsel believes will assist the Court in evaluating counsel's claim, which may include, but shall not be limited to, information relating to the novelty and difficulty of the questions presented, the skill required to perform the legal services properly, and any efforts to settle the case.

Where there are several counsel of record, all of whom are members of or associated with the same firm, an affidavit filed by first counsel of record or that counsel's designee (see Rule 21(b)(2)) shall satisfy the requirements of this paragraph, and an affidavit by each counsel of record shall not be required.

(e) **Burden of Proof:** The moving party shall have the burden of proving that the moving party has substantially

prevailed, that the moving party has exhausted the administrative remedies available to the moving party within the Internal Revenue Service, that the moving party has not unreasonably protracted the court proceeding or (if the claim includes a claim for administrative costs) the administrative proceeding, that the moving party meets the net worth requirements, if applicable, as provided by law, that the position of the Commissioner was not substantially justified, and that the amount of costs claimed is reasonable.

(f) **Disposition:** The Court's disposition of a motion for reasonable litigation or administrative costs shall be included in the decision entered in the case. Where the Court in its opinion states that the decision will be entered under Rule 155, or where the parties have settled all of the issues other than litigation and administrative costs, the Court will issue an order granting or denying the motion and determining the amount of reasonable litigation and administrative costs, if any, to be awarded. The parties, or either of them, shall thereafter submit a proposed decision including an award of any such costs, or a denial thereof, for entry by the Court.

Note

The title of Rule 232 is amended to indicate that the Rule applies to the disposition of claims for administrative costs as well as to the disposition of claims for litigation costs.

Paragraph (a) of Rule 232 is amended to provide that the procedures applicable to the disposition of claims for litigation costs are equally applicable to the disposition of claims for administrative costs.

Paragraphs (b) and (d) of Rule 232 are amended to make the language gender neutral and stylistically consistent.

Paragraph (c) of Rule 232 is amended to conform the requirements for the Commissioner's response with the requirements for the moving party's motion under Rule 231(b). The amendments to paragraph (c), as well as the amendments to Rule 231(b), reflect the amendments to Code Section 7430 made by the Technical and Miscellaneous Revenue Act of 1988, Pub L. 100- 647, 102 Stat. 3342, and the Tax Reform Act of 1986, Pub. L. 99- 514, 100 Stat. 2085. Paragraph (c) is also amended to make the language stylistically consistent.

Paragraph (e) of Rule 232 is amended to set forth the various statutory requirements, after the amendments to Code Section 7430 made by the Technical and Miscellaneous Revenue Act of 1988 and the Tax Reform Act of 1986, in respect of which the moving party bears the burden of

proof. Paragraph (e) is also amended to make the language gender neutral.

Paragraph (f) of Rule 232 is amended to provide that the procedures applicable to the disposition of a motion for reasonable litigation costs are equally applicable to the disposition of a motion for reasonable administrative costs.

Paragraph (f) of the Rule is also amended to provide that under specified circumstances, the Court will issue, rather than enter, an order granting or denying a motion for reasonable litigation or administrative costs and determining the amount of costs, if any, to be awarded. The amendment will serve to permit the Court to incorporate the Court's disposition of a motion for reasonable litigation or administrative costs in the decision entered in the case. The amendment is predicated on the rule-making authority conferred on the Court in Code Section 7430(c)(4)(A)(iii) and on that part of Code Section 7430(f)(1) that expressly permits an order granting or denying an award for reasonable litigation or administrative costs to be incorporated in the decision entered in the case. The amendment is designed to simplify appeal procedures by incorporating into a single document the Court's disposition of both the substantive issues in the case and the motion for reasonable litigation or administrative costs.

The amendments of Rule 232 are generally effective with respect to proceedings commenced after November 10, 1988. However, (1) the amendments to paragraphs (c) and (e) that relate to the amendments to Code Section 7430 made by the Tax Reform Act of 1986 are effective with respect to claims for amounts paid after September 30, 1986, in proceedings commenced after December 31, 1985, and (2) the amendments that involve gender-neutral and stylistically consistent language are effective as of July 1, 1990.

RULE 233. MISCELLANEOUS[1]

For provisions prohibiting the inclusion of a claim for reasonable litigation and administrative costs in the petition, see Rules 34(b) (petition in a deficiency or liability action), 211(f) (petition in a revocation action), and 241(c) (petition in a partnership action). For provisions regarding discovery, see Rule 70(a)(2). For provisions prohibiting the introduction of evidence regarding a claim for reasonable litigation or administrative costs at the trial of the case, see Rule 143(a).

Note

Rule 233 is amended to include claims for administrative costs in cross-referencing pertinent provisions of other Rules of Practice and Procedure

[1]The amendments are effective as of July 1, 1990.

of the Court. The Rule is also amended to include a cross-reference to Rule 241(c), relating to the petition in a partnership action.

The amendments of Rule 233 are effective as of July 1, 1990.

TITLE XXIV

PARTNERSHIP ACTIONS

RULE 240. GENERAL

(a) Applicability: The Rules of this Title XXIV set forth the special provisions which apply to actions for readjustment of partnership items under Code Section 6226 and actions for adjustment of partnership items under Code Section 6228. 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 partnership actions.

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

(1) The term "partnership" means a partnership as defined in Code Section 6231(a)(1).

(2) A "partnership action" is either an "action for readjustment of partnership items" under Code Section 6226 or an "action for adjustment of partnership items" under Code Section 6228.

(3) The term "partnership item" means any item described in Code Section 6231(a)(3).

(4) The term "tax matters partner" means the person who is the tax matters partner under Code Section 6231(a)(7) and who under these Rules is responsible for keeping each partner fully informed of the partnership action. See Code Sections 6223(g) and 6230(l).

(5) A "notice of final partnership administrative adjustment" is the notice described in Code Section 6223(a)(2).

(6) The term "administrative adjustment request" means a request for an administrative adjustment of partnership items filed by the tax matters partner on behalf of the partnership under Code Section 6227(b).

(7) The term "partner" means a person who was a partner as defined in Code Section 6231(a)(2) at any time during any partnership taxable year at issue in a partnership action.

(8) The term "notice partner" means a person who is a notice partner under Code Section 6231(a)(8).

(9) The term "5-percent group" means a 5-percent group as defined in Code Section 6231(a)(11).

[1](c) **Jurisdictional Requirements:** The Court does not have jurisdiction of a partnership action under this Title 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 Section 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 Section 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).

(d) **Form and Style of Papers:** All papers filed in a partnership action shall be prepared in the form and style set forth in Rule 23, except that the caption shall state the name of the partnership and the full name and surname of any partner filing the petition and shall indicate whether such partner is the tax matters partner, as for example, "ABC Partnership, Mary Doe, Tax Matters Partner, Petitioner" or "ABC Partnership, Richard Roe, A Partner Other Than the Tax Matters Partner, Petitioner."

RULE 241. COMMENCEMENT OF PARTNERSHIP ACTION

(a) **Commencement of Action:** A partnership action shall be commenced by filing a petition with the Court. See Rule

[1]The amendments are effective as of July 1, 1990.

20, relating to commencement of case; Rule 22, relating to the place and manner of filing the petition; Rule 32, relating to form of pleadings; and Rule 34(d), relating to number of copies to be filed.

(b) Contents of Petition: Each petition shall be entitled either "Petition for Readjustment of Partnership Items under Code Section 6226" or "Petition for Adjustment of Partnership Items under Code Section 6228." Each such petition shall contain the allegations described in paragraph (c) of this Rule, and the allegations described in paragraph (d) or (e) of this Rule.

[1](c) All Petitions: All petitions in partnership actions shall contain the following:

(1) The name and address of the petitioner.

(2) The name, employer identification number, and principal place of business of the partnership at the time the petition is filed.

(3) The City and State of the office of the Internal Revenue Service with which the partnership's return for the period in controversy was filed.

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

[2](d) Petition for Readjustment of Partnership Items: In addition to including the information specified in paragraph (c) of this Rule, a petition for readjustment of partnership items shall also contain:

(1) *All Petitions:* All petitions for readjustment of partnership items shall contain:

(A) The date of the notice of final partnership administrative adjustment and the City and State of the office of the Internal Revenue Service which issued the notice.

(B) The year or years or other periods for which the notice of final partnership administrative adjustment was issued.

(C) Clear and concise statements of each and every error which the petitioner alleges to have been commit-

[1]The amendments are effective as of July 1, 1990.

[2]The amendments of subparagraphs (1) and (3) are effective as of July 1, 1990.

ted by the Commissioner in the notice of final partnership administrative adjustment. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issues not raised in the assignments of error, or in the assignments of error in any amendment to the petition, shall be deemed to be conceded. Each assignment of error shall be set forth in a separately lettered subparagraph.

(D) Clear and concise lettered statements of the facts on which the 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.

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

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

(G) A copy of the notice of final partnership administrative adjustment, 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 final partnership administrative adjustment or any 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 assignments of error likewise shall be appended to the petition.

(2) *Petitions by Tax Matters Partner:* In addition to including the information specified in paragraph (d)(1) of this Rule, a petition filed by a tax matters partner shall also contain a separate numbered paragraph stating that the pleader is the tax matters partner.

(3) *Petitions by Other Partners:* In addition to including the information specified in paragraph (d)(1) of this Rule, a petition filed by a partner other than the tax matters partner shall also contain:

(A) A separate numbered paragraph stating that the pleader is a notice partner or a representative of a 5-percent group (see Code Section 6226(b)(1)).

(B) A separate numbered paragraph setting forth facts establishing that the pleader satisfies the requirements of Code Section 6226(d).

(C) A separate numbered paragraph stating the name and current address of the tax matters partner.

(D) A separate numbered paragraph stating that the tax matters partner has not filed a petition for readjustment of partnership items within the period specified in Code Section 6226(a).

[1](e) **Petition for Adjustment of Partnership Items:** In addition to including the information specified in paragraph (c) of this Rule, a petition for adjustment of partnership items shall also contain:

(1) A statement that the petitioner is the tax matters partner.

(2) The date that the administrative adjustment request was filed and other proper allegations showing jurisdiction in the Court in accordance with the requirements of Code Section 6228(a)(1) and (2).

