

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2010-15

August 17, 2010

Subject: Commencement of Electronic Filing
of U.S. Tax Court Case-Related Documents
Cancel Date: Upon incorporation
into CCDM

This Notice announces the authorization for attorneys in the Office of Chief Counsel to commence the electronic filing (eFiling) of U.S. Tax Court case-related documents. By letter dated August 17, 2010, we advised the Tax Court that we had authorized our attorneys to commence eFiling for cases in which the petition was filed on or after July 1, 2010.

Background

On May 6, 2010, the Tax Court published an Announcement on its website making electronic filing mandatory in newly filed cases. The requirement applies to all parties represented by counsel for open cases in which the petition is filed on or after July 1, 2010. The Announcement can be viewed at http://www.ustaxcourt.gov/eaccess/Mandatory_eFiling_Announcement.pdf. The first petitions subject to the mandatory eFiling requirement were served on respondent on July 6, 2010; accordingly, the earliest motion due date for such petitions is Friday, August 20, 2010, and the earliest answer due date is Tuesday, September 7, 2010 (the 60th day falling on Saturday, September 4, 2010).

Initially, the office will only eFile documents in those cases in which the petition is filed on or after July 1, 2010, as required by the court's announcement. Managerial approval and concurrence with the Office of the Associate Chief Counsel (Procedure and Administration) is required prior to eFiling a document in a pre-July 1, 2010 existing case not subject to the mandatory eFiling requirement. We recognize that we will encounter unforeseen issues with eFiling and will evaluate the effectiveness of our procedures as we gain experience with the system and thus may then authorize eFiling in additional cases.

Office-wide Procedures for eFiling

eFiling is simply another mode for transmitting documents to the Tax Court. Our procedures and controls for eFiling should follow, to the greatest degree possible, those used for filing paper documents with the court. F&M staff are responsible for the transmission of paper documents to the court and will, therefore, be responsible for the transmission of eFiled documents to the court. In performing these tasks, the F&M staff will be acting as the delegates of the attorneys on whose behalf they eFile documents. Just as they are today with paper documents, attorneys remain

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responsible for all documents filed with the Tax Court. Managerial approval is required for those rare instances when an employee other than F&M staff may eFile a document.

Consent to Electronic Service and Authorization for Electronic Filing

Electronic filing is performed through the court's eAccess utility. The eAccess system may be used to electronically file documents only by those active Tax Court practitioners (and petitioners) who previously registered for remote electronic access to the court's files, agreed to eAccess's "Terms of Use," and consented to receive electronic service (eService) of case-related documents issued by the court or filed by the opposing party. By letter of August 17, 2010 to the Chief Judge, a copy of which is attached to this Notice, the Office of Chief Counsel formally consented to eService of documents electronically filed by the opposing party and documents served by the court through the eAccess system. (Due to computer security restrictions, the Office is not able to consent to electronic service of documents served by the opposing party but not filed with the court, such as discovery requests, that are not transmitted via eAccess.) Accordingly, Chief Counsel attorneys engaged in Tax Court litigation are now authorized to file documents electronically with the court, pursuant to new Rule 26, which became effective on January 1, 2010.

Documents Eligible for eFiling

In general, all documents, other than initial filings commencing an action requiring an original signature, such as a petition, are eligible for electronic filing. Generally, for respondent's filings, all documents in **new** cases are required to be filed electronically, including initial motions and answers. Exceptions to the eFiling requirement include stipulated decisions and documents in sealed cases, which must continue to be filed in paper form. As stated above, initially, the office will only eFile documents in those cases in which the petition is filed on or after July 1, 2010, as required by the court's announcement. The court's website has instructions for eFiling that include a table showing the various types of documents that are filed with the Tax Court, and whether those documents are eligible for eFiling. You can find those instructions at http://www.ustaxcourt.gov/eaccess/eFiling_Instructions_Practitioners.pdf. A Chief Counsel Notice, which is being issued concurrently with this Notice, will contain a job aid that sets forth step-by-step instructions for eFiling, including a list of documents eligible for eFiling. Another Chief Counsel Notice, which is also being issued concurrently with this Notice, will describe in detail the eAccess, eService, and eFiling office-wide policies and protocols. These Notices are intended for incorporation into the CCDM.

