REPORTS
OF THE
UNITED STATES TAX COURT

January 1, 2010, to June 30, 2010

Volume 134

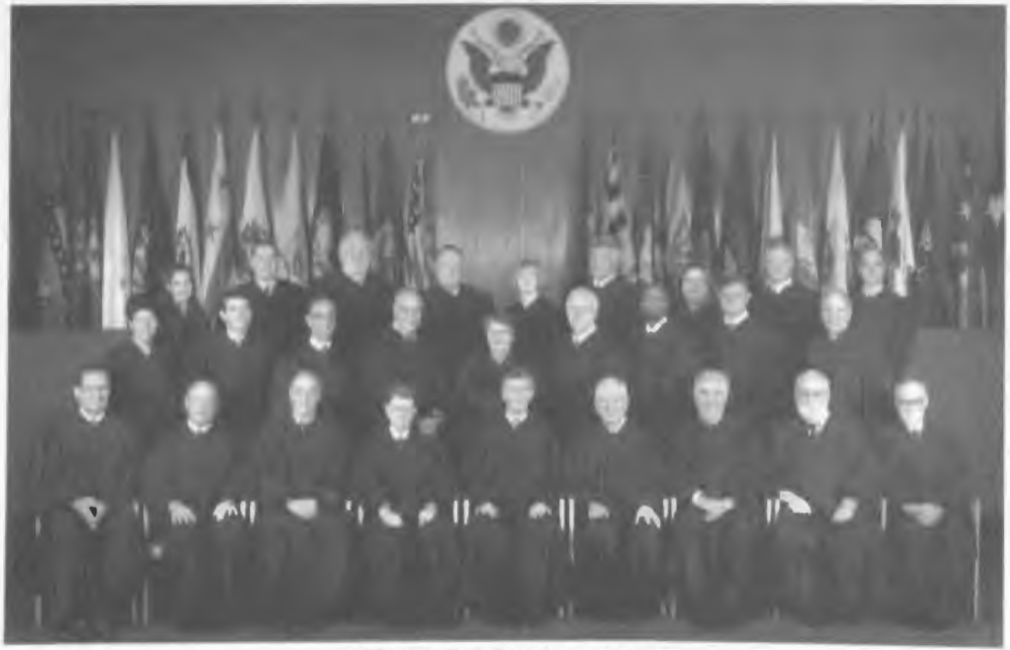
(Cite 134 T.C.)

SHEILA A. MURPHY
REPORTER OF DECISIONS

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

ISBN 978-0-16-088328--6



JUDGES AND SENIOR JUDGES

Seated from left—Laurence J. Whalen, Joel Gerber, Stephen J. Swift, Howard A. Dawson, Jr., John O. Colvin, Arthur L. Nims III, Julian I. Jacobs, Robert P. Ruwe, and Renato Beghe

Standing front row from left—Carolyn P. Chiechi, Michael B. Thornton, Juan F. Vasquez, James S. Halpern, Mary Ann Cohen, Thomas B. Wells, Maurice B. Foley, Joseph H. Gale, and David Laro

Standing back row from left—Elizabeth Crewson Paris, Mark V. Holmes, Robert A. Wherry, Jr., Harry A. Haines, L. Paige Marvel, Joseph Robert Goeke, Diane L. Kroupa, David Gustafson, and Richard T. Morrison

Absent—Herbert L. Chabot

AMENDMENTS TO THE 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 substantive, stylistic, and conforming changes to existing Rules. The Rules generally are effective as of January 1, 2010, except where otherwise stated.

An explanatory note follows each Rule that has been revised.

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

RULE 11. PAYMENTS TO THE COURT

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. The Court may also permit specified fees or charges to be paid by credit card. For the Court's address, see Rule 10(e). For particular payments, see Rules 12(c) (copies of Court records), 20(d) (filing of petition), 173(a)(2) (small tax cases), 200(a) (application to practice before Court), 200(g) (periodic registration fee), 271(c) (filing of petition for administrative costs), 281(c) (filing of petition for review of failure to abate interest), 291(d) (filing of petition for redetermination of employment status), 311(c) (filing of petition for declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return), 321(d) (filing of petition for determination of relief from joint and several liability on a joint return), 331(d) (filing of petition for lien and levy action), and 341(c) (filing of petition for whistleblower action). For fees and charges payable to the Court, see Appendix II.

Note

Rule 11 is amended to clarify that the Court may permit specified fees and charges to be paid by credit card. The Court's Internet Web site provides specific information regarding the fees and charges that may be paid by credit card either in person at the Court, over the telephone, or through designated electronic payment systems. The amendment is effective as of September 18, 2009.

Rule 11 also is amended to conform with Rule 20(d), as amended. The amendment is effective as of January 1, 2010.

RULE 12. COURT RECORDS

(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(e)(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 II.

Note

Paragraph (a) of Rule 12 is amended to conform with Rule 143, as amended. The amendment is effective as of January 1, 2010.

RULE 20. COMMENCEMENT OF CASE

(a) General: A case is commenced in the Court by filing a petition with the Court, inter alia, 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 judgment, or to obtain or restrain a disclosure, or to adjust or readjust partnership items, or to obtain an award for reasonable administrative costs, or to obtain a review of the Commissioner's failure to abate interest. See Rule 13, Jurisdiction.

(b) Statement of Taxpayer Identification Number: The petitioner shall submit with the petition a statement of the petitioner's taxpayer identification number (e.g., Social Security number or employer identification number), or lack thereof. The statement shall be substantially in accordance with Form 4 shown in Appendix I.

(c) Disclosure Statement: A nongovernmental corporation, a partnership, or a limited liability company filing a petition with the Court shall submit with its petition a separate disclosure statement. In the case of a nongovernmental corporation, the disclosure statement shall identify any parent corporation and any publicly held entity owning 10 percent or more of petitioner's stock or state that there is no such entity. In the case of a partnership or a limited liability company, the disclosure statement shall identify any publicly held entity owning an interest in such partnership or limited liability company or state that there is no such entity. A petitioner shall promptly submit a supplemental statement if there is any change in the information required under this Rule. For the form of such disclosure statement, see Form 6, Appendix I.

(d) 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

Introduction

Rule 7.1 of the Federal Rules of Civil Procedure requires a nongovernmental corporate party to file two copies of a disclosure statement that (1) identifies any parent corporation and any publicly held corporation owning 10 percent or more of its stock, or (2) states that there is no such corporation. See 207 F.R.D. 50 (Apr. 29, 2002); see also 195 F.R.D. 95 (May 2000). Fed. R. Civ. P. 7.1 states that a nongovernmental corporate party must file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and promptly file a supplemental statement if any required information changes. The Advisory Committee Notes to Fed. R. Civ. P. 7.1 explain that the rule was drawn from rule 26.1 of the Federal Rules of Appellate Procedure and was adopted to aid judges in making properly informed disqualification decisions consistent with the "financial interest" standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges. The Advisory Committee Notes acknowledge that the rule

"does not cover all of the circumstances that may call for disqualification under the financial interest standard" but the rule is "calculated to reach a majority of the circumstances that are likely to call for disqualification". Some Federal District Courts have adopted local rules that require partnerships and other entities, in addition to corporations, to file disclosure statements as described in Fed. R. Civ. P. 7.1.

Tax Court Judges and Special Trial Judges adhere to the Code of Conduct for United States Judges. Canon 3C(1)(c) of the Code of Conduct for United States Judges provides that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding. Canon 3C(3)(c) of the Code of Conduct for United States Judges defines the term "financial interest" in pertinent part to mean ownership of a legal or equitable interest, however small, in a party to the litigation.

Amendment

New paragraph (c) is added to Rule 20 and current paragraph (c) is redesignated paragraph (d). New Rule 20(c) requires a nongovernmental corporation, partnership, or limited liability company filing a petition with the Court to submit with its petition a separate disclosure statement identifying any parent corporation and any publicly held entity owning an interest in the petitioner. The amendments are intended to enhance the ability of Tax Court Judges and Special Trial Judges to timely identify matters in which automatic disqualification would be appropriate under the financial interest standard. The amendments are effective as of January 1, 2010.

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, includ-

ing 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.

(b) **Manner of Service:** (1) *General:* All petitions shall be served by the Clerk. Unless otherwise provided in these Rules or directed by the Court, all other papers required to be served on a party shall be served by the party filing the paper, and the original paper shall be 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 9, Appendix I. Such service may be made by:

(A) 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.

(B) 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)).

(C) Mail directed or delivery to the Commissioner's counsel at the office address shown in the Commissioner's answer filed in the case or a motion filed in lieu of an answer. If no answer or motion in lieu of an answer has been filed, then mail shall be directed or delivered to the Chief Counsel, Internal Revenue Service, Washington, D.C. 20224.

(D) Electronic means if the person served consented in writing, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served.

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 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 is required to be made only on that counsel whose appearance was first entered of record, unless that counsel notifies the Court, by a designation of counsel to receive service filed with the Court, that other counsel of record is to receive service, in which event service is required to 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), (a)(3), (b), and (d)). A separate notice of change of address shall be filed for each docket number. For the form of such notice of change of address, see Form 10 in Appendix I.