(3) The year or years or other periods to which the administrative adjustment request relates.

(4) The City and State of the office of the Internal Revenue Service with which the administrative adjustment request was filed.

(5) A clear and concise statement describing each partnership item on the partnership return that is sought to be changed, and the basis for each such requested change. Each such statement shall be set forth in a separately lettered subparagraph.

(6) Clear and concise lettered statements of the facts on which the petitioner relies in support of such requested changes in treatment of partnership items.

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

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

(9) A copy of the administrative adjustment request shall be appended to the petition.

[1]The amendment of subparagraph (8) is effective as of July 1, 1990.

(f) Notice of Filing: (1) *Petitions by Tax Matters Partner:* Within 5 days after receiving the Notification of Receipt of Petition from the Court, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as required by Code Section 6223(g). Said notice shall include the docket number assigned to the case by the Court (see Rule 35) and the date the petition was served by the Clerk on the Commissioner.

(2) *Petitions by Other Partners:* Within 5 days after receiving the Notification of Receipt of Petition from the Court, the petitioner shall serve a copy of the petition on the tax matters partner, and at the same time notify the tax matters partner of the docket number assigned to the case by the Court (see Rule 35) and the date the petition was served by the Clerk on the Commissioner. Within 5 days after receiving a copy of the petition and the aforementioned notification from the petitioner, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as required by Code Section 6223(g). Said notice shall include the docket number assigned to the case by the Court and the date the petition was served by the Clerk on the Commissioner.

(g) Copy of Petition to Be Provided All Partners: Upon request by any partner in the partnership as referred to in Code Section 6231(a)(2)(A), the tax matters partner shall, within 10 days of receipt of such request, make available to such partner a copy of any petition filed by the tax matters partner or by any other partner.

Note

Paragraph (c) of Rule 241 is amended to make clear that a claim for reasonable administrative costs is not to be included in the petition in a partnership action. The procedure for claiming reasonable administrative costs in partnership actions is set forth in Rule 231.

Paragraphs (d)(1)(F) and (e)(8) of Rule 241 are amended to require the inclusion of counsel's Tax Court bar number in all petitions in partnership actions.

The amendments of Rule 241(c) are effective as of July 1, 1990.

RULE 242. DESIGNATION OF PLACE OF TRIAL

At the time of filing a petition in a partnership action, a designation of place of trial shall be filed in accordance with Rule 140.

RULE 243. OTHER PLEADINGS

(a) Answer: The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(b) Reply: For provisions relating to the filing of a reply, see Rule 37.

RULE 244. JOINDER OF ISSUE IN PARTNERSHIP ACTION

A partnership action shall be deemed at issue upon the later of:

(1) the time provided by Rule 38, or

(2) the expiration of the period within which a notice of election to intervene or to participate may be filed under Rule 245(a) or (b).

RULE 245. INTERVENTION AND PARTICIPATION

(a) Tax Matters Partner: The tax matters partner may intervene in an action for readjustment of partnership items brought by another partner or partners by filing a notice of election to intervene with the Court. Such notice shall state that the intervenor is the tax matters partner and shall be filed within 90 days from the date of service of the petition by the Clerk on the Commissioner. See Code Section 6226(b)(2) and Rule 241(d)(3).

(b) Other Partners: Any other partner who satisfies the requirements of Code Section 6226(d) or 6228(a)(4)(B) may participate in the action by filing a notice of election to participate with the Court. Such notice shall set forth facts establishing that such partner satisfies the requirements of Code Section 6226(d) in the case of an action for readjustment of partnership items or Code Section 6228(a)(4)(B) in

the case of an action for adjustment of partnership items and shall be filed within 90 days from the date of service of the petition by the Clerk on the Commissioner. A single notice may be filed by two or more partners; however, each such partner must satisfy all requirements of this paragraph in order for the notice to be treated as filed by or for that partner.

(c) **Enlargement of Time:** The Court may grant leave to file a notice of election to intervene or a notice of election to participate out of time upon a showing of sufficient cause.

(d) **Pleading:** No assignment of error, allegation of fact, or other statement in the nature of a pleading shall be included in a notice of election to intervene or notice of election to participate. As to the form and content of a notice of election to intervene and a notice of election to participate, see Appendix I, Forms 14 and 15, respectively.

(e) **Amendments to the Petition:** A party other than the petitioner who is authorized to raise issues not raised in the petition may do so by filing an amendment to the petition. Such an amendment may be filed, without leave of Court, at any time within the period specified in Rule 245(b). Otherwise, such an amendment may be filed only by leave of Court. See Rule 36(a) for time for responding to amendments to the petition.

RULE 246. SERVICE OF PAPERS

(a) **Petitions:** All petitions shall be served by the Clerk on the Commissioner.

(b) **Papers Issued by the Court:** All papers issued by the Court shall be served by the Clerk on the Commissioner, the tax matters partner (whether or not the tax matters partner is a participating partner), and all other participating partners.

(c) **All Other Papers:** All other papers required to be served (see Rule 21(a)) shall be served by the parties filing such papers. Whenever a paper (other than a petition) is required by these Rules to be filed with the Court, the original paper shall be filed with the Court with certificates by the filing party or the filing party's counsel that service of the paper has been made on each of the other parties set

forth in paragraph (b) of this Rule or on such other parties' counsel.

RULE 247. PARTIES

(a) In General: For purposes of this title of these Rules, the Commissioner, the partner who filed the petition, the tax matters partner, and each person who satisfies the requirements of Code Section 6226(c) and (d) or 6228(a)(4) shall be treated as parties to the action.

(b) Participating Partners: Participating partners are the partner who filed the petition and such other partners who have filed either a notice of election to intervene or a notice of election to participate in accordance with the provisions of Rule 245. See Code Sections 6226(c) and 6228(a)(4)(A).

RULE 248. SETTLEMENT AGREEMENTS

(a) Consent by the Tax Matters Partner to Entry of Decision: A stipulation consenting to entry of decision executed by the tax matters partner and filed with the Court shall bind all parties. The signature of the tax matters partner constitutes a certificate by the tax matters partner that no party objects to entry of decision. See Rule 251.

[1](b) Settlement or Consistent Agreements Entered Into by All Participating Partners or No Objection by Participating Partners:

(1) After the expiration of the time within which to file a notice of election to intervene or to participate under Rule 245(a) or (b), the Commissioner shall move for entry of decision, and shall submit a proposed form of decision with such motion, if—

(A) all of the participating partners have entered into a settlement agreement or consistent agreement with the Commissioner, or all of such partners do not object to the granting of the Commissioner's motion for entry of decision, and

(B) the tax matters partner (if a participating partner) agrees to the proposed decision in the case but does not

[1]The amendments of subparagraph (1) are effective as of July 1, 1990.

certify that no party objects to the granting of the Commissioner's motion for entry of decision.

(2) Within 3 days from the date on which the Commissioner's motion for entry of decision is filed with the Court, the Commissioner shall serve on the tax matters partner a certificate showing the date on which the Commissioner's motion was filed with the Court.

(3) Within 3 days after receiving the Commissioner's certificate, the tax matters partner shall serve on all other parties to the action other than the participating partners, a copy of the Commissioner's motion for entry of decision, a copy of the proposed decision, a copy of the Commissioner's certificate showing the date on which the Commissioner's motion was filed with the Court, and a copy of this Rule.

(4) If any party objects to the granting of the Commissioner's motion for entry of decision, then that party shall, within 60 days from the date on which the Commissioner's motion was filed with the Court, file a motion for leave to file a notice of election to intervene or to participate, accompanied by a separate notice of election to intervene or a separate notice of election to participate, as the case may be. If no such motion is filed with the Court within such period, or if the Court should deny such motion, then the Court may enter the proposed decision as its decision in the partnership action. See Code Sections 6226(f) and 6228(a)(5). See also Rule 245, relating to intervention and participation, and Rule 251, relating to decisions.

[1](c) **Other Settlement and Consistent Agreements:** If a settlement agreement or consistent agreement is not within the scope of paragraph (b) of this Rule, then—

(1) in the case of a participating partner, the Commissioner shall promptly file with the Court a notice of settlement agreement or notice of consistent agreement, whichever may be appropriate, that identifies the participating partner or partners who have entered into the settlement agreement or consistent agreement; and

(2) in the case of any partner who enters into a settlement agreement, the Commissioner shall, within 7

[1]The amendments of subparagraph (2) are effective as of July 1, 1990.

days after the settlement agreement is executed by both the partner and the Commissioner, serve on the tax matters partner a statement which sets forth—

(A) the identity of the party or parties to the settlement agreement and the date of the agreement;

(B) the year or years to which the settlement agreement relates; and

(C) the terms of settlement as to each partnership item and the allocation of such items among the partners.

Within 7 days after receiving the statement required by this subparagraph, the tax matters partner shall serve a copy of the statement on all parties to the action.

RULE 249. ACTION FOR ADJUSTMENT OF PARTNERSHIP ITEMS TREATED AS ACTION FOR READJUSTMENT OF PARTNERSHIP ITEMS

[1](a) Amendment to Petition: If, after the filing of a petition for adjustment of partnership items (see Code Section 6228(a) and Rule 241(a)) but before the hearing of such petition, the Commissioner mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the petition relates, then such petition shall be treated as a petition in an action for readjustment of the partnership items to which such notice relates. The petitioner, within 90 days after the date on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, shall file an amendment to the petition, setting forth every error which the petitioner alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment, and the facts on which the petitioner bases the assignments of error. A copy of the notice of final partnership administrative adjustment shall be appended to the amendment to the petition. On or before the day the amendment to petition is delivered to the Court, or, if the amendment to petition is mailed to the Court, on or before the day of mailing, the tax matters partner shall serve notice of the filing of the amendment to

[1]The amendment is effective as of July 1, 1990.

petition on each partner in the partnership as required by Code Section 6223(g).

(b) Participation: Any partner who has filed a timely notice of election to participate in the action for adjustment of partnership items shall be deemed to have elected to participate in the action for readjustment of partnership items and need not file another notice of election to do so. Any other partner may participate in the action by filing a notice of election to participate within 90 days from the date of filing of the amendment to petition. See Rule 245.

