

CC-2022-005

May 5, 2022

Transmittal of Tax Court Files to  
Department of Justice, Tax Division,

**Subject:** Appellate Section

**Cancel Date:** July 5, 2022

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This Notice provides a change in instructions for transmitting Tax Court legal and miscellaneous files to the Appellate Section of the Tax Division of the Department of Justice.

Effective immediately, paper Tax Court legal files should not be routinely sent to the Appellate Section at the onset of appellate litigation. Instead, upon receipt of a letter referring a taxpayer appeal to DOJ or a letter recommending a Commissioner appeal of a Tax Court case, the assigned DOJ Appellate attorney will notify the assigned National Office attorney/paralegal if the DOJ attorney wishes to request a copy of the legal and miscellaneous files. The assigned National Office attorney will then coordinate with the assigned field attorney to transmit the file to DOJ. Typically, an electronic copy of the legal and miscellaneous files will be provided upon a request from a DOJ attorney. For the few Tax Court cases for which a legal file or miscellaneous file is still maintained in paper, the DOJ attorney may request transmission of the paper legal and miscellaneous files or transmission of an electronic copy of the legal and miscellaneous files. DOJ attorneys may also directly access the Tax Court record through DAWSON after the DOJ files an entry of appearance with the Tax Court.

If the assigned DOJ appellate attorney requests an electronic file, then they will provide instructions on when and to whom to send the files. If transmitting the files through e-mail, use SecureZip encryption. To use SecureZip encryption follow these instructions:

1. Right click the icon or file name of the file you will send, choose **SecureZip**, then choose **Add To New Archive**.
2. In the **File name** box enter a name for your archive and then click the **Save** button.
3. A **Please Wait** window will open to show the status of the compression of the file.
4. When the **Enter Passphrase for Encryption** window opens, type in a passphrase and retype the passphrase to confirm the passphrase. A passphrase must include eight characters. Click **OK**.

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Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	X Electronic Reading Room

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5. Attach the zipped file to your e-mail message to DOJ and inform the DOJ attorney that the passphrase will be transmitted separately. E-mail the file to DOJ.
6. Separately e-mail the passphrase, without the attached zipped file, to DOJ.

If the files are too big to send using encrypted e-mail or the assigned DOJ attorney requests the electronic files via JEFS, then field attorneys should use the procedures set forth in [Chief Counsel Notice CC-2019-005](#) and National Office attorneys should contact P&A Branch 8 to transmit these files via JEFS.

The instructions for sending files to the Appellate Section are more fully described in the attached revisions to the relevant portions of the CCDM. Corresponding changes will be made throughout the CCDM for consistency with these instructions.

Forms 9724 and 9725 will be updated to reflect the change in instructions.

Please contact Procedure & Administration at 202-317-3400 with any questions.

\_\_\_\_\_/s/  
Kathryn A. Zuba  
Associate Chief Counsel  
(Procedure & Administration)

## **CCDM Revisions**

To incorporate into the CCDM new procedures for transmitting Tax Court files to the Appellate Section, the below provisions in the CCDM will be revised.

### **Taxpayer Appeals**

#### **36.2.6.2.1.4 Files**

- (1) Upon request by the Appellate Section attorney assigned to the case, Field Counsel will forward the legal and miscellaneous files to the Department of Justice. Typically, this will be an electronic copy of the legal and miscellaneous files. If the Appellate Section attorney requests an electronic copy of the legal and miscellaneous files, the attorney will provide instructions for transmittal. If the legal file and miscellaneous files are maintained in paper and paper files are to be sent, the Field Counsel will forward the legal and miscellaneous files to the following address:

Appellate Section, Tax Division  
Department of Justice  
P.O. Box 502  
Washington, D.C. 20044

- (2) If paper files are sent, then the letter transmitting the files to Justice will direct that upon completion of appellate proceedings the files should be promptly returned for closing to the following address:

Associate Chief Counsel (P&A)  
Attn: Technical Services Support Branch  
1111 Constitution Ave., N.W.  
Washington, DC 20224.