(5) *Using Court Transmission Facilities:* A party may make service under Rule 21(b)(1)(D) through the Court's transmission facilities pursuant to electronic service procedures prescribed by the Court.

Note

Introduction

Rule 21(b)(1) provides that the Clerk of the Court will serve all petitions filed with the Court. The Rule also provides that, unless otherwise provided by the Court's Rules or directed by the Court, the Clerk will serve all other papers required to be served on a party unless the original paper is filed with a certificate by a party or party's counsel that service has been made on the party to be served or the par-

ty's counsel. Rule 5(d) of the Federal Rules of Civil Procedure requires that all papers after the complaint must be filed with a certificate of service showing service on the opposing party or counsel. Amending Rule 21(b)(1) to conform with Fed. R. Civ. P. 5(d) permits the Court to enforce service of documents by the parties, while allowing discretion to provide service by the Clerk when directed by the Court. Amending Rule 21(b)(1)(C) to permit a party to serve the Commissioner's counsel at the office address shown in the Commissioner's motion filed in lieu of an answer aligns the Rule with common practice.

With respect to the Court's implementation of electronic filing, questions have been raised regarding the Court's responsibility to make service of an electronically filed document on an individual or counsel who has not consented to receive electronic service and so must be served by conventional paper service, when no certificate of service is attached to the electronically filed document, and no paper copies are provided for service. Also, when documents are filed electronically, it is anticipated that some electronic transmissions will fail due to improper email addresses or other technological issues, and there are questions as to who has the ultimate responsibility for re-serving the documents. Amending Rule 21(b)(1) helps effect the Court's previously announced policy of placing the burden on the party filing a document electronically to make service on the opposing party or counsel.

Amending Rule 21(b)(1) also aligns the Court's Rules with both the general practice among practitioners and the Court's Standing Pretrial Order, which requires that every pleading, motion, letter, or other document (with the exception of simultaneously filed briefs) submitted to the Court after a case is calendared for trial be served by the filing party on every other party and contain a certificate of service.

Amendments

Rule 21(b)(1) is amended to require that, unless otherwise provided by the Court's Rules or directed by the Court, a party filing a paper other than a petition must make service of the paper on the opposing party and attach to the paper a certificate showing that service was made. Rule 21(b)(1)(C) is amended to provide that, as an alternative to serving

the Commissioner's counsel at the office address shown in the Commissioner's answer, service may be made at the address shown in a motion filed in lieu of an answer. Conforming changes to various Rules also are adopted, although no amendment is made to the requirement in Rule 151(c) that the Clerk shall serve simultaneous briefs. The amendments are effective as of January 1, 2010.

RULE 37. REPLY

(a) Time To Reply or Move: The petitioner shall have 45 days from the date of service of the answer within which to file a reply, or 30 days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

(b) Form and Content: In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply shall contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the petitioner shall so state, and such statement shall have the effect of a denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects the requirements of pleading applicable to the answer provided in Rule 36(b) shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

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

be granted unless the required reply is filed within the time directed by the Court.

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

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

Note

Paragraph (c) of Rule 37 is amended to delete the language referring to service of the motion. The amendment conforms the Rule with Rule 21(b)(1), as amended, and requires the Commissioner to serve on the taxpayer his motion that undenied allegations in the answer be admitted, which is consistent with existing practice. The amendments are effective as of January 1, 2010.

RULE 50. GENERAL REQUIREMENTS

(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(a). The effect of a signature on a motion shall be as set forth in Rule 33(b).

(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 Court may take action after directing that a written response be filed. In that event, the opposing party 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.

(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 133.

(f) Effect of Orders: Orders shall not be treated as precedent, except as may be relevant for purposes of establishing the law of the case, res judicata, collateral estoppel, or other similar doctrine.

Note

Rule 50(b)(1) is amended to delete the language in that Rule referring to service by the Court of a motion with its order directing the filing of a written response. The amendment conforms Rule 50(b)(1) with Rule 21(b)(1), as amended, requiring service of the motion by the filing party. Current paragraph (f) of Rule 50 is deleted as unnecessary and paragraph (g) is redesignated paragraph (f). The amendments are effective as of January 1, 2010.

RULE 70. GENERAL PROVISIONS

(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, electronically stored information, or things (Rules 72 and 73), by depositions upon consent of the parties (Rule 74(b)), or by depositions without consent of the parties in certain cases (Rule 74(c)). 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 Rule 74. 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). Discovery shall be completed and any motion to compel such discovery shall be filed, 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 Rule 74(c) 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 any motion to compel such discovery shall be filed within the time provided by the preceding sentence. 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 discovery shall be completed and any motion to compel such discovery shall be filed, 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.

(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 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.

(3) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 70(b)(2). The Court may specify conditions for the discovery.

(c) Party's Statements: Upon request to the other party and without any showing except the assertion in writ-

ing that the requester lacks and has no convenient means of obtaining a copy of a statement made by the requester, 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.

(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, and 74 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.

(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 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, then 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

Introduction

The Federal Rules of Civil Procedure governing discovery procedures state that, in addition to "documents", "records", and "things", a discovery request may encompass any type of information that is stored electronically in any medium from which information can be obtained. See 234 F.R.D. 219 (Dec. 1, 2006). For example, the Advisory Committee Notes underlying Fed. R. Civ. P. 34 (Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, For Inspection and Other Purposes), state in pertinent part:

> Discoverable information often exists in both paper and electronic form and the same or similar information might exist in both. The items listed in Rule 34(a) show different ways in which information may be recorded or stored. Images, for example, might be hard-copy documents or electronically stored information. The wide variety of computer systems currently in use, and the rapidity of technological change, counsel against a limiting or precise definition of electronically stored information. Rule 34(a)(1) is expansive and includes any type of information that is stored electronically. A common example often sought in discovery is electronic communications, such as e-mail. The rule covers—either as documents or as electronically stored information—information "stored in any medium," to encompass future developments in computer technology. Rule 34(a)(1) is intended to be broad enough to cover all current types of computer-based information and flexible enough to encompass future changes and developments.
>
> Reference elsewhere in the rules to "electronically stored information" should be understood to invoke this expansive approach.

However, the Advisory Committee Notes underlying Fed. R. Civ. P. 26(b)(2)(B) recognize that the burden and cost of locating, retrieving, and providing discovery of some electronically stored information may make such information not reasonably accessible. Although the Advisory Committee Notes underlying Fed. R. Civ. P. 26(b)(2)(B) state that a party's identification of sources of electronically stored information as not reasonably accessible does not relieve the party of its common law or statutory duties to preserve evidence, Fed. R. Civ. P. 26(b)(2)(B) provides that the Court may limit discovery from such sources in appropriate circumstances. The Advisory Committee Notes underlying Fed. R. Civ. P. 26(f)(3) state that the parties should engage in early discussions of the forms of production of electronically stored information so that both parties' needs might be met and to "help avoid the expense and delay of searches or productions using inappropriate forms."

The Advisory Committee Notes underlying Fed. R. Civ. P. 26(b)(5) contain extensive discussions of the difficulties that arise with regard to discovery of electronically stored information and a party's preservation of claims of privilege or protection. The Advisory Committee Notes acknowledge that, in appropriate cases, the parties may enter into voluntary agreements to avoid inadvertent waivers of claims of privilege or protection and that such agreements reduce delays in discovery and reduce the cost and burden of document reviews by the responding party. In addition to voluntary agreements between the parties, rule 502 of the Federal Rules of Evidence provides limitations on waivers of the attorney-client privilege or work product protection in connection with the disclosure of communications or information in a Federal proceeding.

In addition, Fed. R. Civ. P. 37(e) limits the imposition of sanctions for failure to provide electronically stored information in certain circumstances. The Advisory Committee Notes underlying Fed. R. Civ. P. 37(e) (formerly rule 37(f)) state as follows:

Subdivision (f). Subdivision (f) is new. It focuses on a distinctive feature of computer operations, the routine alteration and deletion of information that attends ordinary use. Many steps essential to computer operation may alter or destroy information for reasons that have nothing to do with how that information might relate to litigation. As a result, the ordinary operation of computer systems creates a risk that a party may lose poten-

tially discoverable information without culpable conduct on its part. Under Rule 37(f), absent exceptional circumstances, sanctions cannot be imposed for loss of electronically stored information resulting from the routine, good-faith operation of an electronic information system.

Rule 37(f) applies only to information lost due to the "routine operation of an electronic information system"—the ways in which such systems are generally designed, programmed, and implemented to meet the party's technical and business needs. The "routine operation" of computer systems includes the alteration and overwriting of information, often without the operator's specific direction or awareness, a feature with no direct counterpart in hard-copy documents. Such features are essential to the operation of electronic information systems.