RULE 250. APPOINTMENT AND REMOVAL OF THE TAX MATTERS PARTNER[1]

(a) Appointment of Tax Matters Partner: If, at the time of commencement of a partnership action by a partner other than the tax matters partner, the tax matters partner is not identified in the petition, then the Court will take such action as may be necessary to establish the identity of the tax matters partner or to effect the appointment of a tax matters partner.

(b) Removal of Tax Matters Partner: After notice and opportunity to be heard, (1) the Court may for cause remove a partner as the tax matters partner and (2) if the tax matters partner is removed by the Court, or if a partner's status as the tax matters partner is terminated for reason other than removal by the Court, then the Court may appoint another partner as the tax matters partner if the partnership fails to designate a successor tax matters partner within such period as the Court may direct.

RULE 251. DECISIONS

A decision entered by the Court in a partnership action shall be binding on all parties. For the definition of parties, see Rule 247(a).

[1]The amendments are effective as of July 1, 1990.

TITLE XXV

SUPPLEMENTAL PROCEEDINGS[1]

Prefatory Note

The Rules of Practice and Procedure of the United States Tax Court are revised by adding a new Title XXV, relating to Supplemental Proceedings. This title has been added because of the legislative enlargement of the Court's jurisdiction made by Sections 6244(a), 6246(a), and 6247(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, 3750, 3751-3752. Those sections confer jurisdiction on the Court to enforce overpayment determinations, to redetermine interest on deficiencies, and to modify decisions in estate tax cases involving elections under Code Section 6166. Proceedings commenced under authority of these sections are supplementary in nature in that they all presuppose a prior action for the redetermination of a deficiency under Code Section 6213(a), or a transferee liability, the entry of decision in which does not resolve certain important matters.

Title XXV consists of the following three new Rules:

Rule 260—Proceeding to Enforce Overpayment Determination;
Rule 261—Proceeding to Redetermine Interest on Deficiency; and
Rule 262—Proceeding to Modify Decision in Estate Tax Case Involving Section 6166 Election.

These proceedings are discussed more fully in the relevant Note to each specific Rule.

[1]Title XXV sets forth procedures for supplemental proceedings under Code Section 6512(b)(2) (proceedings to enforce overpayment determinations), Code Section 7481(c) (proceedings to redetermine interest on deficiencies), and Code Section 7481(d) (proceedings to modify decisions in estate tax cases involving elections under Code Section 6166), enacted by sections 6244(a), 6246(a), and 6247(a), respectively, of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342. For the effective dates of these provisions, see sections 6244(c), 6246(c), and 6247(c) of that Act.

RULE 260. PROCEEDING TO ENFORCE OVERPAYMENT DETERMINATION[1]

(a) Commencement of Proceeding: (1) *How Proceeding Is Commenced:* A proceeding to enforce an overpayment determined by the Court under Code Section 6512(b)(1) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court determined the overpayment.

(2) *When Proceeding May Be Commenced:* A proceeding under this Rule may not be commenced before the expiration of 120 days after the decision of the Court determining the overpayment has become final within the meaning of Code Section 7481(a).

(b) Content of Motion: A motion to enforce an overpayment determination filed pursuant to this Rule shall contain the following:

(1) The petitioner's identification number (e.g., Social Security number or employer identification number) and current mailing address.

(2) A statement whether any dispute exists between the parties regarding either the fact or amount of interest payable in respect of the overpayment determined by the Court and, if such a dispute exists, clear and concise lettered statements of the facts regarding the dispute and the petitioner's position in respect of each disputed matter.

(3) A copy of the Court's decision which determined the overpayment, together with a copy of any stipulation referred to therein and any computation filed pursuant to Rule 155 setting forth the amount and date of each payment made by the petitioner.

(4) A copy of the petitioner's written demand on the Commissioner to refund the overpayment determined by the Court, together with interest as provided by law; this demand shall have been made not less than 60 days

[1]New Rule 260 is effective for motions filed to enforce overpayments determined by the Court which have not yet been refunded by February 8, 1989, the 90th day after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342. See section 6244(a) of that Act for the substantive provisions and section 6244(c) of that Act for the effective date.

before the filing of the motion under this Rule and shall have been made on the Commissioner through the Commissioner's last counsel of record in the action in which the Court determined the overpayment which the petitioner now seeks to enforce by this motion.

(5) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) **Response by Commissioner:** Within 30 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall specifically admit or deny each allegation set forth in the petitioner's motion. If a dispute exists between the parties regarding either the fact or amount of interest payable in respect of the overpayment determined by the Court, then the Commissioner's response shall also include clear and concise statements of the facts regarding the dispute and the Commissioner's position in respect of each disputed matter. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) **Disposition of Motion:** A motion to enforce an overpayment determination filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) **Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court determined the overpayment which the petitioner now seeks to enforce will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3).

(f) Cross-Reference: For the need, in the case of an overpayment, to include the amount and date of each payment made by the petitioner in any computation for entry of decision, see paragraphs (a) and (b) of Rule 155.

Note

Rule 260 is a new rule. It is intended to implement Code Section 6512(b)(2), which was enacted by Section 6244(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100- 647, 102 Stat. 3342, 3750. Code Section 6512(b)(2) serves to confer jurisdiction on the Court to order the credit or refund of both an overpayment which has been determined by the Court and the interest on such an overpayment. Before the enactment of that section, the Court could not enforce its own overpayment determination by ordering a credit or refund. See *United States ex rel. Girard Trust Co. v. Helvering*, 301 U.S. 540, 542 (1937). Now, however, if the Commissioner fails to credit or refund the overpayment determined by the Court, the taxpayer is no longer required to seek redress in some other forum, but rather may seek to enforce the overpayment in the same court which determined it, i.e., this Court.

A proceeding to enforce an overpayment determination pursuant to Code Section 6512(b)(2) is not an independent action, but rather is a supplemental proceeding. Accordingly, paragraph (a)(1) of Rule 260 provides that such a proceeding shall be commenced by motion and that the motion shall bear the same docket number as that of the original action, i.e., the action in which the Court determined the overpayment. This will enable the Court to readily retrieve and associate its official case file for the original action with the motion to enforce the overpayment determination. Moreover, under paragraph (e) of the Rule, counsel previously recognized by the Court in the original action will continue to be recognized in the supplemental proceeding. However, counsel not previously recognized will be required to file an entry of appearance pursuant to Rule 24(a)(3).

Paragraph (a)(2) of the Rule provides that a proceeding to enforce an overpayment determination may not be commenced before the expiration of 120 days after the decision of the Court determining the overpayment has become final. See Code Section 6512(b)(2). A decision of the Court becomes final at the time specified by Code Section 7481(a).

The Commissioner's failure to credit or refund an overpayment determined by the Court is likely to be corrected if the petitioner brings that failure to the Commissioner's attention. On the other hand, if the Commissioner's failure to refund such an overpayment is not inadvertent, then formal contact between the parties will more clearly define the matters in dispute. Accordingly, paragraph (b)(4) of the Rule provides that the petitioner shall make a written demand on the Commissioner to credit or refund the overpayment at least 60 days before the filing of the motion. In order to insure that the demand will serve the purposes for which it is intended, the demand shall be made on the Commissioner

through the District Counsel attorney last involved in the original action. If the petitioner later commences a proceeding to enforce an overpayment determination, then paragraph (b)(4) of the Rule also requires the petitioner to attach a copy of the written demand as an exhibit to the motion.

Under paragraph (d) of the Rule, a motion to enforce an overpayment determination will ordinarily be disposed of without a hearing. Paragraph (b), which sets forth the required content of such a motion, and paragraph (c), which sets forth the required content of the Commissioner's written response, are intended to provide the necessary basis to enable the Court to so act. Of course, as paragraph (d) also provides, the Court will direct a hearing if there is a bona fide factual dispute between the parties that cannot be resolved without an evidentiary hearing. The existence of such a dispute should be apparent from the content of the petitioner's motion and the Commissioner's response.

As an aid to the parties and their counsel, paragraph (f) of the Rule cross-references paragraphs (a) and (b) of Rule 155, which require in the case of an overpayment the inclusion in any computation for entry of decision of the amount and date of each payment made by the petitioner.

Rule 260 is effective for motions filed to enforce overpayments determined by the Court which have not yet been refunded by February 8, 1989, the 90th day after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988.

RULE 261. PROCEEDING TO REDETERMINE INTEREST ON DEFICIENCY[1]

(a) Commencement of Proceeding: (1) *How Proceeding Is Commenced:* A proceeding to redetermine interest on a deficiency assessed under Code Section 6215 shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court redetermined the deficiency.

(2) *When Proceeding May Be Commenced:* Any proceeding under this Rule must be commenced within one year after the date that the Court's decision becomes final within the meaning of Code Section 7481(a).

(b) Content of Motion: A motion to redetermine interest filed pursuant to this Rule shall contain the following:

[1]New Rule 261 is effective for motions filed in respect of deficiencies redetermined by the Court which are assessed after November 30, 1988. See section 6246(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, for the substantive provisions and section 6246(c) of that Act for the effective date.

(1) The petitioner's identification number (e.g., Social Security number or employer identification number) and current mailing address.

(2) A statement that the petitioner has paid the entire amount of the deficiency assessed under Code Section 6215 plus interest claimed by the Commissioner in respect of which the proceeding under this Rule has been commenced.

(3) A schedule setting forth—

(A) the amount of each payment made by the petitioner in respect of the deficiency and interest described in paragraph (b)(2) of this Rule,

(B) the date of each such payment, and

(C) if applicable, the part of each such payment allocated by the petitioner to tax and the part of each such payment allocated by the petitioner to interest.

(4) A statement setting forth the petitioner's contentions regarding the correct amount of interest, together with a schedule detailing the computation of that amount.

(5) A statement whether the petitioner has discussed the dispute over interest with the Commissioner, and if so, the contentions made by the petitioner; and if not, the reason or reasons why not.

(6) A copy of the Court's decision which redetermined the deficiency, together with a copy of any notice of assessment including any supporting schedules or any collection notice that the petitioner may have received from the Commissioner, in respect of which the proceeding under this Rule has been commenced.

