

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2011-012

March 23, 2011

Subject: Expansion of Permission and Additional Procedures for eFiling in the U.S. Tax Court
Cancel Date: Upon incorporation into the CCDM

I. INTRODUCTION

On May 6, 2010, the United States Tax Court announced that electronic filing would be mandatory in cases represented by counsel in which the petition was filed on or after July 1, 2010. See http://www.ustaxcourt.gov/eaccess/Mandatory_eFiling_Announcement.pdf.

In Chief Counsel Notice CC-2010-015, attorneys in the Office of Chief Counsel engaged in Tax Court litigation were authorized to file documents electronically with the court pursuant to Rule 26 of the Tax Court's Rules of Practice and Procedure. That Notice restricted the scope of the Service's participation in eFiling to those cases in which the court had made eFiling mandatory, *i.e.*, cases in which the petition was filed on or after July 1, 2010, and to pre-July 1 cases in which managerial approval for eFiling was given.

The Office's initial experience with eFiling has been successful. Feedback on eFiling has been uniformly favorable. To date, more than **18,000** documents have been successfully eFiled while only about 300 eFiled documents have been rejected by the court. In response to the problems that occurred during the first few months of eFiling and as a result of our specific suggestions, the court has modified their eAccess system, which has improved the process for eFiling.

This Notice announces that the scope of our participation in Tax Court eFiling will expand as of April 25, 2011. All procedures for eFiling, as set forth in Chief Counsel Notice CC-2010-015, remain in effect. This Notice also includes a revision of the Frequently Asked Questions that appeared in Chief Counsel Notice CC-2011-002. The questions and answers have been revised to reflect changes that the court has made to the electronic filing process and to reflect the expansion of the scope of our participation and accordingly this Notice supersedes Chief Counsel Notice CC-2011-002.

II. EXPANSION OF eFILING REQUIREMENT

Effective April 25, 2011, this office will eFile all documents permitted to be eFiled under the court's rules. eFiling will be required in cases in which the petition was filed before July 1, 2010, as well as those cases in which the petition was filed on or after that date. The only

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exceptions are for those cases under seal or otherwise excluded by the court from eFiling, such as disclosure cases.

Expanding the scope of the eFiling program will allow our office to further benefit from its efficiencies, for example, with the elimination of the need for copying and mailing many documents. Expansion will also reduce the need to maintain dual systems for filing documents with the court, one for paper filing and one for electronic filing.

III. COUNSEL OF RECORD

In some pre-July 1, 2010 cases, the court has listed a Chief Counsel attorney as respondent's counsel of record, based on documents filed on paper. In other pre-July 1 cases, no counsel of record is listed. Prior to eFiling for the first time in a pre-July 1 case, the assigned attorney or manager should check to see whether a counsel of record for respondent appears on the court's docket sheet.

If no counsel of record is listed, then the office should follow the procedures for initial filing of documents in a case. The court's system now allows up to three documents to be filed by respondent before the court lists an attorney as respondent's counsel of record. There should be no restriction on the type of document that may be filed initially.

If the correct counsel of record for respondent is listed, then normal eFiling procedures may be followed. Support staff should login using the assigned attorney's user name and password, select the case from the attorney's list of "My Cases" and follow the usual eFiling procedures.

If the listed counsel of record is no longer assigned to the case, then support staff should login using the listed counsel of record's user name and password and add the attorney and manager now assigned to the case as additional counsel of record. After the new attorney has been added to the case, the original attorney may be removed as counsel of record. At that point, documents may be eFiled in the case using the assigned attorney's identifying information.

If the listed counsel of record for respondent is no longer employed by the Office of Chief Counsel, the manager to whom the case is assigned should forward the case information and the name and Tax Court bar number of the assigned attorney to eFiling.Questions@irscounsel.treas.gov. Procedure and Administration will then work with the Tax Court to have the former Counsel attorney removed from the case.

IV. UPDATED FREQUENTLY ASKED QUESTIONS

The following FAQs include those appearing in Chief Counsel Notice CC-2011-002 with updated answers as well as additional FAQs regarding eFiling.

Question 1: What is the email address from which the Tax Court sends rejection notices?