Information subject to discovery in a Tax Court case may be stored electronically in a variety of devices and formats. In this regard, electronically stored information is different from paper records, documents, and tangible things. Electronically stored information can pose unique discovery problems due to the volume of such information, the lack of accessibility to such information, the format in which it is stored and/or produced, the potential for destruction or loss of such information, and difficulties related to assertion of a privilege and/or inadvertent waiver of a privilege. The Tax Court Rules of Practice and Procedure currently do not make reference to the discovery or use of electronically stored information in Tax Court proceedings.

Amendments

Consistent with the general principles expressed in the Advisory Committee Notes as outlined above, the Court amends its Rules[1] to include an express reference to electronically stored information and to provide specific rules applicable to the discovery of electronically stored information. The amendments are intended to clarify that electronically stored information generally is subject to discovery in Tax Court proceedings and that a cooperative effort may be required to ensure that such information is disclosed in a form or format that will be useful to the parties and the Court. The term "electronically stored information" is intended to be broad enough to cover all current types of computer-based informa-

[1] The Court amends Rules 70(a) and (b), 71(e), 72(a) and (b), 73(a), (b), and (c), 80(a), 81(a) and (b), 82, 100, 103(a), 104(e), 147(a), (b), and (d), and 181.

tion and flexible enough to encompass future changes and technological developments.

Rule 70(a)(1) is amended to include a reference to electronically stored information and new paragraph (b)(3) is added to the Rule to prescribe possible limits on discovery of electronically stored information. See Fed. R. Civ. P. 26(b)(2)(B).

Paragraphs (a)(1), (a)(2), and (d) of Rule 70 are amended to conform with amendments merging Rules 74, 75, and 76 into new Rule 74. All amendments are effective as of January 1, 2010.

RULE 71. INTERROGATORIES

(a) Availability: Unless otherwise stipulated or ordered by the Court, a party may serve upon any other party no more than 25 written interrogatories, including all discrete subparts but excluding interrogatories described in paragraph (d) of this Rule, 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. A motion for leave to serve additional interrogatories may be granted by the Court to the extent consistent with Rule 70(b)(2).

(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.

(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 30

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 a motion for such an order, neither the interrogatories nor the response shall be filed with the Court.

(d) Experts: (1) By means of written interrogatories in conformity with this Rule, a party may require any other 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's name, address, vocation or occupation, and a statement of the witness's 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(g). 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.

(e) Option To Produce Business Records: If the answer to an interrogatory may be derived or ascertained from the business records (including electronically stored information) of the party upon whom the interrogatory has been served, or from an examination, audit, or inspection of such 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

Introduction

Rule 33(a) of the Federal Rules of Civil Procedure provides that, unless otherwise stipulated by the parties or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts of an interrogatory. See 146 F.R.D. 401, 672–677 (Dec. 1, 1993). Fed. R. Civ. P. 33(a) was implemented in conjunction with broader changes to discovery procedures in Federal District Courts, including amendments to Fed. R. Civ. P. 26(a) that impose on the parties an affirmative duty to disclose (without awaiting formal discovery) basic information that the parties need in most cases to prepare for trial or make an informed decision about settlement. The Advisory Committee Notes to Fed. R. Civ. P. 33(a) state that experience in Federal District Courts confirmed that interrogatory limits were useful and manageable, and the 25-interrogatory limit was imposed to reduce the frequency and increase the efficiency of interrogatory practice.

The term "discrete subparts" is not defined in Fed. R. Civ. P. 33(a). The Advisory Committee Notes to Fed. R. Civ. P. 33(a) discuss the meaning of "discrete subparts" and the manner in which separate interrogatories are to be counted as follows:

> Parties cannot evade [the 25-interrogatory limit] through the device of joining as "subparts" questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each communication.

The Court has held that interrogatories "should be simple, concise and concerning only matters relevant to the action" and should be framed as a single, definite question. *Pleier v. Commissioner*, 92 T.C. 499, 501 (1989).

Rule 70(a)(1) states in pertinent part that "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." See *Branerton v. Commissioner*, 61 T.C. 691, 692 (1974). Rule 70(a)(1) is akin to so much of Fed. R. Civ. P. 26(a) as imposes on the parties an affirmative duty to disclose basic information (without awaiting formal discovery).

Although, when established, the Tax Court's discovery procedures generally were more restrictive than the Federal Rules of Civil Procedure, see Note, 60 T.C. 1057, 1097 (1973), Rule 71, which governs the use of interrogatories, does not impose any limit on the number of written interrogatories one party may serve on another party. To conform Rule 71 with Fed. R. Civ. P. 33(a), and with the aims of (1) encouraging the parties to voluntarily exchange information, (2) enhancing the efficiency of interrogatory practice, and (3) allowing the Court to exercise greater discretion over the use of interrogatories, Rule 71 is amended to generally limit the number of interrogatories one party may serve on another party to 25 interrogatories (including discrete subparts as discussed in the Advisory Committee Notes to Fed. R. Civ. P. 33(a)). Interrogatories concerning an opposing party's expert(s) that are authorized under Rule 71(d) are not counted among the presumptive limit of 25 interrogatories prescribed in Rule 71(a).

The presumptive limit on the number of interrogatories one party may serve on another is not intended to limit in any way the parties' obligations to attempt to attain the objectives of discovery through informal consultation or communication before using formal discovery procedures. See Rule 70(a). Consistent with Tax Court policy and practice, formal discovery is to be instituted only after the parties have undertaken a good faith attempt to voluntarily exchange information in furtherance of the stipulation process described in Rule 91. Thus, interrogatories should be necessary only where a party has failed to participate or cooperate in informal consultation or communication or to finally narrow remaining issues or disputes. See, e.g., *Branerton v. Commissioner*, *supra*; *International Air Conditioning Corp. v. Commissioner*, 67 T.C. 89 (1976).

The presumptive limit on interrogatories is not intended to prevent needed discovery but requires the agreement of the parties or judicial scrutiny before the limit may be exceeded. Consistent with Rule 70(b)(2), a motion by a party for leave to serve more than 25 interrogatories on an opposing party

may be denied if (A) the interrogatories are unreasonably cumulative or duplicative, or the information sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, (B) the party seeking additional interrogatories has had ample opportunity by discovery in the action to obtain the information sought, or (C) the interrogatories are 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.

Amendments

Paragraph (a) of Rule 71 is amended to prescribe a presumptive limit of 25 interrogatories that one party may serve on another party, including all discrete subparts of an interrogatory but excluding interrogatories authorized under Rule 71(d) regarding an opposing party's expert. Rule 71(d)(2) is amended to conform with Rule 143, as amended. Rule 71(e) is amended to include a reference to discovery of electronically stored information. The amendments are effective as of January 1, 2010.

RULE 72. PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS

(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, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data compilations stored in any medium from which information can be obtained, either directly or translated, if necessary, by the responding party into a 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.

(b) Procedure: (1) *Contents of the Request:* The request shall set forth the items to be inspected, either by individual item or category, describe each item and category with reasonable particularity, and may specify the form or forms in which electronically stored information is to be produced. It shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) *Responses and Objections:* 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. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party shall state the form or forms it intends to use. 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 a motion for such a ruling, neither the request nor the response shall be filed with the Court.

(3) *Producing Documents or Electronically Stored Information:* Unless otherwise stipulated or ordered by the Court, these procedures apply to producing documents or electronically stored information: (A) A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request; (B) If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and (C) A party need not produce the same electronically stored information in more than one form.

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

Note

Paragraphs (a) and (b) of Rule 72 are amended to include references to discovery of electronically stored information and to prescribe specific procedures applicable to the production of electronically stored information. See Fed. R. Civ. P. 34. The amendments are effective as of January 1, 2010.

RULE 73. EXAMINATION BY TRANSFEREES

(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, electronically stored information, 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, electronically stored information, 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 are necessary in order to enable the transferee to ascertain the liability of the taxpayer or preceding transferee.

(b) **Procedure:** A petitioner desiring an examination permitted under paragraph (a) shall file an application with the Court, showing that such petitioner is entitled to such an examination, describing the documents, electronically stored information, 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, electronically stored information, 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, electronically stored information, and materials.

Note

Paragraphs (a), (b), and (c) of Rule 73 are amended to include references to discovery of electronically stored information. The amendments are effective as of January 1, 2010.

RULE 74. DEPOSITIONS FOR DISCOVERY PURPOSES

(a) General: In conformity with this Rule, a party may obtain discovery by depositions with the consent of the parties under paragraph (b) and without the consent of the parties under paragraph (c). Paragraph (d) describes additional uses for depositions of expert witnesses, and paragraphs (e) and (f) set forth general provisions governing the taking of all depositions for discovery purposes.

(b) Depositions Upon Consent Of The Parties: (1) *When Deposition May Be Taken:* 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 of either a party, a nonparty witness, or an expert 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).

(2) *Notice to Nonparty Witness or Expert Witness:* A notice of deposition shall be served on a nonparty witness

or an expert witness. The notice shall state that the deposition is to be taken under Rule 74(b) and shall set forth the name of the party or parties seeking the deposition; the name and address of the person to be deposed; the time and place proposed for the deposition; the name of the officer before whom the deposition is to be taken; a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition; and a statement of the issues in controversy to which the expected testimony of the witness, or the document, electronically stored information, or thing relates, and the reasons for deposing the witness. 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.