(7) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) **Response by Commissioner:** Within 60 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall specifically address each of the contentions made by the petitioner regarding the correct amount of interest and the petitioner's computation of that amount. The Commissioner shall attach to the Commissioner's response a sched-

ule detailing the computation of interest claimed by the Commissioner. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) **Disposition of Motion:** A motion to redetermine interest filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) **Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court redetermined the deficiency the interest paid in respect of which the petitioner now seeks a redetermination will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3).

Note

Rule 261 is a new rule. It is intended to implement Code Section 7481(c), which was enacted by Section 6246(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, 3751. Code Section 7481(c) serves to confer jurisdiction on the Court to redetermine interest on deficiencies assessed under Code Section 6215. Before the enactment of that section, the Court did not have jurisdiction to resolve disputes that arose over the Commissioner's post-decision computation of interest. Now, however, if a dispute over interest arises, the taxpayer is no longer required to seek redress in some other forum, but rather may seek review in the same court which redetermined the deficiency that gives rise to the liability for interest, i.e., this Court.

A proceeding to redetermine interest on a deficiency pursuant to Code Section 7481(c) is not an independent action but rather is a supplemental proceeding. Accordingly, paragraph (a)(1) of Rule 261 provides that such a proceeding shall be commenced by motion and that such motion shall bear the same docket number as that of the original action, i.e., the action in which the Court redetermined the deficiency. This will enable the Court to readily retrieve and associate its official case file for the original action with the motion to redetermine interest. Moreover, under paragraph (e) of the Rule, counsel previously recognized by the Court in

the original action will continue to be recognized in the supplemental proceeding. However, counsel not previously recognized will be required to file an entry of appearance pursuant to Rule 24(a)(3).

Paragraph (a)(2) of the Rule provides that any proceeding to redetermine interest must be commenced within one year after the date that the Court's decision becomes final. See Code Section 7481(c)(3). A decision of the Court becomes final at the time specified by Code Section 7481(a).

Under paragraph (d) of the Rule, a motion to redetermine interest will ordinarily be disposed of without an evidentiary or other hearing. Paragraph (b), which sets forth the required content of such a motion, and paragraph (c), which sets forth the required content of the Commissioner's written response, are intended to provide the necessary basis to enable the Court to so act. Those paragraphs specifically require the parties to include a schedule detailing the computation of interest claimed by each to be the correct amount. These schedules should include not only the applicable interest rates and the period for which each such rate is effective, but also the mathematics underlying each step in the computation. Of course, as paragraph (d) also provides, the Court will direct a hearing if there is a bona fide factual dispute between the parties that cannot be resolved without an evidentiary hearing. The existence of such a dispute should be apparent from the content of the petitioner's motion and the Commissioner's response.

Rule 261 is effective for motions filed in respect of deficiencies redetermined by the Court which are assessed after November 10, 1988, i.e., the date of enactment of the Technical and Miscellaneous Revenue Act of 1988.

RULE 262. PROCEEDING TO MODIFY DECISION IN ESTATE TAX CASE INVOLVING SECTION 6166 ELECTION[1]

(a) Commencement of Proceeding: A proceeding to modify a decision in an estate tax case pursuant to Code Section 7481(d) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court entered the decision which the petitioner now seeks to modify.

(b) Content of Motion: A motion to modify a decision filed pursuant to this Rule shall contain the following:

(1) The petitioner's identification number.

[1]New Rule 262 is effective with respect to cases for which the Court's decision is not final on November 10, 1988. See section 6247(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342 for the substantive provisions and section 6247(c) of that Act for the effective date.

(2) The name and current mailing address of each fiduciary authorized to act on behalf of the petitioner.

(3) A copy of the decision entered by the Court which the petitioner now seeks to modify.

(4) A statement that the time for payment by the petitioner of an amount of tax imposed by Code Section 2001 has been extended pursuant to Code Section 6166.

(5) A schedule setting forth—

(A) the amount of interest paid by the petitioner on any portion of the tax imposed by Code Section 2001 on the petitioner for which the time of payment has been extended under Code Section 6166;

(B) the amount of interest on any estate, succession, legacy, or inheritance tax imposed by a State on the petitioner during the period of the extension of time for payment under Code Section 6166; and

(C) the date that each such amount of interest was paid by the petitioner.

(6) A statement describing the nature of any dispute within the purview of Code Section 7481(d). If no such dispute exists, then a statement to that effect and a proposed form of decision shall be submitted with the motion.

(7) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) **Response by Commissioner in Unagreed Case:** If a dispute exists between the parties regarding either the petitioner's right to relief under Code Section 7481(d) or the amount of interest deductible as an administrative expense under Code Section 2053, then the Commissioner shall, within 60 days after service of a motion filed pursuant to this Rule, file a written response. The response shall identify the nature of the dispute, shall specifically admit or deny each allegation set forth in the petitioner's motion, and shall state the Commissioner's position in respect of each disputed matter. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a

statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) **Disposition of Motion:** A motion to modify a decision filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) **Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court entered the decision which the petitioner now seeks to modify will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3).

(f) **Cross-Reference:** For the need to move the Court to retain its official case file in the action with respect to which the petitioner seeks to modify the decision, see Rule 157.

Note

Rule 262 is a new rule. It is intended to implement Code Section 7481(d), which was enacted by Section 6247(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100- 647, 102 Stat. 3342, 3751-3752. Code Section 7481(d) serves to confer jurisdiction on the Court to modify decisions in estate tax cases in which elections under Code Section 6166 have been made to extend the time for payment of estate tax. Before the enactment of Code Section 7481(d), and upon request of the parties, the Court would not enter decisions in estate tax cases involving such elections until the extended-payment period had expired, because the amount of the deduction for interest under Code Section 2053 to which the estate was entitled could not be determined until the interest was actually paid. See *Estate of Bailly v. Commissioner,* 81 T.C. 949 (1983), supplementing 81 T.C. 246 (1983), for a fuller explanation of the problem. Now, however, the Court may enter decision in an estate tax case in which an election under Code Section 6166 has been made and then subsequently modify that decision (which would otherwise be final) in order to reflect the estate's entitlement to a deduction under Code Section 2053 for interest on Federal and State death taxes paid during the extended-payment period.

A proceeding to modify an otherwise final decision of this Court in an estate tax case pursuant to Code Section 7481(d) is not an independent

action but rather is a supplemental proceeding. Accordingly, paragraph (a) of Rule 262 provides that such a proceeding shall be commenced by motion and that the motion shall bear the same docket number as that of the original action, i.e., the action commenced by the petitioner to redetermine the deficiency. This will enable the Court to readily retrieve and associate its official case file for the original action with the motion to modify decision. Moreover, under paragraph (e) of the Rule, counsel previously recognized by the Court in the original action will continue to be recognized in the supplemental proceeding. However, counsel not previously recognized will be required to file an entry of appearance pursuant to Rule 24(a)(3).

Rule 262 contemplates that a proceeding to modify a decision pursuant to Code Section 7481(d) will be commenced by the estate, i.e., the petitioner in the original action. However, Rule 262 does not preclude the parties from filing a joint motion if they agree on the deficiency (or overpayment), as modified. In fact, the Court favors joint motions under such circumstances. Joint motions, as well as agreed motions, should always be accompanied by a proposed form of decision.

Under paragraph (d) of the Rule, a motion to modify a decision in an estate tax case will ordinarily be disposed of without a hearing. Paragraph (b), which sets forth the required content of such a motion, and paragraph (c), which sets forth the required content of the Commissioner's written response in an unagreed case, are intended to provide the necessary basis to enable the Court to so act. Of course, as paragraph (d) also provides, the Court will direct a hearing if there is bona fide factual dispute between the parties that cannot be resolved without an evidentiary hearing. The existence of such a dispute should be apparent from the content of the petitioner's motion and the Commissioner's response.

As an aid to petitioners and their counsel, paragraph (f) of the Rule cross-references Rule 157, which requires the petitioner to move the Court to retain its official case file at the conclusion of the original action.

Rule 262 is effective with respect to cases for which the Court's decision is not final on November 10, 1988, i.e., the date of enactment of the Technical and Miscellaneous Revenue Act of 1988.

TITLE XXVI

ACTIONS FOR ADMINISTRATIVE COSTS[1]

Prefatory Note

The Rules of Practice and Procedure of the United States Tax Court are revised by adding a new Title XXVI, relating to actions for administrative costs. This title has been added because of the legislative enlargement of the Court's jurisdiction made by Section 6239(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, 3743-3746. That section confers jurisdiction on the Court to hear and decide appeals by taxpayers from decisions by the Internal Revenue Service denying awards for reasonable administrative costs under Code Section 7430. For the grant of jurisdiction, see Code Section 7430(f)(2).

Title XXVI consists of the following five new Rules:

Rule 270—General
Rule 271—Commencement of Action for Administrative Costs
Rule 272—Other Pleadings
Rule 273—Joinder of Issue in Action for Administrative Costs
Rule 274—Applicable Small Tax Case Rules

These provisions are discussed more fully in the relevant Note to each specific Rule.

Code Section 7430(f)(2) provides that proceedings in actions for administrative costs shall be conducted "under rules similar to the rules under Section 7463 (without regard to the amount in dispute)." Accordingly, the Rules of this Title set forth a simplified procedure applicable to actions for administrative costs which is analogous to the simple and informal procedure that characterizes proceedings in small tax cases under Title XVII of the Court's Rules of Practice and Procedure. In fact, many of the Rules of Title XVII are specifically made applicable to actions for administrative costs. See Rule 274, *infra*. Perhaps the most

[1]Title XXVI sets forth procedures for actions for administrative costs under Code Section 7430(f)(2), as amended by section 6239(a) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342, 3743-3746. The amendments of Code Section 7430 apply to proceedings commenced after November 10, 1988, the date of enactment of the Technical and Miscellaneous Revenue Act of 1988. See section 6239(d) of that Act, 102 Stat. at 3746. Similarly, the Rules of this Title XXVI are effective with respect to actions for administrative costs commenced after November 10, 1988.

important of the incorporated Rules is Rule 177, and in particular paragraph (b) thereof. That Rule provides that trials of small tax cases (and, therefore, administrative costs cases) will be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible.