Answer 1: Doc-Service@ustaxcourt.gov

Question 2: I used eFiling to transmit an answer to the Tax Court and the court's website shows that the answer has been filed, but I don't appear as counsel of record on the case index. The court's eAccess system will not allow me to file additional documents in the case. What should I do?

Answer 2: The court has changed its programming so as to eliminate this problem. But if the problem occurs, send the following information to eFiling.Questions@irscounsel.treas.gov: case name, docket number, and the name and bar numbers of the attorneys who should appear as counsel of record. We will then work with the court to request that the attorneys be added as counsel of record.

Question 3: I eFiled an answer several days ago and the court still has not filed it. The document hasn't been rejected by the court either. Should I resubmit the document if the court has not acted by the answer due date?

Answer 3: The court often takes several days to process eFiled documents. The document will appear on the list of "My Pending" documents on the court's website until the court acts on the document. The court takes action with respect to documents throughout the day, removing them from the "My Pending" list. At that time, the court updates the docket sheet to reflect that the document has been accepted for filing.

Assuming that you have a copy of the transmission sheet generated by the court's system reflecting the transaction number and time and date of submission, and that the answer appears in your "My Pending" list, then you should do nothing. There is no point in submitting another document that is identical to the first submission; additionally, it will cause one of the submissions to be rejected as a duplicate. The transmission sheet and your "My Pending" list show that the court has received the document. You should only resubmit if you are aware of an error in the initial submission that would cause the court to reject the answer. If you have a deadline approaching, you should review that document again to make sure there are no defects that might cause the court to reject the document for filing.

Question 4: I must file a notice of filing of petition and right to intervene for the nonrequesting spouse in a section 6015 case. The Tax Court's Rules require the notice to be filed within 60 days of the petition, the same deadline as for the answer. I eFiled the answer several days ago, but I still don't appear as counsel of record. I can't eFile the notice and day sixty is tomorrow. What should I do?

Answer 4: The court's eFiling system now allows up to three documents to be eFiled prior to a counsel of record for respondent being recorded on the system. Ideally, the notice of filing of petition and right to intervene should be filed at the same time that the answer is filed.

Question 5: I also need to file a notice of filing of petition and right to intervene to the nonrequesting spouse. I'm listed as counsel of record, so I can eFile it, but I have a question about the certificates of service. In the paper environment, we would not include a certificate of service to the petitioner on the copy of the notice sent to the nonrequesting spouse (and vice versa). This was because of potential privacy concerns regarding the addresses of the spouses. In the eFiling environment, petitioning spouses who have consented to eService will be able to view the certificates of service to the non-requesting spouses via eAccess because we must include that certificate of service with the document eFiled with the court. Also, if the petitioning spouse has not consented to eService, but the nonpetitioning spouse consents after intervening, the nonpetitioning spouse will be able to view the certificates of service, as well as other documents in the court's file such as the petition, containing the petitioning spouse's address information. How do we protect the spouses' privacy when eFiling?

Answer 5: You should eFile the notice of filing of petition and right to intervene, including a certificate of service for each spouse if the petitioning spouse has not consented to eService. If

the petitioning spouse consented to eService, you should only include the certificate of service for the nonrequesting spouse. (The nonrequesting spouse cannot consent to eService before becoming a party to the case). If either spouse wishes to restrict the information made available to the other spouse, they may file a motion for a protective order.

Question 6: I'm planning to file a motion to dismiss for lack of jurisdiction but I don't see it on the list of documents that may be eFiled. Should I file it in paper form?

Answer 6: No. The motion should be eFiled. If you examine the court's list of documents that may be eFiled more closely, you will see that there are several generic categories, such as motion by respondent, request, and notice. If your document falls into one of those categories and is not specifically excluded from eFiling, you should eFile it.

Question 7: I am in the process of filing a Motion To Extend Time To Answer. How should I name this document in the eFile system?

Answer 7: As you know, our Office established an officewide naming convention: [case name - individual last name or corporate keyword][docket number][document title].pdf. In choosing the document title, the conventional title must incorporate enough of it to uniquely identify the document. For your document, use: Smith_1234-56_ Motion_Extend_ Time_Answer.pdf.