(3) *Objection by Nonparty Witness or Expert Witness:* Within 15 days after service of the notice of deposition, a nonparty witness or expert 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 nonparty witness or expert 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.

(c) Depositions Without Consent Of The Parties: (1) *In General:* (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 take a deposition for discovery purposes of a party, a nonparty witness, or an expert witness in the circumstances described in this paragraph.

(B) *Availability:* The taking of a deposition of a party, a nonparty witness, or an expert witness under this paragraph is an extraordinary method of discovery and may be used only where a party, a nonparty witness, or an expert witness can give testimony or possesses documents, electronically stored information, or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, elec-

tronically stored information, or things practicably cannot be obtained through informal consultation or communication (Rule 70(a)(1)), interrogatories (Rule 71), a request for production of documents, electronically stored information, or things (Rule 72), or by a deposition taken with consent of the parties (Rule 74(b)). If such requirements are satisfied, then a deposition of a witness may be taken under this paragraph, 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 S corporation (as described in Code section 1361(a)), and an issue in the case involves an adjustment with respect to such S corporation. See Title XXIV, relating to partnership actions, brought under provisions first enacted by the Tax Equity and Fiscal Responsibility Act of 1982.

(2) *Nonparty Witnesses:* A party may take the deposition of a nonparty witness without leave of court and without the consent of all the parties as follows:

(A) *Notice:* A party desiring to take a deposition under this subparagraph shall give notice in writing to every other party to the case and to the nonparty witness to be deposed. The notice shall state that the deposition is to be taken under Rule 74(c)(2) 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; the officer before whom the deposition is to be taken; a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition; and a statement of the issues in controversy to which the expected testimony of the witness, or the document, electronically stored information, or thing relates, and the reasons for deposing the witness. 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.

(B) *Objections:* Within 15 days after service of the notice of deposition, a party or a nonparty 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 nonparty 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 a motion for such an order, neither the notice nor the responses shall be filed with the Court.

(3) *Party Witnesses:* A party may take the deposition of another party without the consent of all the parties as follows:

(A) *Motion:* A party desiring to depose another party shall file a written motion which shall state that the deposition is to be taken under Rule 74(c)(3) and shall set forth the name of the person to be deposed, the time and place of the deposition, and the officer before whom the deposition is to be taken. With respect to the deposition of an organization described in Rule 81(c), the motion shall also set forth the information required under that Rule, and the organization shall make the designation authorized by that Rule.

(B) *Objection:* Upon the filing of a motion to take the deposition of a party, the Court shall issue an order directing each non-moving party to file a written objection or response thereto.

(C) *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 a party witness and may in its order allocate the cost therefor as it deems appropriate.

(4) *Expert Witnesses:* A party may take the deposition of an expert witness without the consent of all the parties as follows:

(A) *Scope of Deposition:* The deposition of an expert witness under this subparagraph shall be limited to: (i) 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, (ii) the opinion of the witness in respect of which the witness's expert testimony is relevant to the issue or issues in dispute, (iii) the facts or data that underlie that opinion, and (iv) the witness's analysis, showing how the witness proceeded

from the facts or data to draw the conclusion that represents the opinion of the witness.

(B) *Procedure:* (i) *In General:* A party desiring to depose an expert witness under this subparagraph (4) shall file a written motion and shall set forth therein the matters specified below:

(*a*) The name and address of the witness to be examined;

(*b*) a statement describing any books, papers, documents, electronically stored information, 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, electronically stored information, 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 (c)(4)(D)); and

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

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).

(ii) *Disposition of Motion:* Any objection or other response to the motion for order to depose an expert witness under this subparagraph shall be filed with the Court within 15 days after service of the motion. If the Court approves the taking of a deposition, then it will issue an order as described in paragraph (e)(4)

of this Rule. If the deposition is to be video recorded, then the Court's order will so state.

(C) *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.

(D) *Expenses:* (i) *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 paragraph (c)(4)(D)(ii).

(ii) *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.

(iii) *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 paragraph (c)(4)(D)(ii) and to pay any other party such expenses, including attorney's fees, that the Court deems reasonable under the circumstances.

(d) Use of Deposition of an Expert Witness 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(g)(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(g)(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).

(e) General Provisions: Depositions taken under this Rule are subject to the following provisions. (1) *Transcript:* A transcript shall be made of every deposition upon oral examination taken under this Rule, but the transcript and exhibits introduced in connection with the deposition generally shall not be filed with the Court. See Rule 81(h)(3).

(2) *Depositions Upon Written Questions:* Depositions under this Rule may be taken upon written questions rather than upon oral examination. If the deposition is to be taken on written questions, a copy of the written questions shall be annexed to the notice of deposition or motion to take deposition. 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 a notice of or motion to take deposition rather than service of an application). With respect to taking the deposition, the procedure of Rule 84(c) shall apply.

(3) *Hearing:* A hearing on a motion for an order regarding a deposition under this Rule will be held only if di-

rected by the Court. A motion for an order regarding a deposition may be granted by the Court to the extent consistent with Rule 70(b)(2).

(4) *Orders:* If the Court approves the taking of a deposition under this Rule, then it will issue an order which includes 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.

(5) *Continuances:* Unless the Court shall determine otherwise for good cause shown, the taking of a deposition under this Rule will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set.

(f) Other Applicable Rules: Unless otherwise provided in this Rule, the depositions described in this Rule generally shall be governed by the provisions of the following Rules with respect to the matters to which they apply: 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 (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. For provisions governing the issuance of subpoenas, see Rule 147(d).

Note

Introduction

Rule 30(a)(1) of the Federal Rules of Civil Procedure provides that one party generally may take the deposition of another party without leave of court. Fed. R. Civ. P. 30(a)(2)(A) provides that leave of court is required to take a deposition if (i) the parties have not stipulated to the deposition, and (ii) the deposition would result in more than 10 depositions by one of the parties, the deponent was already deposed in the case, or the party seeks to take the deposition before scheduling a discovery conference with the opposing party.

The use of depositions as a discovery tool in Tax Court practice has evolved gradually over time. When the Court adopted its first discovery rules in 1973, discovery was lim-

ited to interrogatories and requests for production of documents. At the time, the Notes to Rule 70(a) stated that any additional benefits that might be associated with depositions as a discovery tool were outweighed by the problems and burdens depositions would entail for the parties and the Court. See 60 T.C. 1097. The Court's reluctance to permit discovery depositions "was based primarily on the concern for the burden and cost imposed on litigants". H. Dubroff, Recent Developments In The Business And Procedures Of The United States Tax Court, 52 Alb. L. Rev. 33, 222 (1987–88).

By 1979, the Court's position with regard to discovery depositions began to change, and it added Rule 74 (then titled "Depositions for Discovery Purposes"), which provides that, upon consent of all the parties to a case, a deposition for discovery purposes may be taken of either a party or a nonparty witness. The Note to Rule 74 stated that the Rule limits the availability of depositions to avoid the excessive and abusive use of discovery depositions. See 71 T.C. at 1195. A few years later, in 1982, the Court added Rule 75 (titled "Depositions for Discovery Purposes—Without Consent of Parties in Certain Cases"), which provides for the taking of discovery depositions of nonparty witnesses—"an extraordinary method of discovery which may be used only where the information sought cannot be obtained by informal consultation or by other discovery methods." See 79 T.C. at 1141–1142. A deposition under Rule 75 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, and within the time for completion of discovery under Rule 70(a)(2). Finally, in 1990, the Court added Rule 76 (titled "Deposition of Expert Witnesses"), which authorizes depositions of expert witnesses upon the consent of all the parties (under Rule 74) or, in extraordinary cases, without the consent of all the parties. The Note to Rule 76 stated that the Court's experience led the Court to reconsider the utility of depositions of experts and "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." See 93 T.C. at 910–911.

The Tax Court Rules of Practice and Procedure currently do not permit a party to take the deposition of another party

for discovery purposes absent consent to the deposition under Rule 74.[2] In some cases, a Judge or Special Trial Judge may conclude that the inability of one party to depose an opposing party may both hamper a party's ability to prepare for trial and unnecessarily complicate the presentation of evidence at trial.

Amendments

The Court's existing Rules governing depositions for discovery purposes are amended to provide that a party may move to take the deposition of another party or the Court in the exercise of its discretion may order the deposition of a party sua sponte. The deposition of a party without consent 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 or pursuant to a motion filed by a party. A Judge or Special Trial Judge should order such a deposition only where the testimony or information sought practicably cannot be obtained through informal communications or the Court's normal discovery procedures and to the extent consistent with Rule 70(b)(2).

In conjunction with this amendment, Rules 74, 75, and 76 are merged into a single new Rule 74 so as to improve clarity, eliminate redundancies, and streamline the Court's Rules. New Rule 74 contains provisions governing all depositions that may be taken for discovery purposes in Tax Court proceedings.

New Rule 74 conforms with Rule 21(b)(1), as amended, includes references to the discovery of electronically stored information, and conforms with Rule 143, as amended. The amendments are effective as of January 1, 2010.