Code Section 7430(f)(2) does not mandate that proceedings in actions for administrative costs be conducted under rules *identical* to those applicable to small tax cases, but rather only under *similar* rules. Accordingly, there are some differences in the applicable procedures. Thus, for example, in an action for administrative costs the Commissioner is required to file an answer (see Rule 272(a), *infra*), whereas in a small tax case an answer is generally not required. Nevertheless, it must be emphasized that the goal of the administrative costs case Rules is the same as that of the small tax case Rules, namely, the availability of a simple and informal procedure whereby taxpayers, even though unrepresented, may present to the Court their dispute with the Commissioner and receive a fair, impartial, and speedy resolution thereof on the merits.

The Rules of Title XXVI are effective for actions for administrative costs commenced after November 10, 1988, the date of enactment of the Technical and Miscellaneous Revenue Act of 1988. See Section 6239(d) of that Act, 102 Stat. at 3746.

RULE 270. GENERAL[1]

(a) Applicability: The Rules of this Title XXVI set forth the special provisions which apply to actions for administrative costs under Code Section 7430(f)(2). 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 administrative costs.

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

(1) "Reasonable administrative costs" means the items described in Code Section 7430(c)(2).

(2) "Attorney's fees" include fees paid or incurred for the services of an individual (whether or not an attorney)

[1]New Rule 270 is effective with respect to actions for administrative costs commenced after November 10, 1988.

admitted to practice before the Court or authorized to practice before the Internal Revenue Service. For the procedure for admission to practice before the Court, see Rule 200.

(3) "Administrative proceeding" means any procedure or other action before the Internal Revenue Service.

(c) **Jurisdictional Requirements:** The Court does not have jurisdiction of an action for administrative costs under this Title 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.

Note

Rule 270 is a new Rule. It describes the applicability of the Rules of Title XXVI, defines certain operative terms, and sets forth the prerequisites for the exercise of jurisdiction by the Court.

Paragraph (a) of Rule 270 provides that actions for administrative costs under Code Section 7430(f)(2) are governed by the Rules of Title XXVI, i.e., Rules 270 through 274. Such actions are also governed by the Court's other Rules of Practice and Procedure to the extent that they are pertinent and not otherwise superseded by any provision in Title XXVI.

The definitions of the terms in paragraph (b) of the Rule are derived from the definitions of those terms in the Internal Revenue Code. See Code Section 7430(c)(2), (c)(3), and (c)(5).

Under paragraph (c) of the Rule, the Court's jurisdiction in an action for administrative costs depends on (1) the Commissioner's decision denying (in whole or in part) an award for reasonable administrative costs under Code Section 7430(a) and (2) the filing by the taxpayer of a petition for an award for reasonable administrative costs.

Rule 270 is effective with respect to actions for administrative costs commenced after November 10, 1988.

RULE 271. COMMENCEMENT OF ACTION FOR ADMINISTRATIVE COSTS[1]

(a) **Commencement of Action:** An action for an award for reasonable administrative costs under Code Section 7430(f)(2) shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule

[1]New Rule 271 is effective with respect to actions for administrative costs commenced after November 10, 1988.

22, relating to the place and manner of filing the petition; and Rule 32, relating to the form of pleadings.

(b) Content of Petition: A petition filed pursuant to this Rule shall be entitled "Petition for Administrative Costs (Sec. 7430(f)(2))." Such a petition shall be substantially in accordance with Form 16 shown in Appendix I, or shall, in the alternative, contain the following:

(1) In the case of a petitioner other than a corporation, the petitioner's name and legal residence; in the case of a corporate petitioner, the petitioner's name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address and identification number (e.g., Social Security number or employer identification number). The mailing address, legal residence, and principal place of business, or principal office or agency, shall be stated as of the date that the petition is filed.

(2) The date of the decision denying an award for administrative costs in respect of which the petition is filed, and the City and State of the office of the Internal Revenue Service which issued the decision.

(3) The amount of administrative costs claimed by the petitioner in the administrative proceeding; the amount of administrative costs denied by the Commissioner; and, if different from the amount denied, the amount of administrative costs now claimed by the petitioner.

(4) Clear and concise lettered statements of the facts on which the petitioner relies to establish that, in the administrative proceeding, the petitioner substantially prevailed and the Commissioner's position was not substantially justified.

(5) A statement that the petitioner meets the net worth requirements of Section 2412(d)(2)(B) of Title 28, United States Code (as in effect on October 22, 1986).

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

(7) A copy of the decision denying (in whole or in part) an award for reasonable administrative costs in respect of which the petition is filed.

(c) Filing Fee: The fee for filing a petition for administrative costs shall be $60, payable at the time of filing. The

payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information that the petitioner is unable to make such payment.

Note

Rule 271 is a new Rule. It states how an action for administrative costs shall be commenced, describes the content of the petition in such an action, and sets forth procedures relating to the filing fee.

Code Section 7430(f)(2) confers jurisdiction on the Court to hear and decide appeals by taxpayers from decisions by the Internal Revenue Service denying awards for reasonable administrative costs under Code Section 7430. Paragraph (a) of the Rule provides that a taxpayer shall prosecute such an appeal through an action for administrative costs and that such an action shall be commenced by filing a petition with the Court. Paragraph (a) also cross-references other Rules which set forth various administrative and procedural requirements relating to the filing of a petition.

An action for administrative costs under Code Section 7430(f)(2) constitutes a new proceeding. The record made in the court proceeding will serve as the predicate for the Court's decision. In other words, review by the Court will be de novo and not based on an administrative record. With this approach in mind, paragraph (b) of the Rule specifies the content of a petition for administrative costs.

Under paragraph (b), a petition filed pursuant to the Rule shall be entitled "Petition for Administrative Costs (Sec. 7430(f)(2)." This requirement is designed to facilitate the docketing and processing of the petition by the Court's clerical personnel.

The seven subparagraphs of paragraph (b) detail the required content of a petition for administrative costs. The requirements are comparable to a petition in a deficiency or liability action under Rule 34(b) and a motion for an award of reasonable litigation costs under Rule 231(b). However, in keeping with the goal of this title, the requirements have been streamlined. In the alternative, a taxpayer may complete and file a form petition. Such a form petition appears as Form 16 in Appendix I of the Court's Rules of Practice and Procedure and is available upon request from the Clerk of the Court.

Paragraph (c) of the Rules provides that the filing fee for an action for administrative costs is $60, payable at the time the petition is filed. The filing fee may be waived for a taxpayer who is financially unable to pay and who establishes that fact to the satisfaction of the Court by furnishing an affidavit containing specific financial information.

Rule 271 is effective with respect to actions for administrative costs commenced after November 10, 1988.

RULE 272. OTHER PLEADINGS[1]

(a) Answer (1) *In General:* The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(2) *Additional Requirement for Answer:* In addition to the specific admission or denial of each material allegation in the petition, the answer shall specifically state:

(A) Whether the Commissioner agrees that the petitioner substantially prevailed in the administrative proceeding;

(B) Whether the Commissioner agrees that the position of the Commissioner in the administrative proceeding was not substantially justified;

(C) Whether the Commissioner agrees that the amount of administrative costs claimed by the petitioner is reasonable;

(D) Whether the Commissioner agrees that the petitioner meets the net worth requirements as provided by law; and

(E) The basis for the Commissioner's disagreement with any such allegations by the petitioner.

(3) *Effect of Answer:* Every material allegation set forth in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted. The failure to include in the answer any statement required by subparagraph (2) of this paragraph shall be deemed to constitute a concession by the Commissioner of that matter.

(b) Reply: A reply to the answer shall not be filed in an action for administrative costs unless the Court, on its own motion or upon motion of the Commissioner, shall otherwise direct. Any reply shall conform to the requirements of Rule 37(b). In the absence of a requirement of a reply, the provisions of the second sentence of Rule 37(c) shall not apply and the material allegations of the answer will be deemed denied.

[1]New Rule 272 is effective with respect to actions for administrative costs commenced after November 10, 1988.

Note

Rule 272 is a new Rule. It provides for the filing of an answer to the petition in an action for administrative costs. It also provides that no reply to the answer shall be filed unless the Court should direct otherwise.

Paragraph (a) of the Rule sets forth the requirements relating to the answer. Subparagraph (1) incorporates the provisions of Rule 36 relating to the time within which the Commissioner must file an answer (or move with respect to the petition) and the form and content of the answer.

Additional requirements for the answer are set forth in paragraph (a)(2) of the Rule. This paragraph is designed to identify the issues for decision by the Court in the action for administrative costs by requiring the Commissioner to specifically state whether the Commissioner agrees or does not agree that the petitioner substantially prevailed in the administrative proceeding, that the position of the Commissioner in the administrative proceeding was not substantially justified, that the amount of administrative costs claimed by the petitioner is reasonable, and that the petitioner meets the applicable net worth requirements. Most important, if the Commissioner states that he or she does not agree with any such allegations by the petitioner, paragraph (a)(2)(E) of the Rule requires the Commissioner to state the basis why he or she does not agree. Paragraph (a)(2) thus serves not only to identify the issues in contention but also to define the basis for the parties' dispute.

The importance of the additional requirement for the answer set forth in paragraph (a)(2) of the Rule is underscored by paragraph (a)(3). Under that paragraph the Commissioner's failure to include in the answer any statement required by paragraph (a)(2) shall be deemed to constitute a concession by the Commissioner of that matter. In addition, and consistent with Rule 36(c), paragraph (a)(3) also provides that the Commissioner's failure to expressly admit or deny any material allegations in the petition shall constitute a deemed admission of that allegation.

The requirement of an answer to the petition in every action for administrative costs is the major difference between the administrative costs case Rules and the small tax case Rules of Title XVII. See and compare Rule 175(b). By requiring an answer, the issues in dispute should be more clearly defined at an earlier stage of the proceeding, thereby encouraging better trial preparation and more fruitful settlement negotiation.

Paragraph (b) of the Rule sets forth procedures relating to a reply. These procedures closely parallel those set forth in Rule 175(c) relating to small tax cases. Accordingly, paragraph (b) of Rule 272 provides that no reply to the answer shall be filed in an action for administrative costs unless the Court should direct otherwise on its own motion or upon motion of the Commissioner. It is anticipated that only infrequently will the Court direct that a reply be filed. If a reply is directed, then its form and content should conform to the requirements of Rule 37(b). If a reply is not directed, then the motion procedure described in the second sentence of Rule 37(c) shall not apply and the affirmative allegations of the answer will be deemed denied.