Question 8: I've eFiled a document electronically that should not have been filed and needs to be withdrawn – can I do that electronically?

Answer 8: No. The Tax Court's system will not allow you to completely withdraw a document. You can replace it with a corrected version using the resubmission feature, but cannot withdraw it without replacing it. Depending on the facts and circumstances, you may wish to consider filing a motion to withdraw the document.

Question 9: My document is more than 50 pages long. I eFiled it today and I need to send a courtesy copy to the judge according to the court's eFiling instructions. Should I just go ahead and mail the copy today?

Answer 9: No. Before the courtesy copy is sent, the document must have been accepted for filing with the court. Once it has been accepted, forward a paper copy of the document by cover letter, which should include information on the date of filing the document, and send it to the judge assigned to the case. If no judge has been assigned, send it to the Chief Judge. Do not include a Transmittal of Documents to the Tax Court Form with the paper document and cover letter, since this is a courtesy copy and not for filing. The courtesy copy should be sent within three days of the date the document was accepted for filing.

Question 10: I efiled three related documents in my case today. One of them was more than fifty pages long, but the others were not. When the court accepts the documents for filing, should I send the court a courtesy copy of only the fifty page document or should I send copies of all three.

Answer 10: The court's procedures only require a courtesy copy of the fifty page document, but in this situation, you should send courtesy copies of all three to facilitate the court's consideration of all three documents together.

Question 11: My case is not subject to eFiling, but petitioner's counsel has elected eService. Does that mean I have to eFile or find some other way to electronically serve documents?

Answer 11: As of April 25, 2011, we will eFile in all cases so this question will become moot. Prior to that date, petitioner's counsel should be served in paper. Paper service remains an acceptable method of service even if the party served has elected eService. The fact that petitioner's counsel has elected eService does not affect whether we eFile in the case.

Question 12: I'm trying to file an Answer to Amended Petition, but I don't see that as one of the documents listed for eFiling. What should I do?

Answer 12: Use the general Answer category to eFile the document. Whenever you have a document that is not specifically listed, choose the most applicable general category of document, such as an answer, motion, etc. The court will not reject a document for filing because an incorrect category was selected on the eFiling screen.

Question 13: How do I eFile a motion to consolidate in a group of cases? Do I eFile it in only the lead (earliest) docket, or can I somehow eFile the motion in all of the cases in the group? What if the cases in the proposed group consist of both pre-July 1 and post-July 1 cases? Must I eFile the motion to consolidate?

Answer 13: Prepare the motion to consolidate as usual, listing all of the case captions and docket numbers in numerical order beginning with the earliest docket, and then eFile the motion in the earliest (lead) docket. When the court's staff retrieves the document for processing, it will proceed to file the document in the remaining dockets in the proposed group. If any of the petitioners or representatives in the group require paper service, you will need to attach the appropriate certificate of service for that party or representative to the motion to consolidate. The distinction regarding pre- and post-July 1 cases will no longer matter as of April 25, 2011, because we will eFile in all cases as of that date.

Question 14: I need to eFile an answer together with a motion for leave to file it out of time in a post-July 1 case. How do I electronically lodge the answer with the motion for leave, since the system will only allow me to electronically submit a single initial document in a case?

Answer 14: The system now allows up to three documents to be filed initially. eFile the documents separately, but at the same time.

Question 15: I am expecting the petitioners not to show up next week for the calendar. I anticipate filing a motion to dismiss for lack of prosecution. How should I handle filing the motion? When we were filing documents on paper, I would have given it to the judge at the calendar and requested that it be filed.

Answer 15: The Tax Court's e-Filing Instructions for Practitioners state that the e-Filing procedures do not apply to documents filed at trial sessions. The best practice is to prepare a written motion to dismiss for lack of prosecution and be prepared to file the motion in paper form at calendar call or during the trial session unless instructed to do otherwise by the judge.

V. CHANGE TO POLICY REGARDING REJECTION OF DOCUMENTS

The court's eAccess Guide for Practitioners provides that each document electronically filed should state below the docket number on the first page that it is being "Filed Electronically."