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[2] Since 1973, Title VIII of the Court's Rules of Practice and Procedure (Rules 80–85) has permitted depositions of party and nonparty witnesses for the (nondiscovery) purpose of making testimony and documents available as evidence at trial. See 60 T.C. 1103–1114 (1973). Such depositions may be taken in a pending case before trial (Rule 81), in anticipation of commencing a case (Rule 82), or in connection with the trial (Rule 83).

RULE 80. GENERAL PROVISIONS

(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, electronically stored information, 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 Rule 74.

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

Note

Paragraph (a) of Rule 80 is amended to conform with amendments merging Rules 74, 75, and 76 into new Rule 74 and to include a reference to electronically stored information. The amendments are effective as of January 1, 2010.

RULE 81. DEPOSITIONS IN PENDING CASE

(a) Depositions To Perpetuate Testimony: A party to a case pending in the Court, who desires to perpetuate testimony or to preserve any document, electronically stored information, 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, electronically stored information, or thing involved will not be available at the trial of the case, and shall relate only to testimony or document, electronically stored information, 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, electronically stored information, or thing is material to a matter in controversy;

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

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

(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 video record the deposition, then the application shall so state, and shall show the name and address of the video recorder operator and of the operator's employer. (The video recorder 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. In addition to serv-

ing each of the other parties to the case, the applicant shall serve a copy of the application 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 video recorded, 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 herein above 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.

(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 is held, either by the law thereof or by the law of the United States; (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, Mar. 18, 1970, 23 U.S.T. (Part 3) 2555. 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. 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(d).

(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, and 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 16 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(d).

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

(j) Video Recorded 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 video recorded. 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 ad-

dress; (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 deposition spans multiple units of video storage medium (tape, disc, etc.), the end of each unit and the beginning of each succeeding unit 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 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 video recording together with any exhibits, and such party shall permit the viewing of or shall provide a copy of the video recording and any exhibits upon the request and at the cost of any other party.

(5) *Use:* A video recorded 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 video recording in evidence shall provide all necessary equipment for viewing the video recording and personnel to operate such equipment. At a trial or hearing, that part of the audio portion of a video recorded 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 video recording shall be marked as an exhibit and, subject to the provisions of Rule 143(e)(2), shall remain in the custody of the Court.

Note

Rule 81(b)(2) is amended to conform with Rule 21(b)(1), as amended, requiring service of the filed application on each of

the other parties to the case. Paragraphs (a) and (b) of Rule 81 are amended to include references to electronically stored information. Paragraphs (h)(1), (h)(3), (i)(4), and (j)(5) of Rule 81 are amended to conform with Rule 143, as amended. The amendments are effective as of January 1, 2010.

RULE 82. DEPOSITIONS BEFORE COMMENCEMENT OF CASE

A person who desires to perpetuate testimony or to preserve any document, electronically stored information, 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; and (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, electronically stored information, 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.

Note

Rule 82 is amended to include references to electronically stored information. The amendments are effective as of January 1, 2010.

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(d).

Note

Paragraph (e) of Rule 85 is amended to conform with Rule 143, as amended. The amendments are effective as of January 1, 2010.

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 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. The exhibit number shall be followed by "P" if offered by the petitioner, e.g., 1–P; "R" if offered by the respondent, e.g., 2–R; or "J" if joint, e.g., 3–J.

(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.

(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; and (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.

(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, 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 issued 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.

Note

Rule 91(f)(1) is amended to delete the requirement that the party filing a motion to compel stipulation show proof of service, as a certificate of service is required by Rule 21(b)(1), as amended.

RULE 100. APPLICABILITY

The Rules in this Title apply according to their terms to written interrogatories (Rule 71), production of documents, electronically stored information, or things (Rule 72), examination by transferees (Rule 73), depositions (Rules 74, 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 is amended to conform with amendments merging Rules 74, 75, and 76 into new Rule 74 and to include a reference to electronically stored information. The amendments are effective as of January 1, 2010.

RULE 102. SUPPLEMENTATION OF RESPONSES

A party who has responded to a request for discovery (under Rule 71, 72, 73, or 74) 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(g)(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.

Note

Rule 102 is amended to conform with amendments merging Rules 74, 75, and 76 into new Rule 74 and to conform with Rule 143, as amended. The amendments are effective as of January 1, 2010.

RULE 103. PROTECTIVE ORDERS

(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.

(10) That documents or records (including electronically stored information) be impounded by the Court to ensure 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 include references to electronically stored information. The amendments are effective as of January 1, 2010.

RULE 104. ENFORCEMENT ACTION AND SANCTIONS

(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) or (c) or Rule 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, 81, 82, 83, or 84; (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 (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, 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, 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) or (c) or Rule 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) or (c) or Rule 81(c) fails to obey an order

made by the Court with respect to the provisions of Rule 71, 72, 73, 74, 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, staying further proceedings until the order is obeyed, 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, 81, 82, 83, 84, and 90, an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(e) Failure to Provide Electronically Stored Information: Absent exceptional circumstances, sanctions may not be imposed under this Rule on a party for failing to provide electronically stored information that was lost as a result of the routine, good-faith operation of an electronic information system.

Note

Introduction

The Advisory Committee Notes underlying Fed. R. Civ. P. 37(e) (formerly rule 37(f)) state in relevant part:

Subdivision (f). Subdivision (f) * * * focuses on a distinctive feature of computer operations, the routine alteration and deletion of information

that attends ordinary use. Many steps essential to computer operation may alter or destroy information, for reasons that have nothing to do with how that information might relate to litigation. As a result, the ordinary operation of computer systems creates a risk that a party may lose potentially discoverable information without culpable conduct on its part. Under Rule 37(f), absent exceptional circumstances, sanctions cannot be imposed for loss of electronically stored information resulting from the routine, good-faith operation of an electronic information system.

Rule 37(f) applies only to information lost due to the "routine operation of an electronic information system"—the ways in which such systems are generally designed, programmed, and implemented to meet the party's technical and business needs. The "routine operation" of computer systems includes the alteration and overwriting of information, often without the operator's specific direction or awareness, a feature with no direct counterpart in hard-copy documents. Such features are essential to the operation of electronic information systems.

Rule 37(f) applies to information lost due to the routine operation of an information system only if the operation was in good faith. Good faith in the routine operation of an information system may involve a party's intervention to modify or suspend certain features of that routine operation to prevent the loss of information, if that information is subject to a preservation obligation. A preservation obligation may arise from many sources, including common law, statutes, regulations, or a court order in the case. The good faith requirement of Rule 37(f) means that a party is not permitted to exploit the routine operation of an information system to thwart discovery obligations by allowing that operation to continue in order to destroy specific stored information that it is required to preserve. When a party is under a duty to preserve information because of pending or reasonably anticipated litigation, intervention in the routine operation of an information system is one aspect of what is often called a "litigation hold." Among the factors that bear on a party's good faith in the routine operation of an information system are the steps the party took to comply with a court order in the case or party agreement requiring preservation of specific electronically stored information.

Whether good faith would call for steps to prevent the loss of information on sources that the party believes are not reasonably accessible under Rule 26(b)(2) depends on the circumstances of each case. One factor is whether the party reasonably believes that the information on such sources is likely to be discoverable and not available from reasonably accessible sources.

The protection provided by Rule 37(f) applies only to sanctions "under these rules." It does not affect other sources of authority to impose sanctions or rules of professional responsibility.

This rule restricts the imposition of "sanctions." It does not prevent a court from making the kinds of adjustments frequently used in managing discovery if a party is unable to provide relevant responsive information. For example, a court could order the responding party to produce an additional witness for deposition, respond to additional interrogatories, or make similar attempts to provide substitutes or alternatives for some or all of the lost information.

Amendments

Consistent with the general principles expressed in the Advisory Committee Notes quoted above, Rule 104 is amended by adding new paragraph (e) to limit the imposition of sanctions for failure to provide electronically stored information in certain circumstances. Rule 104 also is amended to conform with amendments merging Rules 74, 75, and 76 into new Rule 74. The amendments are effective as of January 1, 2010.

RULE 143. EVIDENCE

(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 sec. 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 174(b)).

(b) Testimony: The testimony of a witness generally must be taken in open court except as otherwise provided by the Court or these Rules. For good cause in compelling circumstances and with appropriate safeguards, the Court may permit testimony in open court by contemporaneous transmission from a different location.

(c) 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).

(d) 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).

(e) Documentary Evidence: (1) *Copies:* A copy is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original or in the circumstances it would be unfair to admit the copy in lieu of the original. Where the original is admitted in evidence, a clearly legible copy may be substituted later for the original or such part thereof as may be material or relevant, upon leave granted in the discretion of the Court.

(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.

(f) 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.

(g) 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's 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 prep-

aration of the report, or otherwise at the discretion of the Court. After the case is calendared for trial or assigned to a Judge or Special Trial Judge, each party who calls any expert witness shall serve on each other party, and shall submit to the Court, not later than 30 days before the call of the trial calendar on which the case shall appear, a copy of all expert witness reports prepared pursuant to this subparagraph. An expert witness's 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's 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's 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 74(d).