Rule 272 is effective with respect to actions for administrative costs commenced after November 10, 1988.

RULE 273. JOINDER OF ISSUE IN ACTION FOR ADMINISTRATIVE COSTS[1]

An action for administrative costs shall be deemed at issue upon the filing of the answer.

Note

Rule 273 is a new Rule. It establishes the date on which an action for administrative costs shall be deemed at issue, i.e., the date on which the answer is filed.

Rule 273 is effective with respect to actions for administrative costs commenced after November 10, 1988.

RULE 274. APPLICABLE SMALL TAX CASE RULES[2]

Proceedings in an action for administrative costs shall be governed by the provisions of the following Small Tax Case Rules (see Rule 170) with respect to the matters to which they apply: Rule 174 (representation); Rule 176 (preliminary hearings); Rule 177 (trial); Rule 178 (transcript of proceedings); and Rule 179 (number of copies of papers).

Note

Rule 274 is a new Rule. It provides that proceedings in actions for administrative costs shall be governed by the provisions of the five specifically enumerated Small Tax Case Rules of Title XVII of the Court's Rules of Practice and Procedure. These Rules relate to representation (Rule 174), preliminary hearings (Rule 176), trial, including place of trial, conduct of trial and evidence, and briefs (Rule 177), transcript of proceedings (Rule 178), and number of copies of papers (Rule 179). The incorporation of the provisions of these Rules by Rule 274 is consistent with the mandate of Code Section 7430(f)(2) that proceedings in actions for administrative costs be conducted under rules similar to those applicable to small tax cases.

Rule 274 is effective with respect to actions for administrative costs commenced after November 10, 1988.

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[1] New Rule 273 is effective with respect to actions for administrative costs commenced after November 10, 1988.

[2] New Rule 274 is effective with respect to actions for administrative costs commenced after November 10, 1988.

APPENDIX I

FORMS

The following forms are listed in this appendix:

Form 1. Petition (Other Than In Small Tax Case)
*Form 2. Petition (Small Tax Case)
*Form 3. Entry of Appearance
*Form 4. Designation of Place of Trial
*Form 5. Subpoena
*Form 6. Application for Order to Take Deposition
Form 7. Certificate on Return
Form 8. Notice of Appeal to Court of Appeals
Form 9. Appeal Bond, Corporate Surety
Form 10. Appeal Bond, Approved Collateral
Form 11. Power of Attorney and Agreement by Corporation
Form 12. Power of Attorney and Agreement by Individuals
Form 13. Certificate of Service
Form 14. Notice of Election to Intervene
Form 15. Notice of Election to Participate
*Form 16. Petition for Administrative Costs (Sec. 7430(f)(2))

The forms marked by an asterisk (*) (Forms 2, 3, 4, 5, 6, and 16) have been printed and are available upon request from the Clerk of Court. All the forms may be typewritten, except that the subpoena (Form 5) must be obtained from the Court. When preparing papers for filing with the Court, attention should be given to the applicable requirements of Rule 23 in regard to form, size, type, and number of copies, as well as to such other Rules of the Court as may apply to the particular item.

FORM 1

PETITION (Other Than In Small Tax Case)

(See Rules 30 through 34)

UNITED STATES TAX COURT

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

PETITION

The petitioner hereby petitions for a redetermination of the deficiency (or liability) set forth by the Commissioner of Internal Revenue in the Commissioner's notice of deficiency (or liability) [Service symbols] dated ....., 19...., and as the basis for the petitioner's case alleges as follows:

1. The petitioner is [set forth whether an individual, fiduciary, corporation, etc., as provided in Rule 60] with mailing address now at

..... (Street, City, State, Zip Code)

and with legal residence (or principal office) now at [if different from the mailing address]

..... (Street, City, State, Zip Code)

Petitioner's taxpayer identification number (e.g., Social Security or employer identification number) is .....

The return for the period here involved was filed with the Office of the Internal Revenue Service at ..... (City, State)

2. The notice of deficiency (or liability) (a copy of which, including so much of the statement and schedules accompanying the notice as is material, is attached and marked Exhibit A) was mailed to the petitioner on ....., 19...., and was issued by the Office of the Internal Revenue Service at ..... (City, State)

3. The deficiencies (or liabilities) as determined by the Commissioner are in income (estate, gift, or certain excise) taxes for the calendar (or fiscal) year 19...., in the amount of $....., of which $....., is in dispute.

4. The determination of the tax set forth in the said notice of deficiency (or liability) is based upon the following errors: [Here set forth specifically in lettered subparagraphs the assignments of error in a concise manner. Do not plead facts, which properly belong in the succeeding paragraph.]

5. The facts upon which the petitioner relies, as the basis of the petitioner's case, are as follows: [Here set forth allegations of fact, but not the evidence, sufficient to inform the Court and the Commissioner of the positions taken and the bases therefor. Set forth the allegations in orderly and logical sequence, with subparagraphs lettered, so as to enable the Commissioner to admit or deny each allegation. See Rules 31(a) and 34(b)(5).]

WHEREFORE, petitioner prays that [here set forth the relief desired].

(Signed) .....
Petitioner or Counsel

.....
Post office address

Dated: ....., 19....

.....
Telephone (include area code)

.....
Counsel's Tax Court Bar Number

FORM 2

PETITION (Small Tax Case)

(Available—Ask for Form 2)

(See Rules 170 through 179)

UNITED STATES TAX COURT

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

PETITION

1. Petitioner(s) disagree(s) with the tax deficiency(ies) for the year(s) ....., as set forth in the NOTICE OF DEFICIENCY dated ....., 19...., A COPY OF WHICH IS ATTACHED. The notice was issued by the Office of the Internal Revenue Service at .....
City State

2. Petitioner(s)' taxpayer identification (e.g., Social Security) number(s) is (are)... .....

3. Petitioner(s) dispute(s) the following:

Year	Amount of deficiency disputed	Addition to tax (penalty), if any, disputed	Amount of overpayment claimed
.....	.....	.....	.....
.....	.....	.....	.....

4. Set forth those adjustments, i.e., changes, in the NOTICE OF DEFICIENCY with which you disagree and why you disagree.

.....

.....

.....

.....

Petitioner(s) request(s) that this case be conducted under the "small tax case" procedures authorized by Congress to provide the taxpayer(s) with an informal, prompt, and inexpensive hearing at a reasonably convenient location. Consistent with these objectives, a decision in a "small tax case" is final and cannot be appealed to higher Courts (the Courts of Appeals and the Supreme Court) by the Internal Revenue Service or the Petitioner(s).

.....		.....
Signature of Petitioner	Date	Present Address—Street, City, State, Zip Code, Telephone (include area code)
.....		.....
Signature of Petitioner (Spouse)	Date	Present Address—Street, City, State, Zip Code, Telephone (include area code)

.....

Signature, name, address, telephone number, and Tax Court Bar Number of counsel, if retained by petitioner(s)

*If you do not want to make this request, you should place an "X" in the following box. ☐

FORM 3

ENTRY OF APPEARANCE

(Available—Ask for Form 3)

(See Rule 24)

UNITED STATES TAX COURT

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

ENTRY OF APPEARANCE

The undersigned, being duly admitted to practice before the United States Tax Court, hereby enters an appearance for the petitioner in the above-entitled case.

Dated:

.....
Signature
.....
Typed name
.....
Office address
.....
City State Zip Code
.....
Telephone (include area code)
.....
Tax Court Bar Number

SEPARATE ENTRY OF APPEARANCE MUST BE FILED IN DUPLICATE FOR EACH DOCKET NUMBER.

FORM 4

DESIGNATION OF PLACE OF TRIAL

(Available—Ask for Form 4)

(See Rule 140)

UNITED STATES TAX COURT

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

DESIGNATION OF PLACE OF TRIAL

Petitioner(s) hereby designate(s) ..... as the place of trial of this case.
City and State

.....
Signature of Petitioner or Counsel

Dated: ....., 19....

FORM 5

SUBPOENA

(Available—Ask for Form 5)

(See Rule 147)

UNITED STATES TAX COURT

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

SUBPOENA

To .....

.....

YOU ARE HEREBY COMMANDED to appear before the United States Tax Court

.....

(or the name and official title of a person authorized to take depositions)

at ..... (Time) on the ..... (Date) day of ..... (Month), 19... (Year) at .....

.....

(Place)

then and there to testify on behalf of ..... (Petitioner or Respondent)

in the above-entitled case, and to bring with you .....

.....

.....

(Use reverse if necessary)

and not to depart without leave of the Court.

Date: .....

.....

Attorney for (Petitioner)(Respondent) Title

Return on Service

The above-named witness was summoned on the ..... day of ....., 19.... at ... by delivering a copy of this subpoena to h....., and, if a witness for the petitioner, by tendering fees and mileage to h..... pursuant to Rule 148 of the Rules of Practice and Procedure of the Tax Court.

Dated ..... Signed .....

Subscribed and sworn to before me this ..... day of ....., 19....

..... [SEAL]

Name Title

FORM 6

APPLICATION FOR ORDER TO TAKE DEPOSITION*

(Available—Ask for Form 6)

(See Rules 81 through 84)

UNITED STATES TAX COURT

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

APPLICATION FOR ORDER TO TAKE DEPOSITION*

To the United States Tax Court:

1. Application is hereby made by the above-named ..... Petitioner or Respondent for an order to take the deposition(s) of the following named person(s) who has (have) been served with a copy of this application, as evidenced by the attached certificate of service:

	Name of witness	Post office address
(a)	.....	.....
(b)	.....	.....
(c)	.....	.....
(d)	.....	.....

2. It is desired to take the deposition(s) of the above- named person(s) for the following reasons: (With respect to each of the above-named persons, set forth the reasons for taking the depositions rather than waiting until trial to introduce the testimony or other evidence.)

3. The substance of the testimony, to be obtained through the deposition(s), is as follows: (With respect to each of the above-named persons, set forth briefly the substance of the expected testimony or other evidence.)