**Note:** See Exhibit 36.4.1-17, Sample Transmittal of Files to Justice.

- (3) The administrative file in taxpayer appeal cases remains in the field for assessment purposes.
- (4) When assigned a taxpayer appeal, the National Office attorney or paralegal should prepare and maintain an open folder, a file for a case on appeal. This file should contain copies of the three notices comprising the appeal package, the TLCATS assignment sheet, copies of both the Tax Court opinion and decision, a copy of the completed Form 9725 (Form 9724 in TEFRA cases), a copy of the letter to the Department of Justice, and a copy of the appeal bond, if one has been filed. Any further documents pertaining to the case on appeal should be placed in this temporary file until a closing letter is received from the Department of Justice. At that time, the temporary file should be merged with the legal file, regardless of the format (paper or electronic) of the legal file.

**Exhibit 36.4.1-16 Taxpayer Appeal Letter**

**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

[Org. Symbols] [Attorney initials]

The Honorable [Name]  
Assistant Attorney General  
Tax Division  
Department of Justice  
P.O. Box 502  
Washington, D.C. 20044

Attn: Chief, Appellate Section  
Re: [Petitioner names] v. Commissioner  
T.C. Docket No. [Docket number] Venue: [Court]

Dear [Name]:

This letter requests that you defend the Commissioner in the taxpayer's appeal of the above-referenced case. On [date], the taxpayer filed with the United States Tax Court a timely notice of appeal to the United States Court of Appeals for the [Circuit Court]. The decision of the Tax Court was entered on [date].

At the time the petition was filed, the taxpayer resided in [City of Residence/Place of Business], [State]. Accordingly, venue properly lies in the [name of court].

The issues on appeal are whether [describe issues]. The amount at issue is approximately [amount]. The estimated level of difficulty is [simple / average / complex].

The taxpayer is represented on appeal by [Attorney name, address, phone number].

The Associate Chief counsel attorney/paralegal assigned to this case is [name], who can be reached at [phone number]. The Field Counsel attorney assigned to this case is [name], who can be reached at [phone number].

The case is reported at [Tax Court citation]. The legal file will be forwarded to your office upon request. If you wish to obtain the legal file electronically, please provide instructions for transmittal. For your use in the interim, we are enclosing copies of the notice of filing, the notice of appeal, the Tax Court docket entries, and decision in this case.

The Associate Chief Counsel attorney/paralegal is the primary point of contact for this case. If you have any questions, please contact [Name] at [phone number].

Sincerely,

[Chief Counsel Name]  
Chief Counsel

By: \_\_\_\_\_  
[Branch Reviewer]  
[Division/Branch]

Enclosures (4) [Notice of Filing of Appeal, Notice of Appeal, Docket Entries, Tax Court Opinion]

## **Commissioner Appeals**

### **36.2.6.2.2.1.4. Files**

- (1) Upon request by the Appellate Section attorney assigned to the case, send the legal and miscellaneous law files to the Department of Justice. Typically, this will be an electronic copy of the legal and miscellaneous files. If the Appellate Section attorney requests an electronic copy of the legal and miscellaneous law files, the attorney will provide instructions for transmittal. If necessary, contact P&A, Branch 8 to facilitate the transmittal of the electronic files to DOJ if the files are too large to send via encrypted email. The administrative file remains in the field.
  
- (2) Prepare and maintain an open folder, which is the temporary file for a Tax Court case on appeal. The file should contain the following:
  - TLCATS assignment sheet
  - Copies of the Tax Court's opinion and decision
  - A copy of the letter to the Department of Justice requesting authority to prosecute the appeal
  - The receipted copy of the notice of appeal
  - A completed Form 9724 or 9725
  - Any other documents relating to the case
  - Any further documents received by the attorney in connection with the case
  
- (3) Upon completion of the appellate litigation, the materials in the open folder will be merged into the legal file.