Note

Introduction

Rule 43(a) of the Federal Rules of Civil Procedure states that "For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." The Advisory Committee Notes underlying Fed. R. Civ. P. 43 include the following cautionary language:

> Contemporaneous transmission of testimony from a different location is permitted only on showing good cause in compelling circumstances. The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truthtelling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition. Transmissions

cannot be justified merely by showing that it is inconvenient for the witness to attend the trial.

The most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as an accident or illness, but remains able to testify from a different place. Contemporaneous transmission may be better than an attempt to reschedule the trial, particularly if there is a risk that other—and perhaps more important—witnesses might not be available at a later time.

Other possible justifications for remote transmission must be approached cautiously. Ordinarily depositions, including video depositions, provide a superior means of securing the testimony of a witness who is beyond the reach of a trial subpoena, or of resolving difficulties in scheduling a trial that can be attended by all witnesses. Deposition procedures ensure the opportunity of all parties to be represented while the witness is testifying. An unforseen need for the testimony of a remote witness that arises during trial, however, may establish good cause and compelling circumstances. Justification is particularly likely if the need arises from the interjection of new issues during trial or from the unexpected inability to present testimony as planned from a different witness.

Good cause and compelling circumstances may be established with relative ease if all parties agree that testimony should be presented by transmission. The court is not bound by a stipulation, however, and can insist on live testimony. Rejection of the parties' agreement will be influenced, among other factors, by the apparent importance of the testimony in the full context of the trial.

A party who could reasonably foresee the circumstances offered to justify transmission of testimony will have special difficulty in showing good cause and the compelling nature of the circumstances. Notice of a desire to transmit testimony from a different location should be given as soon as the reasons are known, to enable other parties to arrange a deposition, or to secure an advance ruling on transmission so as to know whether to prepare to be present with the witness while testifying.

No attempt is made to specify the means of transmission that may be used. Audio transmission without video images may be sufficient in some circumstances, particularly as to less important testimony. Video transmission ordinarily should be preferred when the cost is reasonable in relation to the matters in dispute, the means of the parties, and the circumstances that justify transmission. Transmission that merely produces the equivalent of a written statement ordinarily should not be used.

Safeguards must be adopted that ensure accurate identification of the witness and that protect against influence by persons present with the witness. Accurate transmission likewise must be assured.

Other safeguards should be employed to ensure that advance notice is given to all parties of foreseeable circumstances that may lead the proponent to offer testimony by transmission. Advance notice is important to protect the opportunity to argue for attendance of the witness at trial. Advance notice also ensures an opportunity to depose the witness, perhaps by video record, as a means of supplementing transmitted testimony.

The Tax Court is a court of national jurisdiction—its Judges and Special Trial Judges travel to 75 cities to conduct hearings and trial sessions, and its subpoena power extends nationwide so that a witness may be compelled to attend a trial or hearing from anywhere in the United States. I.R.C. sec. 7456. The Court also conducts motions hearings in Washington, D.C., and these hearings occasionally require witness testimony. Rules 50(b)(2), 130(a), Tax Court Rules of Practice and Procedure.

Situations sometimes arise in which a witness is unable to attend a trial or hearing for unexpected reasons, such as an accident or illness, and the parties may suffer substantial delays and incur significant additional costs if it is necessary to reschedule the trial or hearing to accommodate such a witness. However, if the witness is able to testify from a different location, the interests of justice may be better served by accepting the witness's testimony by contemporaneous transmission, particularly if there is a risk that other—and perhaps more important—witnesses might not be available at a later time.

The Tax Court has a "high-tech" courtroom enabling the Court to receive testimony from a witness who is in a different location. The Tax Court Rules of Practice and Procedure currently do not provide for the contemporaneous transmission of testimony from a different location.

Amendments

Consistent with the general principles expressed in the Advisory Committee Notes quoted above, Rule 143 is amended by adding new paragraph (b) to provide that the Court may permit testimony in open court by contemporaneous transmission from another location. Current paragraphs (b), (c), (d), (e), and (f) are redesignated paragraphs (c), (d), (e), (f), and (g). See Fed. R. Civ. P. 43(a).

Paragraph (f)(3) of Rule 143 is amended to conform with amendments merging Rules 74, 75, and 76 into new Rule 74. The amendments are effective as of January 1, 2010.

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 or electronically stored information, 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 sec. 7456(a).

(b) Production of Documentary Evidence and Electronically Stored Information: A subpoena may also command the person to whom it is directed to produce the books, papers, documents, electronically stored information, or tangible things designated therein, and may specify the form or forms in which electronically stored information is to be produced. 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, electronically stored information, or tangible things.

(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 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.

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

(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)(2) or (c)(2), in a motion to take deposition under Rule 74(c)(3) or (4), 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)(2), 81(e)(2), and 84(a).

(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

Paragraph (d) of Rule 147 is amended to conform with amendments merging Rules 74, 75, and 76 into new Rule 74, and paragraphs (a), (b), and (d) of Rule 147 are amended to include references to electronically stored information. The amendments are effective as of January 1, 2010.

RULE 151. BRIEFS

(a) General: Briefs shall be filed after trial or submission of a case, except as otherwise directed by the presiding 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. The Court may return without filing any brief that does not conform to the requirements of this Rule.

(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).

(c) Service: Each brief shall be served upon the opposite party when it is filed, except that, in the event of simultaneous briefs, such brief shall be served by the Clerk after 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 return without filing 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.

(e) Form and Content: All briefs shall conform to the requirements of Rule 23 and 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 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).

Note

Rule 151(c) is amended to require that the parties serve seriatim briefs on each other. The Rule retains the requirement that the Clerk serve simultaneous briefs on the parties after both briefs have been filed. The language referring to service in partnership actions is deleted, as the service requirements for partnership actions would not differ from those contained in Rule 21(b)(1), as amended. The amendments are effective as of January 1, 2010.

RULE 155. COMPUTATION BY PARTIES FOR ENTRY OF DECISION

(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 to be included in the decision. If the parties are in agreement as to the amount to be included in 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 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.

(b) Procedure in Absence of Agreement: If, however, the parties are not in agreement as to the amount to be included in 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 amount 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 and if, on or before a date specified in the Clerk's notice, the opposite party fails to file an objection, accompanied or preceded by an alternative computation, then 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 amount 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 amount to be included in the decision 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 not to be regarded as affording an opportunity for retrial or reconsideration.

Note

Rule 155(b) is amended to eliminate the requirement that the Clerk serve an unagreed computation on the opposite party. The amendments are effective as of January 1, 2010.

RULE 181. POWERS AND DUTIES

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 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, electronically stored information, 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 the 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.

Note

Rule 181 is amended to include a reference to electronically stored information. The amendment is effective as of January 1, 2010.

RULE 200. ADMISSION TO PRACTICE AND PERIODIC REGISTRATION FEE

(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 and professional character and possesses the requisite qualifications to provide competent representation before the Court. In addition, the applicant must satisfy the other requirements of this Rule. If the applicant fails to satisfy the requirements of this Rule, then the Court may deny such applicant admission to practice before the Court.

(2) *Attorney Applicants:* An applicant who is an attorney at law must, as a condition of being admitted to practice, file with the Admissions Clerk at the address listed in paragraph (b) of this Rule a completed application accompanied by a fee to be established by the Court, see Appendix II, 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 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) *Nonattorney Applicants:* An applicant who is not an attorney at law must, as a condition of being admitted to practice, file with the Admissions Clerk at the address listed in paragraph (b) of this Rule, a completed application accompanied by a fee to be established by the Court. See Appendix II. In addition, such an applicant must, as a condition of being admitted to practice, satisfy the Court, by means of a written examination given by the Court, that the applicant possesses the requisite qualifications to provide competent representation before the Court. Written examinations for applicants who are not attorneys at law will be held no less often than every 2 years. By public announcement at least 6 months prior to the date of each examination, the Court will announce the date and the time of such examination. The Court will notify each applicant, whose application for admission is in order, of the time and the place at which the applicant is to be present for such examination, and the applicant must present that notice to the examiner as authority for taking such examination.

(b) Applications for Admission: 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. As to forms of payment for application fees, see Rule 11.

(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 at the address listed in paragraph (b) of this Rule, 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 (a)(3) of this Rule. 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.

(d) Admission: Upon the Court's approval of an application for admission in which an applicant has subscribed to the oath or affirmation and upon an applicant's satisfaction of the other applicable requirements of this Rule, such applicant will be admitted to practice before the Court and be entitled to a certificate of admission.

(e) Change of Address: Each person admitted to practice before the Court shall promptly notify the Admissions Clerk at the address listed in paragraph (b) of this Rule of any change in office address for mailing purposes. See Form 10 in Appendix I regarding a form for and methods of providing the notification required by this paragraph (e). See also Rule 21(b)(4) regarding the filing of a separate notice of change of address for each docket number in which such person has entered an appearance.

(f) Corporations and Firms Not Eligible: Corporations and firms will not be admitted to practice or recognized before the Court.