4. The following books, papers, documents, or other tangible things to be produced at the deposition, are as follows: (With respect to each of the above-named persons, describe briefly all things which the applicant desires to have produced at the deposition.)

5. The expected testimony or other evidence is material to one or more matters in controversy, in the following respects:

(continued)

*Applications must be filed at least 45 days prior to the date set for trial. When the applicant seeks to take depositions upon written questions, the title of the application shall so indicate and the application shall be accompanied by an original and five copies of the proposed questions. The taking of depositions upon written questions is not favored, except when the depositions are to be taken in foreign countries, in which case any depositions taken must be upon written questions, except as otherwise directed by the Court for cause shown. (See Rule 84(a).) If the parties so stipulate, depositions may be taken without application to the Court. (See Rule 81(d).)

6. (a) This deposition (will)(will not) be taken on written questions (see Rule 84).
(b) All such written questions are annexed to this application (attach such questions pursuant to Rule 84).

7. The petition in this case was filed with the Court on .....
month,day,year
The pleadings in this case (are) (are not) closed. This case (has) (has not) been placed on a trial calendar.

8. An arrangement as to payment of fees and expenses of the deposition is desired which departs from Rules 81(g) and 103, as follows:

.....
.....

9. It is desired to take the testimony of ..... on the .....day of ....., 19...., at the hour of .... o'clock.... m, at

.....
Room number, street number, street name, city and state
before .....
Name and official title

10. ..... is a person who is authorized
Name of person before whom deposition is be to taken
to administer an oath, in (his)(her) capacity as .....Such person is not a relative or employee or counsel of any party, or a relative or employee or associate of such counsel, nor is such person financially interested in the action. (For possible waiver of this requirement, see Rule 81(e)(3).)

11. It is desired to record the testimony of .....
before ..... by videotape. The name and address of the videotape operator and the name and address of the operator's employer are .....

.....

Dated .....19.... (Signed) .....
Petitioner or Counsel

.....
Post office address

.....
Counsel's Tax Court Bar Number

FORM 7

CERTIFICATE ON RETURN

(See Rule 81(h))

UNITED STATES TAX COURT

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

CERTIFICATE ON RETURN OF DEPOSITION

To the United States Tax Court:

I, ..., the person named in an order of this Court dated ..... to take depositions in this case, hereby certify:

1. I proceeded, on the ..... day of ..... , A.D. 19...., at the office of ....., in the city of ....., State of ....., at ..... o'clock ... m., under the said order and in the presence of ..... and ..... the counsel of the respective parties, to take the following depositions, viz:

..... , a witness produced on behalf of the .....
Petitioner or Respondent

..... , a witness produced on behalf of the .....
Petitioner or Respondent

..... , a witness produced on behalf of the .....
Petitioner or Respondent

2. Each witness was examined under oath at such times and places as conditions of adjournment required, and the testimony of each witness (or each witness' answers to the questions filed) was taken stenographically or otherwise recorded and reduced to typewriting by me or under my direction.

3. After the said testimony of each witness was reduced to writing, the transcript of the testimony was read and signed by the witness and was acknowledged by the witness to be the witness' testimony, in all respects truly and correctly transcribed except as otherwise stated.

4. All exhibits introduced during the deposition are transmitted herewith, except to the following extent agreed to by the parties or directed by the Court (state disposition of exhibits if not transmitted with the deposition):

5. This deposition (was) (was not) taken on written questions pursuant to Rule 84 of the Rules of Practice and Procedure of the United States Tax Court. All such written questions are annexed to the deposition.

6. After the signing of the deposition, no alterations or changes were made therein.

7. I am not a relative or employee or counsel of any party, or a relative or employee or associate of such counsel, nor am I financially interested in the action.

.....
Signature of person taking deposition

.....
Official title

NOTE.—This form, when properly executed, should be attached to and bound with the transcript preceding the first page thereof. It should then be delivered to the party taking the deposition or his counsel.

FORM 8

NOTICE OF APPEAL TO COURT OF APPEALS

(See Rules 190 and 191)

UNITED STATES TAX COURT

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

NOTICE OF APPEAL

Notice is hereby given that ..... hereby appeals to the United States Court of Appeals for the ..... Circuit from [that part of] the decision of this Court entered in the above-captioned proceeding on the ..... day of ....., 19.... [relating to .....].

.....
Party* or Counsel

.....
Post office address

.....
Counsel's Tax Court Bar Number

*If husband and wife are parties, then both must sign if both want to appeal.

FORM 9

APPEAL BOND, CORPORATE SURETY

(See Rule 191)

The following is a satisfactory form of bond for use in case bond with a corporate surety approved by the Treasury Department is to be furnished to stay the assessment and collection of tax involved in an appeal from a decision of the Tax Court. The original bond and one copy are required. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

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

BOND

KNOW ALL MEN BY THESE PRESENTS that we ..... as principal, and ....., as surety, are held and firmly bound unto the above-named COMMISSIONER OF INTERNAL REVENUE and/or the UNITED STATES OF AMERICA, in the sum of $....., (double the deficiency or such sum as the Tax Court has fixed upon petitioner's prior motion), to be paid to the said Commissioner of Internal Revenue and/or the United States of America for the payment of which well and truly to be made we bind ourselves and each of us and our successors and assigns jointly and severally firmly by these presents.

Signed, sealed, and dated this ..... day of ....., 19.....

WHEREAS, the above-named ..... is filing or is about to file with the United States Tax Court, an appeal from the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years ....., by the United States Court of Appeals for the ..... Circuit to reverse the decision rendered in the above-entitled cause.

Now, THEREFORE, the condition of this Obligation is such that if the above-named ..... shall file its appeal and shall prosecute said appeal to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

..... [SEAL]
For an individual petitioner

.....
For a corporate petitioner

By .....
Title

(Corporate seal) .....
Surety

Attest: By .....
Title (surety corporate seal)

.....
Secretary

FORM 10

APPEAL BOND, APPROVED COLLATERAL

(See Rule 191)

A satisfactory form of bond for use in case an appellant desires to furnish approved collateral (Treasury Department Circular No. 154, Revised), instead of furnishing a corporate surety bond, and also forms of powers of attorney covering the pledged collateral are shown below. The original and one copy are required in either case. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

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

BOND

KNOW ALL MEN BY THESE PRESENTS that ..... is held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America in the sum of ..... ($ .....) Dollars, to be paid to the said COMMISSIONER OF INTERNAL REVENUE, and/or the UNITED STATES OF AMERICA, for the payment of which, well and truly to be made, the ..... binds itself and its successors, firmly by these presents.

Signed, sealed, and dated this ..... day of ....., 19....

WHEREAS, The above-named ..... is filing or is about to file with the United States Tax Court, an appeal from the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years ..... , by the United States Court of Appeals for the ..... Circuit to reverse the decision rendered in the above-entitled case.

Now, THEREFORE, the condition of this obligation is such that if the above-

.....

named shall file its appeal and shall prosecute said appeal to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

The above-bounden obligor, in order the more fully to secure the Commissioner of Internal Revenue and/or the United States in the payment of the aforementioned sum, hereby pledges as security therefor bonds/notes of the United States in a sum equal as their par value to the aforementioned sum, to wit: ..... dollars ($.....), which said bonds/notes are numbered serially and are in the denominations and amounts, and are otherwise more particularly described as follows:

.....

.....

which said bond otes have this day been deposited with the Clerk of the United States Tax Court and the Clerk's receipt taken therefor.

(continued)

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of the Clerk of the United States Tax Court, authorizing and empowering the Clerk, as such attorney to collect or sell or transfer or assign, the above-described bond otes so deposited, or any part thereof, in case of any default in the performance of any of the above-named conditions or stipulations.

[SEAL]

.....
For an individual petitioner

(Corporate seal)
Attest:

.....
For a corporate petitioner

..... By .....
Secretary Title

FORM 11

POWER OF ATTORNEY AND AGREEMENT BY CORPORATION

(See Rule 191)

KNOW ALL MEN BY THESE PRESENTS: That ....., a corporation duly incorporated under the laws of the State of ..... and having its principal office in the city of....., State of ....., in pursuance of a resolution of the Board of Directors of said corporation, passed on the.....day of....., 19...., a duly certified copy of which resolution is hereto attached, does hereby constitute and appoint the Clerk of the United States Tax Court as attorney for said corporation, for and in the name of said corporation to collect or to sell, assign, and transfer certain United States Liberty bonds or other bonds or notes of the United States, the property of said corporation, described as follows:

Title of bonds/notes	Total face amount	Denomination	Serial No.	Interest dates
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

such bond/notes having been deposited by it, pursuant to the Act of July 30, 1947, c. 390, 61 Stat. 646, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by it with (here enter "the Commissioner of Internal Revenue and/or the United States") under date of Key, which is hereby made a part thereof, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, its said attorney shall have full power to collect said bond otes or any part thereof, or to sell, assign, and transfer said bond/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation,, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and the undersigned further agrees that the authority herein granted is irrevocable.

And said corporation hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of these presents.

In witness whereof, the ....., the corporation hereinabove named, by .....:..... (name and title of officer), duly authorized to act in the premises, has executed this instrument and caused the seal of the corporation to be hereto affixed this.....day of....., 19...

....

(Corporate seal) Secretary

By .....

Title

State of .....
County of ..... } SS:

Before me, the undersigned, a notary public within and for the said county and State, personally appeared ..... (name and title of officer), and for and in behalf of said ..... , corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this.....day of....., 19....

[Notarial seal] .....

Notary Public

My Commission expires .....

FORM 12

POWER OF ATTORNEY AND AGREEMENT BY INDIVIDUALS

(See Rule 191)

KNOW ALL MEN BY THESE PRESENTS: That I(we) ..... , do hereby constitute and appoint the Clerk of the United States Tax Court as attorney for me (us), and in my (our) name to collect or to sell, assign, and transfer certain United States Liberty bonds, or other bonds or notes of the United States, being my (our) property described as follows:

Title of bonds/notes	Total face amount	Denomination	Serial No.	Interest dates
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

such bond/notes having been deposited by me(us) pursuant to the Act of July 30, 1947, c.390, 61 Stat. 646, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by me (us) with (here enter "the Commissioner of Internal Revenue and/or the United States") under date of Key, which is hereby made a part thereof, and I(we), agree that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, my (our) attorney shall have full power to collect said bond otes or any part thereof, or to sell, assign, and transfer said bond/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and I(we) further agree that the authority herein granted is irrevocable.

