

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2011-015

May 16, 2011

Amendments to United States Tax
Court Rules of Practice and
Subject: Procedure

Upon incorporation
Cancel Date: into the CCDM

BACKGROUND

On May 5, 2011, the U.S. Tax Court adopted amendments to its Rules of Practice and Procedure. The text of the amendments can be found on the Tax Court's website at <http://www.ustaxcourt.gov/notice.htm>. A press release explaining the amendments is available at <http://www.ustaxcourt.gov/press/050511.pdf>. The most significant changes are new deadlines for the filing of motions for summary judgment under Rule 121 and computations for entry of decision under Rule 155. The court also amended its rules concerning discovery, stipulations for trial, alternative dispute resolution, small tax case designations, and ownership disclosure statements. Other amendments made minor conforming and clerical changes. Of note, the court did not adopt its proposal to shorten the answer period in lien and levy (CDP) cases to 30 days, which we opposed in our official comments to the proposed amendments. (The comments, along with those of other commentators, are available at <http://www.ustaxcourt.gov/press/031811.pdf>.)

In general, the amendments to the rules are effective as of May 5, 2011. The amendments to Rule 121 are effective for cases in which notices of trial are issued after May 5, 2011; the amendments to Rule 155 are effective for cases in which opinions are issued after May 5, 2011; and the amendments to Rule 171 are effective for petitions filed after May 5, 2011.

DISCUSSION

I. Motions for Summary Judgment -- Rule 121

Motions for summary judgment are now required to be filed no later than 60 days before the first day of the court's session for which the case is calendared for trial, unless otherwise permitted by the court. The 60-day limit is intended to allow time for the court to issue necessary orders, for responses to be filed, and for the court to consider action on the motion before trial. The 60-day deadline is effective for cases in which a notice of trial is issued after May 5, 2011.

The court's addition of a 60-day deadline for filing motions for summary judgment was, in part, motivated by the court's concern over expediting the resolution of lien and levy cases. Most lien

Distribute to: All Personnel
 Electronic Reading Room

Filename: CC-2011-015 File copy in: CC:FM:PM

and levy cases not presenting issues subject to de novo review can be resolved solely on the basis of the administrative record through summary judgment motions. Attorneys should be proactive in identifying lien and levy cases in which a dispositive motion can be filed soon after the case is at issue. Further, notwithstanding the court's 60-day deadline, attorneys are reminded of CCDM 35.3.5.3(5), which provides that motions for summary judgment should be filed prior to a case being calendared for trial or at least 90 days prior to trial.

II. Computations for Entry of Decision -- Rule 155

There is now a 90-day deadline for filing computations for entry of decision in accordance with an opinion or order issued by the court. Both agreed and unagreed computations must be filed within 90 days of the issuance of an opinion unless otherwise directed by the court. This 90-day deadline is effective for cases in which opinions are issued after May 5, 2011. If there is no agreement with respect to a computation and a party files an alternative computation, a separate objection to the other party's computation is not required.

While attorneys should make every effort to file Rule 155 computations as soon as possible after issuance of an opinion and before the 90-day deadline, the complexities of some cases may require more than 90 days for computations to be completed. In cases in which the 90-day deadline is unlikely to be met, attorneys should move the court for additional time as early as possible, and request an extended due date that can reasonably be met in order to avoid having to file further motions for additional time.

III. Removal of Small Tax Case Designation -- Rule 171

The court reinstated the requirement that, if the Commissioner opposes a small tax case request, a motion must be filed opposing the small tax case designation at the time the answer is filed. The rule is effective for petitions filed after May 5, 2011, and is intended to conform to the court's earlier reinstated requirement that answers be filed in all small tax cases. The early identification of cases with significant issues or those in which the jurisdictional limits of section 7463(a) are exceeded assists the court in the management of its docket.

Former paragraphs (b) and (c) of Rule 171 have been relettered as paragraphs (c) and (d). Rellettered paragraph (d) continues to allow parties to seek removal of the small tax case designation at any time prior to trial. The court's explanation of the amendments to Rule 171 clarifies that the court will be deemed to have concurred in a small tax case election if a case is dismissed or resolved prior to trial. This clarification was necessary because previously, Rule 171(d) provided that the court will be deemed to have concurred in a small tax case election at the commencement of trial, suggesting that cases resolved prior to trial have not ripened into a small tax case and could be subject to appeal.