(g) Periodic Registration Fee: (1) Each person admitted to practice before the Court shall pay a periodic registration fee. The frequency and the amount of such fee shall be determined by the Court, except that such amount shall not exceed $30 per calendar year. The Clerk shall maintain an Ineligible List containing the names of all persons admitted to practice before the Court who have failed to comply with the provisions of this paragraph (g)(1). No such person 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 person appearing on the Ineligible List shall not be removed from the List until the currently due registration fee has been paid and arrearages have been made current. Each person admitted to practice before the Court, whether or not engaged in private practice, must pay the periodic registration fee. As to forms of payment, see Rule 11.

(2) The fees described in paragraph (g)(1) of this Rule shall be used by the Court to compensate independent counsel appointed by the Court to assist it with respect to disciplinary matters. See Rule 202(h).

Note

Rule 21(b)(4) provides that a notice of change of address shall be filed with the Court to notify 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. Form 10, Notice of Change of Address, is revised by adding a line on which counsel for a party should include his or her Tax Court Bar number.

Rule 200(e) requires that each person admitted to practice before the Court promptly notify the Admissions Clerk of any change in office address for mailing purposes. Form 10 is revised to note that a practitioner can satisfy the notification requirement of Rule 200(e) by filing a Form 10 in a pending case, mailing a Form 10 or other written communication to the Admissions Clerk, or electronically updating his or her registration information by clicking on the "Update Info" hyperlink through the "Practitioner Access" on the Court's Internet Web site. It is anticipated that, if a practitioner using Form 10 to notify the Court of a change of address pursuant to Rule 200(e) has not entered an appearance in a

pending case, then the practitioner will omit any caption and docket number from the form. Rule 200(e) is amended to include a reference to Form 10. Rule 200(g)(2) is amended to conform with amendments to Rule 202. The amendments are effective as of January 1, 2010.

RULE 202. DISCIPLINARY MATTERS

(a) General: A member of the Bar of this Court may be disciplined by this Court as a result of:

(1) Conviction in any court of the United States, or of the District of Columbia, or of any State, territory, commonwealth, or possession of the United States of any felony or of any lesser crime involving false swearing, misrepresentation, fraud, criminal violation of any provision of the Internal Revenue Code, bribery, extortion, misappropriation, theft, or moral turpitude;

(2) Imposition of discipline by any other court of whose bar an attorney is a member, or an attorney's disbarment or suspension by consent or resignation from the bar of such court while an investigation into allegations of misconduct is pending;

(3) Conduct with respect to the Court which violates the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association, the Rules of the Court, or orders or other instructions of the Court; or

(4) Any other conduct unbecoming a member of the Bar of the Court.

(b) Reporting Convictions and Discipline: A member of the Bar of this Court who has been convicted of any felony or of any lesser crime described in paragraph (a)(1), who has been disciplined as described in paragraph (a)(2), or who has been disbarred or suspended from practice before an agency of the United States Government exercising professional disciplinary jurisdiction, shall inform the Chair of the Court's Committee on Admissions, Ethics, and Discipline of such action in writing no later than 30 days after entry of the judgment of conviction or order of discipline.

(c) Disciplinary Actions: Discipline may consist of disbarment, suspension from practice before the Court, reprimand, admonition, or any other sanction that the Court may deem appropriate. The Court may, in the exercise of its discretion, immediately suspend a practitioner from practice

before the Court until further order of the Court. Except as provided in paragraph (d), 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.

(d) Interim Suspension Pending Final Disposition of Disciplinary Proceedings: If a member of the Bar of this Court is convicted in any court of the United States, or of the District of Columbia, or of any State, territory, commonwealth, or possession of the United States of any felony or of any lesser crime described in paragraph (a)(1), then, notwithstanding the pendency of an appeal of the conviction, if any, the Court may, in the exercise of its discretion, immediately suspend such practitioner from practice before the Court pending final disposition of the disciplinary proceedings described in paragraph (e).

(e) Disciplinary Proceedings: Upon the occurrence or allegation of any event described in paragraph (a)(1) through (a)(4), except for any suspension imposed for 60 days or less pursuant to paragraph (c), the Court shall issue to the practitioner an order to show cause why the practitioner should not be disciplined or shall otherwise take appropriate action. The order to show cause shall direct that a written response be filed within such period as the Court may direct and shall set a prompt hearing on the matter before one or more Judges of the Court. If the disciplinary proceeding is predicated upon the complaint of a Judge of the Court, the hearing shall be conducted before a panel of three other Judges of the Court.

(f) Reinstatement: (1) A practitioner suspended for 60 days or less pursuant to paragraph (c) shall be automatically reinstated at the end of the period of suspension.

(2) A practitioner suspended for more than 60 days or disbarred pursuant to this Rule may not resume practice before the Court until reinstated by order of the Court.

(A) A disbarred practitioner or a practitioner suspended for more than 60 days who wishes to be reinstated to practice before the Court must file a petition for reinstatement. Upon receipt of the petition for reinstatement, the Court may set the matter for prompt

hearing before one or more Judges of the Court. If the disbarment or suspension for more than 60 days was predicated upon the complaint of a Judge of the Court, any such hearing shall be conducted before a panel of three other Judges of the Court.

(B) In order to be reinstated before the Court, the practitioner must demonstrate by clear and convincing evidence in the petition for reinstatement and at any hearing that such practitioner's reinstatement will not be detrimental to the integrity and standing of the Court's Bar or to the administration of justice, or subversive of the public interest.

(C) 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.

(g) Right to Counsel: In all proceedings conducted under the provisions of this Rule, the practitioner shall have the right to be represented by counsel.

(h) Appointment of Court Counsel: The Court, in its discretion, may appoint counsel to the Court to assist it with respect to any disciplinary matters.

(i) Jurisdiction: Nothing contained in this Rule shall be construed to deny to the 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 or for costs under Code Section 6673(a)(2).

Note

Introduction

The Model Rules for Lawyer Disciplinary Enforcement, adopted by the American Bar Association House of Delegates in August 1989 and last amended in August 2002, recommend that a lawyer admitted to practice be referred to the appropriate lawyer disciplinary agency in the jurisdiction with respect to the lawyer's conviction of a serious crime or the discipline of the lawyer in another jurisdiction. Model Rules for Lawyer Discipl. Enforc. R. 22 (Aug. 2002). The Model Rules also suggest that a court place a lawyer on interim suspension immediately upon proof that the lawyer has been found guilty of a serious crime, regardless of the pend-

ency of an appeal. Model Rules for Lawyer Discipl. Enforc. R. 19 (Aug. 2002). As the commentaries to the Model Rules state, continued practice by a lawyer found guilty of a serious crime or judicially determined to be unfit leaves the public unprotected, exposes innocent clients to harm, and undermines public confidence in the legal profession. Similar rules are found in the rules of a number of State courts. See, e.g., Cal. Bus. & Prof. Code sec. 6068(o); D.C. Bar R. XI, sec. 10(c); Va. Sup. Ct., pt. 6, sec. III, R. 8.3(e).

Amendments

Rule 202 is amended to add new paragraphs (b) and (d). New paragraph (b) requires a member of the Tax Court Bar to notify the Court within 30 days after: (1) Conviction of any felony, or conviction of any lesser crime described in paragraph (a)(1) of Rule 202; (2) imposition of discipline by any other court; or (3) disbarment or suspension from practice before an agency of the United States Government exercising professional disciplinary jurisdiction. Similar notice requirements are recommended by rule 22 of the Model Rules for Lawyer Disciplinary Enforcement, adopted by the ABA House of Delegates in August 1989 and last amended in August 2002, and are found in the rules of a number of State courts. See, e.g., Cal. Bus. & Prof. Code sec. 6068(o); D.C. Bar R. XI, sec. 10(c); Va. Sup. Ct., pt. 6, sec. III, R. 8.3(e). New paragraph (d) gives the Court discretionary authority to suspend a member of the Bar who is convicted of certain serious crimes pending final disposition of the disciplinary proceedings in this Court. Again, similar provisions are recommended by rule 19 of the Model Rules for Lawyer Disciplinary Enforcement, and are found in the rules of various States. See, e.g., D.C. Bar R. XI, sec. 10(c). The amendments are effective as of January 1, 2010.

RULE 215. JOINDER OF PARTIES

(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. In addition to serving the parties to the action, 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 party and is not less than 18 years of age, who shall make a return of service. See Form 9, 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 in Estate Tax Installment Payment Action: The joinder of parties in estate tax installment payment actions shall be subject to the following requirements:

(1) *Permissive Joinder:* Any person who, under Code section 7479(b)(1), is entitled to commence an action for declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code section 6166 may join in filing a petition with any other such person in such an action with respect to such estate. If the Commissioner has issued a notice of determination with respect to the eligibility of the estate, then any person joining in the petition must do so within the period specified in Code section 7479(b)(3). If more than one petition is filed with respect to the eligibility of the same estate, then see Rule 141 (relating to the possibility of consolidating the actions with respect to the estate).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code section 6166 may move to have joined in the action any executor or any person who has assumed an obligation to make payments under Code section 6166 with respect to such estate. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue. See Rule 214. In addition to serving the parties to the action, 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 party and is not less than 18 years of age, who shall make a return of service. See Form 9, 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, or, in the case of an action brought by a person described in Code section 7479(b)(1)(B), is another such person described in Code section 7479(b)(1)(B), 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 absence of such person, 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.