And for myself (ourselves), my (our several) administrators, executors, and assigns, I(we) hereby ratify and confirm whatever my (our) said attorney shall do by virtue of these presents.

In witness whereof, I (we) hereinabove named, have executed this instrument and affixed my (our) seal this ..... day of ....., 19....

..... [SEAL]

State of .....
County of ..... } SS:

Before me, the undersigned, a notary public within and for the said county and State, personally appeared ..... (name of obligor), and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this ..... day of ....., 19....

[Notarial seal]

.....
Notary Public

My commission expires .....

FORM 13

CERTIFICATE OF SERVICE

(See Rule 21)

This is to certify that a copy of the foregoing paper was served on ..... by (delivering the same to ..... at ..... on .....) or (mailing the same on in a postage-paid wrapper addressed to ..... at .....).

.....
Party or Counsel

Dated:

FORM 14

NOTICE OF ELECTION TO INTERVENE

(See Rule 245)

UNITED STATES TAX COURT

ABC Partnership, Richard Roe, A Partner Other Than the Tax Matters Partner,

.....

Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No.

NOTICE OF ELECTION TO INTERVENE

Mary Doe, the tax matters partner in the ABC Partnership, hereby elects to intervene, pursuant to Section 6226(b)(5), I.R.C. 1986, and Rule 245(a), Tax Court Rules of Practice and Procedure, in the above-entitled action for readjustment of partnership items.

Dated:

.....

Mary Doe
Tax Matters Partner
Present Address—Street, City, State, Zip Code
Telephone (with Area Code)

Dated:

.....

Counsel for Tax Matters Partner
Present Address—Street, City, State, Zip Code
Telephone (with Area Code)
Tax Court Bar Number

FORM 15

NOTICE OF ELECTION TO PARTICIPATE

(Action for Readjustment of Partnership Items)

(See Rule 245)

UNITED STATES TAX COURT

ABC Partnership, Mary Doe, Tax Matters Partner,

.....
Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No.

NOTICE OF ELECTION TO PARTICIPATE

Richard Roe hereby elects to participate, pursuant to Section 6226(c)(2), I.R.C. 1986, and Rule 245(b), Tax Court Rules of Practice and Procedure, in the above-entitled action for readjustment of partnership items.

Richard Roe satisfies the requirements of Section 6226(d), I.R.C. 1986, because he was a partner during the applicable period(s) for which readjustment of partnership items is sought and, if such readjustment is made, the tax attributable to such partnership items may be assessed against him.

Dated: .....
Richard Roe
Present Address—Street,
City, State, Zip Code
Telephone (with Area Code)

Dated: .....
Counsel for Richard Roe
Present Address—Street,
City, State, Zip Code
Telephone (with Area Code)
Tax Court Bar Number

FORM 16

PETITION FOR ADMINISTRATIVE COSTS (SEC. 7430(f)(2))

(Available—Ask for Form 16)

(See Rules 270 through 274)

UNITED STATES TAX COURT

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

PETITION FOR ADMINISTRATIVE COSTS
(Sec. 7430(f)(2))

1. Petitioner(s) appeal(s) the DECISION dated ..... denying (in whole or in part) an award for reasonable administrative costs by the Internal Revenue Service. That DECISION, A COPY OF WHICH IS ATTACHED, was issued by the Office of the Internal Revenue Service at .....
(City/State)

2. Petitioner(s)' taxpayer identification (e.g., Social Security) number(s) is (are) .....

3. Set forth in the appropriate column the AMOUNT of administrative costs (a) claimed in the administrative proceeding, (b) denied by the Internal Revenue Service, and (c) now claimed in this Court proceeding (if different from the amount claimed in the administrative proceeding).

(a) Claimed	(b) Denied	(c) Now claimed
$	$	$

4. Explain briefly why you disagree with the DECISION denying an award for reasonable administrative costs by the Internal Revenue Service.

.....
.....
.....
.....

5. Petitioner(s)' present net worth (exceeds) (does not exceed) $2,000,000. (Strike through as appropriate.)

....
Signature of Petitioner Date Signature of Petitioner (Spouse) Date

.....
Present Address—Street, City, State, Zip Code, Telephone (include area code)

.....
Signature of Counsel (if retained by petitioners) Date

.....
Name, Address, Telephone Number, and Tax Court Bar Number of counsel

APPENDIX II

Code Section 7463

DISPUTES INVOLVING $10,000 OR LESS

(See Rules 170 through 179)

(a) IN GENERAL.—In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds:

(1) $10,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

(2) $10,000 in the case of the tax imposed by chapter 11,

(3) $10,000 for any one calendar year, in the case of the tax imposed by chapter 12, or

(4) $10,000 for any 1 taxable period (or, if there is no taxable period, taxable event) in the case of any tax imposed by subtitle D which is described in Section 6212(a) (relating to a notice of deficiency),

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of Section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of Sections 7459(b) and 7460.

(b) FINALITY OF DECISIONS.—A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.

(c) LIMITATION OF JURISDICTION.—In any case in which the proceedings are conducted under this section, notwithstanding the provisions of Sections 6214(a) and 6512(b), no decision shall be entered redetermining the amount of a deficiency, or determining an overpayment, except with respect to amounts placed in dispute within the limits described in subsection (a) and with respect to amounts conceded by the parties.

(d) DISCONTINUANCE OF PROCEEDINGS.—At any time before a decision entered in a case in which the proceedings are conducted under this section becomes final, the taxpayer or the Secretary may request that further proceedings under this section in such case be discontinued. The Tax Court, or the division thereof hearing such case, may, if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount described in subsection (a), and (2) the amount of such excess is large enough to justify granting such request, discontinue further proceedings in such case under this section. Upon any such discontinuance, proceedings in such case shall be conducted in the same manner as cases to which the provisions of Sections 6214(a) and 6512(b) apply.

(e) AMOUNT OF DEFICIENCY IN DISPUTE.—For purposes of this section, the amount of any deficiency placed in dispute includes additions to the tax, additional amounts, and penalties imposed by Chapter 68, to the extent that the procedures described in Subchapter B of Chapter 63 apply.

(f) QUALIFIED STATE INDIVIDUAL INCOME TAXES.—For purposes of this section, a deficiency placed in dispute or claimed overpayment with regard to a qualified State individual income tax to which subchapter E of chapter 64 applies, for a taxable year, shall be treated as a portion of a deficiency placed in dispute or claimed overpayment of the income tax for that taxable year.

APPENDIX III

FEES AND CHARGES

(See Rules 148, 190(a), and 200(i))

(a) Fees and charges payable to the Court:

1. Filing petition	$60.00
2. Application for admission to practice	25.00
3. Periodic Registration Fee	*
4. Photocopies (plain or certified) l/n per page	.50
5. Certification l/n per document	5.00
6. Filing notice of appeal	**
7. Transmitting record on appeal	***

*Frequency and amount set by order of the Court (see Rule 200(i))

**Amount determined in accordance with Rule 3(e) of the Federal Rules of Appellate Procedure (see also Rules 13 and 14 of such Rules)

***Actual cost of insurance and postage

(b) Charges for copies of transcripts of proceedings:

Transcripts of proceedings before the Tax Court are supplied to the parties and to the public by the official reporter at such rates as may be fixed by contract between the Court and the reporter. Information as to those rates may be obtained from the Clerk of the Court or from the trial clerk at a trial session.

APPENDIX IV

PLACES OF TRIAL

(See Rules 140 and 177)

A list of cities in which regular sessions of the Court are held appears below. This list is published to assist parties in making designations under Rules 140 and 177. If sufficient cases are not ready for trial in a city designated by a taxpayer, or if suitable courtroom facilities are not available in that city, the Court may find it necessary to calendar cases for trial in some other city within reasonable proximity of the designated place.

ALABAMA:
- Birmingham
- Mobile

ALASKA:
- Anchorage

ARIZONA:
- Phoenix

ARKANSAS:
- Little Rock

CALIFORNIA:
- Los Angeles
- San Diego
- San Francisco

COLORADO:
- Denver

CONNECTICUT:
- Hartford

DISTRICT OF COLUMBIA:
- Washington

FLORDIA:
- Jacksonville
- Miami
- Tampa

GEORGIA:
- Atlanta

HAWAII:
- Honolulu

IDAHO:
- Boise

ILLINOIS:
- Chicago

INDIANA:
- Indianapolis

IOWA:
- Des Moines

KENTUCKY:
- Louisville

LOUISIANA:
- New Orleans

MARYLAND:
- Baltimore

MASSACHUSETTS:
- Boston

MICHIGAN:
- Detroit

MINNESOTA:
- St. Paul

MISSISSIPPI:
- Biloxi
- Jackson

MISSOURI:
- Kansas City
- St. Louis

MONTANA:
- Helena

NEBRASKA:
- Omaha

NEVADA:
- Las Vegas
- Reno

NEW JERSEY:
- Newark

NEW MEXICO:
- Albuquerque

NEW YORK:
- Buffalo
- New York City
- Westbury

NORTH CAROLINA:
- Winston-Salem

OHIO:
- Cincinnati
- Cleveland
- Columbus

OKLAHOMA:
- Oklahoma City

OREGON:
- Portland

PENNSYLVANIA:
- Philadelphia
- Pittsburgh

SOUTH CAROLINA:
- Columbia

TENNESSEE:
- Knoxville
- Memphis
- Nashville

TEXAS:
- Dallas
- El Paso
- Houston
- Lubbock
- San Antonio

UTAH:
- Salt Lake City

VIRGINIA:
- Richmond

WASHINGTON:
- Seattle
- Spokane

WEST VIRGINIA:
- Charleston/Huntington

WISCONSIN:
- Milwaukee

*The Court sits in about 15 other cites to hear Small Tax Cases. A list of such cities is contained in a pamphlet entitled "Election of Small Tax Case Procedure and Preparation of Petitions", a copy of which may be obtained from the Clerk of the Court.

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