eFiling of Initial Motions and Answers

The court's procedures provide that, in general, electronic filing may be performed only by counsel of record in an existing case. But at our request, the court modified their system to permit our attorneys who have registered for eAccess to electronically file the initial motion or answer in a new case. In order to electronically file the answer or other initial responsive document, log on to Practitioner Access and retrieve the case index of the new case by entering its docket number through the "Case Entry" link. Upon display of the case index, click on the "eFiling" link and follow the screen prompts, using the job aid, to complete the eFiling form. As an IRS attorney, you will be permitted to select "Answer" or "Motion" from the drop down menu, and then follow the remaining procedures to browse for and electronically submit the document. Once the case has been answered (or other initial document filed), the attorneys (up to five) who signed the initial document and included their Tax Court bar numbers will be listed as counsel of record for respondent on the court's docket record for the case. Thereafter, only a designated

counsel of record will be able to file documents electronically in that case. In order to ensure coverage in the event of absences, each Tax Court case must have at least two attorneys in the Office of Chief Counsel designated as counsel of record on the court's docket records, one of whom should be a manager.

Service of eFiled Documents

When eFiling a document, you must determine whether the opposing party or counsel has consented to electronic service of documents in the case. This information is displayed in a table on the eFiling screen. If consent to electronic service has been given, no certificate of service is necessary. The document will be served by the court on the opposing party through the eAccess system. If paper service is required, a paper copy of the eFiled document must be produced and served on the opposing party or counsel, and a certificate of service either must be attached to the eFiled document or a stand-alone certificate of service must be included in the eFiling transmission.

Timeliness of eFiled Documents

The Tax Court considers an eFiled document to be timely if it is transmitted via eAccess no later than 6:00 a.m. Eastern time on the day after the due date. Managerial approval is required for a late transmission if a document cannot be eFiled within normal business hours prior to the due date. Note: If a paper certificate of service is required, it, along with the document, must be dated and put in the mail on or before the due date. The extension to 6:00 am ET the following morning for eFiling does **not** apply to the mailing of service copies.

Troubleshooting, Additional Information, and Contacts

As with any new software system, occasional problems will arise as more users utilize the system for an increasing volume of electronic filings. A dedicated eFiling e-mailbox has been established in Procedure and Administration to receive questions, comments, and suggestions concerning eFiling and eAccess. The mailbox address is eFiling.questions@irscounsel.treas.gov. Questions and concerns may also be directed to the contact persons listed below. In particular, P&A is interested in receiving information about any delays or transmission difficulties experienced with the eAccess system. As mentioned above, companion Chief Counsel Notices are being published containing office-wide policies and protocols with respect to electronic filing, electronic service, and the other features of the eAccess system, as well as a job aid containing step-by-step instructions on how to perform eFilings.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

August 17, 2010

The Honorable John O. Colvin
Chief Judge
United States Tax Court
400 Second Street NW
Washington DC 20217

Dear Chief Judge Colvin:

Pursuant to Rule 21(b) of the Tax Court Rules of Practice and Procedure, the Office of Chief Counsel formally consents to electronic service. Please change the eAccess records for all attorneys employed by this office to reflect consent to eService. This will enable us to eFile all documents for those cases in which the petition was filed on or after July 1, 2010, in compliance with the court's May 6, 2010 announcement.

The government's computer security rules, however, prevent us from emailing material containing Personal Identifying Information (sometimes known as PII) outside of the Treasury firewall without a prior agreement with the recipient to use an encryption scheme. Accordingly, we will not be able to electronically serve documents, such as discovery that are not filed through the court's eFiling system, nor will be able to accept electronic service of such documents. Because we cannot accept documents by email, we plan to omit our email address from the signature block on documents eFiled with the court.

Two issues have been raised that are not addressed in the court's guides to eFiling. The first regards spousal relief cases in which the nonpetitioning spouse has elected to intervene. If either spouse has not consented to eService, we will attach a certificate of service for that spouse to any document eFiled with the court. We are concerned that the court's eAccess system may transmit that certificate of service to the other spouse, revealing address information that should remain confidential.

The second issue regards motions to consolidate. The court's procedures address how to eFile documents in cases once they have become consolidated, but are silent with respect to the initial motion to consolidate. Our concern is whether the motion to consolidate should be eFiled in the oldest case or in each of the cases to be consolidated.

Please advise us of the court's procedures for handling these documents. We anticipate that, as we begin the eFiling process and gain more experience with eFiling, we will have other procedural issues to refer to you.

Sincerely,



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