(c) Joinder of Parties in Gift Valuation, Governmental Obligation, and Exempt Organization Actions: Joinder of parties is not permitted in a gift valuation action, in a governmental obligation action, or in an exempt organization action. See Code secs. 7477(b)(1), 7478(b)(1), 7428(b)(1). With respect to consolidation of actions, see Rule 141.

Note

Paragraphs (a) and (b) of Rule 215 are amended to clarify that the party moving for joinder of additional parties must serve the motion on the other parties to the case, as well as on the person sought to be joined. The amendments are effective as of January 1, 2010.

APPENDIX I [1]

FORMS

The following forms are listed in this appendix:

All the forms are available on the Court's Web site at www.ustaxcourt.gov. The forms also may be manually prepared, except that the subpoena (Form 14) must be obtained either from the Clerk of the Court or from the Court's Web site. 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.

Note

Appendix I is amended to reflect the issuance of new Form 6, Ownership Disclosure Statement.

Form 5, Request for Place of Trial, is amended to correct a typographical error. [2]

Form 6, Ownership Disclosure Statement, is a new form that petitioners may use to comply with Rule 20(c).

Form 10, Notice of Change of Address, is revised by adding a line on which counsel for a party should include his or her Tax Court Bar number. Form 10 also is revised to note that a practitioner can satisfy the notification requirement of Rule 200(e) by filing a Form 10 in a pending case, mailing a Form 10 or other written communication to the Admissions Clerk, or electronically updating his or her registration information

[1] Except as otherwise stated, the amendments are effective as of January 1, 2010.

[2] The amendment to Form 5, correcting a typographical error, is effective as of March 1, 2008.

by clicking on the "Update Info" hyperlink through the "Practitioner Access" on the Court's Internet Web site. It is anticipated that, if a practitioner using Form 10 to notify the Court of a change of address pursuant to Rule 200(e) has not entered an appearance in a pending case, then the practitioner will omit any caption and docket number from the form.

Form 13, Notice of Intervention, is revised to require the intervenor to state the grounds for the intervention and the reasons therefor. The revision conforms the form with Rule 325(b), which provides that all new matters of claim or defense in a notice of intervention shall be deemed denied. Compare Rules 216(b), 225(b) and 245(e), which set forth procedures for the filing of pleadings by intervenors and participating partners; see Fed. R. Civ. P. 24(c).

FORM 5

REQUEST FOR PLACE OF TRIAL

(See Rule 140.)

www.ustaxcourt.gov

UNITED STATES TAX COURT

.....

Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

} Docket No.

PLACE AN X IN ONE BOX. REQUEST A CITY MARKED * ONLY IF YOU ELECTED SMALL TAX CASE STATUS ON FORM 2. ANY OTHER CITY MAY BE REQUESTED FOR ANY CASE, INCLUDING A SMALL TAX CASE.

ALABAMA
- ☐ Birmingham
- ☐ Mobile

ALASKA
- ☐ Anchorage

ARIZONA
- ☐ Phoenix

ARKANSAS
- ☐ Little Rock

CALIFORNIA
- ☐ Fresno*
- ☐ Los Angeles
- ☐ San Diego
- ☐ San Francisco

COLORADO
- ☐ Denver

CONNECTICUT
- ☐ Hartford

DISTRICT OF COLUMBIA
- ☐ Washington

FLORIDA
- ☐ Jacksonville
- ☐ Miami
- ☐ Tallahassee*
- ☐ Tampa

GEORGIA
- ☐ Atlanta

HAWAII
- ☐ Honolulu

IDAHO
- ☐ Boise
- ☐ Pocatello*

ILLINOIS
- ☐ Chicago
- ☐ Peoria*

INDIANA
- ☐ Indianapolis

IOWA
- ☐ Des Moines

KANSAS
- ☐ Wichita*

KENTUCKY
- ☐ Louisville

LOUISIANA
- ☐ New Orleans
- ☐ Shreveport*

MAINE
- ☐ Portland*

MARYLAND
- ☐ Baltimore

MASSACHUSETTS
- ☐ Boston

MICHIGAN
- ☐ Detroit

MINNESOTA
- ☐ St. Paul

MISSISSIPPI
- ☐ Jackson

MISSOURI
- ☐ Kansas City
- ☐ St. Louis

MONTANA
- ☐ Billings*
- ☐ Helena

NEBRASKA
- ☐ Omaha

NEVADA
- ☐ Las Vegas
- ☐ Reno

NEW MEXICO
- ☐ Albuquerque

NEW YORK
- ☐ Albany*
- ☐ Buffalo
- ☐ New York City
- ☐ Syracuse*

NORTH CAROLINA
- ☐ Winston-Salem

NORTH DAKOTA
- ☐ Bismarck*

OHIO
- ☐ Cincinnati
- ☐ Cleveland
- ☐ Columbus

OKLAHOMA
- ☐ Oklahoma City

OREGON
- ☐ Portland

PENNSYLVANIA
- ☐ Philadelphia
- ☐ Pittsburgh

SOUTH CAROLINA
- ☐ Columbia

SOUTH DAKOTA
- ☐ Aberdeen*

TENNESSEE
- ☐ Knoxville
- ☐ Memphis
- ☐ Nashville

TEXAS
- ☐ Dallas
- ☐ El Paso
- ☐ Houston
- ☐ Lubbock
- ☐ San Antonio

UTAH
- ☐ Salt Lake City

VERMONT
- ☐ Burlington*

VIRGINIA
- ☐ Richmond
- ☐ Roanoke*

WASHINGTON
- ☐ Seattle
- ☐ Spokane

WEST VIRGINIA
- ☐ Charleston

WISCONSIN
- ☐ Milwaukee

WYOMING
- ☐ Cheyenne*

.....

Signature of Petitioner(s) or Counsel

.....

Date

FORM 6

OWNERSHIP DISCLOSURE STATEMENT

(See Rule 20(c).)

www.ustaxcourt.gov

UNITED STATES TAX COURT

..... Petitioner(s) v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

OWNERSHIP DISCLOSURE STATEMENT

Pursuant to Rule 20(c), Tax Court Rules of Practice and Procedure, [Name of Petitioner], makes the following disclosure:

[If petitioner is a nongovernmental corporation, provide the following information:]

A. All parent corporations, if any, of petitioner, or state that there are no parent corporations:

B. All publicly held entities owning 10 percent or more of petitioner's stock, or state that there is no such entity:

OR

[If petitioner is a partnership or a limited liability company, provide the following information:]

All publicly held entities owning an interest in petitioner, or state that there is no such entity:

....

Signature of Counsel / Petitioner's Duly Authorized Representative — Date

FORM 10

NOTICE OF CHANGE OF ADDRESS
(See Rule 21(b)(4).)
www.ustaxcourt.gov

UNITED STATES TAX COURT

....
Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
} Docket No.

NOTICE OF CHANGE OF ADDRESS
(See Rule 21(b)(4).)*

Please change my/our address on the records of the Court.

Old Address: _____

_____

_____

_____

_____

Telephone: _____

New Address: _____

_____

_____

_____

_____

Telephone: _____

Signature: _____

Printed name: _____

Tax Court Bar No. (if applicable):

_____

Date: _____

*See also Rule 200(e), which requires each person admitted to practice before the Tax Court promptly to notify the Admissions Clerk of any change in office address for mailing purposes. Filing Form 10 in a pending case satisfies this requirement. If a practitioner has not entered an appearance in a pending case, the practitioner can satisfy the Rule 200(e) notification requirement by mailing Form 10 (omitting any caption and docket number) or other written communication to the Admissions Clerk, or by electronically updating the practitioner's registration information by clicking on the "Update Info" hyperlink through "Practitioner Access" on the Court's Internet Web site at *www.ustaxcourt.gov*.

FORM 13

NOTICE OF INTERVENTION
(Action for Determination of Relief From Joint and Several Liability on a Joint Return)

(See Rule 325.)

www.ustaxcourt.gov

UNITED STATES TAX COURT

..... Petitioner(s) v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

NOTICE OF INTERVENTION

Intervenor, ..., the spouse or former spouse of petitioner,
please type or print name
hereby intervenes, pursuant to section 6015(e)(4), I.R.C. 1986, and Rule 325, Tax Court Rules of Practice and Procedure, in the above-entitled action.

The grounds for my intervention and the reasons why I agree or disagree with the Petition for Determination of Relief From Joint and Several Liability on a Joint Return served on me by respondent, are as follows:

.....

.....

.....

.....

.....

Dated:

.....
Intervenor
Present Address—City, State,
ZIP Code, Telephone No
(including area code

Dated:

.....
Counsel for Intervenor
(if retained by intervenor
Present Address—City, State,
ZIP Code, Telephone No
including area code
Tax Court Bar No.