Finally, while not addressed by the amendments to Rule 171, section 7463(d) continues to allow the Commissioner, or a taxpayer, to request removal of the small tax case designation at any time prior to a decision becoming final if the case no longer meets the jurisdictional requirements for the small tax case designation and the amount of the excess is large enough to justify discontinuance of the proceedings as a small tax case.

IV. Alternative Dispute Resolution Procedures -- Rule 124

The alternative dispute resolution options available to the parties and the procedures to seek the court's assistance were clarified by the amendments. Previously, Rule 124 was titled "Voluntary

Binding Arbitration,” with mediation referenced only as an optional form of dispute resolution. The amendments change the title to “Alternative Dispute Resolution” and clarify that the rule applies to both binding arbitration and nonbinding mediation. A new paragraph (b) has been inserted that provides procedures for filing a motion seeking voluntary nonbinding mediation and the assignment of a Judge or Special Trial Judge to act as a mediator. A motion seeking nonbinding mediation can be filed as a joint motion or an unopposed motion by one of the parties. In contrast to binding arbitration, which is limited to questions of fact, the issues that may be resolved through mediation are not limited to factual questions.

A new paragraph (c) has also been inserted to clarify that the amendments are not intended to prevent the parties from engaging in informal mediation or other forms of dispute resolution without the involvement of the court.

V. Stipulations for Trial -- Rule 91

Prior to amendment, Rule 91(a)(2) required that matters obtained through discovery and requests for admissions must be included in the stipulation of facts to be considered by the court notwithstanding that any matter admitted under Rule 90(f) is deemed conclusively established. To eliminate the potential conflict with Rule 90(f), a statement was added to clarify that the omission of an admitted fact from the stipulation will not impair the court’s ability to consider that fact.

VI. Discovery -- Rule 70, Rule 74

Two clarifying changes to the court’s discovery rules were made by the amendments. Rule 70(a)(2) was amended to clarify that all discovery related motions, not just motions to compel, shall be filed no later than 45 days before trial unless otherwise authorized by the court. Rule 74(a) was amended to clarify the distinction between the court’s procedures for taking depositions to perpetuate testimony and the procedures for taking depositions for discovery purposes. Rule 74(a) now includes a statement that an application to take a deposition is required only with respect to depositions to perpetuate evidence. A similar statement was added to Form 15, Application for Order to Take Deposition to Perpetuate Evidence.

VII. Ownership Disclosure Statements -- Rule 20(c)

The ownership disclosure statement requirement applicable to petitions filed pursuant to TEFRA procedures was expanded by the amendments to cases in which the petitioner is a tax matters partner, a notice partner, or a 5-percent group rather than a partnership. The amendment was made to assist the court’s determination of whether conflicts exist affecting the assignment of particular judges to individual cases. Conforming amendments were also made with respect to Form 6, Ownership Disclosure Statement.

VIII. Clerical and Conforming Changes

The court made a number of minor conforming and clerical changes to the rules. Rules 50(b)(2) and 130 were amended to reflect the current practice of Judges and Special Trial Judges often holding hearings on motions at trial sessions instead of Washington, D.C. motions sessions, and often acting on motions on the basis of the filings alone.

Rule 24(a) was amended to conform the rules to the practice of law students participating in Tax Court proceedings under the direct supervision of attorneys. Rule 24(f) was also amended to clarify procedures for counsel to withdraw after a substitution of parties.

Rules 12, 22, 150, and 151 were amended to include references to Special Trial Judges.

Rule 10(d) was amended to conform the court's business hours to those of other Federal courts and no longer references legal holidays in the District of Columbia.

Questions regarding this Notice should be directed to Procedure and Administration, Branch 6 at (202) 622-7950 or Branch 7 at (202) 622-4570, respectively.

/s/

Deborah A. Butler
Associate Chief Counsel
(Procedure & Administration)