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UNITED STATES TAX COURT

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SHEILA A. MURPHY
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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

JUDGES OF THE UNITED STATES TAX COURT

Chief Judge

JOHN O. COLVIN

Judges

MARY ANN COHEN
JAMES S. HALPERN
MICHAEL B. THORNTON
L. PAIGE MARVEL
JOSEPH ROBERT GOEKE
ROBERT A. WHERRY, JR.
DIANE L. KROUPA
MARK V. HOLMES
DAVID GUSTAFSON
ELIZABETH CREWSON PARIS
RICHARD T. MORRISON

Senior Judges recalled to perform judicial duties under the provisions of section 7447 of the Internal Revenue Code:

HOWARD A. DAWSON, JR.
HERBERT L. CHABOT
ARTHUR L. NIMS III
STEPHEN J. SWIFT
JULIAN I. JACOBS
JOEL GERBER
THOMAS B. WELLS [1]
ROBERT P. RUWE
LAURENCE J. WHALEN
RENATO BEGHE
CAROLYN P. CHIECHI
DAVID LARO
MAURICE B. FOLEY
JUAN F. VASQUEZ
JOSEPH H. GALE [2]
HARRY A. HAINES

Special Trial Judges

PETER J. PANUTHOS, *Chief Special Trial Judge*

ROBERT N. ARMEN, JR.
LEWIS R. CARLUZZO
JOHN F. DEAN

ROBERT R. DI TROLIO, *Clerk*

[1] Judge Thomas B. Wells retired on Dec. 31, 2010, and was recalled on Jan. 1, 2011.

[2] Judge Joseph H. Gale was recalled on Feb. 6, 2011, after the expiration of his term on Feb. 5, 2011.

SPECIAL TRIAL JUDGES

Seated from left—Stanley J. Goldberg, Peter J. Panuthos, and Robert N. Armen, Jr.
Standing from left—Lewis R. Carluzzo and John F. Dean

AMENDMENTS
TO THE
RULES OF PRACTICE AND PROCEDURE
OF THE
UNITED STATES TAX COURT

Rules 10, 12, 20, 22, 24, 50, 70, 74, 91, 121, 124, 130, 150, 151, 155, and 171, the title to Title VIII, and Forms 1, 2, 6, 14, and 15 of the Rules of Practice and Procedure of the United States Tax Court are amended as hereinafter set forth.

The Notes accompanying these amendments were prepared by the Rules Committee and are included herein for the convenience of the public and the Bar. They are not officially part of the Rules and are not included in the printed publication prepared for general distribution.

RULE 10. NAME, OFFICE, AND SESSIONS

(a) Name: The name of the Court is the United States Tax Court.

(b) Office of the Court: The principal office of the Court shall be in the District of Columbia, but the Court or any of its Divisions may sit at any place within the United States. See Code secs. 7445, 7701(a)(9).

(c) Sessions: The time and place of sessions of the Court shall be prescribed by the Chief Judge.

(d) Business Hours: The office of the Clerk at Washington, D.C., shall be open during business hours on all days, except Saturdays, Sundays, and Federal holidays, for the purpose of receiving petitions, pleadings, motions, and other papers. Business hours are from 8 a.m. to 4:30 p.m.

(e) Mailing Address: Mail to the Court should be addressed to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. Other addresses, such as locations at which the Court may be in session, should not be used, unless the Court directs otherwise.

Note

Paragraph (d) of Rule 10 is amended to bring the Court's Rules into substantial conformity with other Federal courts' rules for business hours. See, e.g., U.S. Ct. Fed. Cl. R. 6(a)(6).[1] The amendments delete the references to legal holidays in the District of Columbia, and the Rule as amended refers instead to Federal holidays. The amendments are effective as of May 5, 2011.

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, from the offices of the Court, or from the custody of a Judge, a Special Trial Judge, or an employee of the Court, except as authorized by a Judge or Special Trial 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).

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[1] U.S. Ct. Fed. Cl. R. 6(a)(6) states:

Rule 6. Computation and Extending Time; Time for Motion Papers

(a) Computing Time. * * *

(6) "Legal Holiday" Defined. "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any other day declared a holiday by the President or Congress.

(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

Rule 12(a) currently does not include a Special Trial Judge as an individual who can authorize the removal of records from the courtroom. The lack of any reference in Rule 12(a) to a Special Trial Judge reflects the inconsistent use of terms in other Rules; e.g., Rules 22, 150(a), and 151(a) and (b) also do not refer to a Special Trial Judge, while Rules 70(a)(2) and (b), 74, 124, 143, and 152 refer to both a Judge and a Special Trial Judge. Accordingly, paragraph (a) is amended to include references to a Special Trial Judge. The amendments are effective as of May 5, 2011.

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, large partnership, or limited liability company, or a tax matters partner or partner other than the tax matters partner of a nongovernmental partnership filing a petition with the Court shall file with the petition a separate disclosure statement. In the case of a nongovernmental corporation, the disclosure statement shall identify any parent cor-

poration and any publicly held entity owning 10 percent or more of the petitioner's stock or state that there is no such entity. In the case of a nongovernmental large partnership or limited liability company, or a tax matters partner or partner other than a tax matters partner of a nongovernmental partnership, the disclosure statement shall identify any publicly held entity owning an interest in the large partnership, the limited liability company, or the partnership, or state that there is no such entity. A petitioner shall promptly file 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. For the definition of a large partnership, see Rule 300(b)(1). For the definitions of a partnership and a tax matters partner, see Rule 240(b)(1), (4). A partner other than a tax matters partner is a notice partner or a 5-percent group as defined in Rule 240(b)(8) and (9).

(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

Rule 20(c), effective January 1, 2010, requires a nongovernmental entity to submit with its petition a separate ownership disclosure statement in the form provided by Form 6 and to submit a supplemental statement if there is any change in the information required under the Rule. Rule 20(c) is patterned after Fed. R. Civ. P. 7.1, which requires the disclosure statement and any supplemental statement to be filed, and the Court, as a matter of practice, routinely files the statements it receives from petitioners. The amendments to paragraph (c) of Rule 20 reflect technical corrections to conform the substance of the Rule with Fed. R. Civ. P. 7.1 and with the Court's practice. Paragraph (c) is also amended to include references to petitions filed pursuant to the procedures set forth in Code sections 6221 et seq. (TEFRA), in which the petitioner is a tax matters partner, a notice partner, or a 5-percent group rather than a partnership (or a limited liability company treated as a partnership) with respect to which adjustments were determined. Conforming amend-

ments are made with respect to Form 6 regarding the instructions for partnerships. The amendments are effective as of May 5, 2011.

RULE 22. FILING

Any pleadings or other papers to be filed with the Court must be filed with the Clerk in Washington, D.C., during business hours, except that the Judge or Special Trial Judge presiding at any trial or hearing may permit or require documents pertaining thereto to be filed at that particular session of the Court, or except as otherwise directed by the Court. For the circumstances under which timely mailed papers will be treated as having been timely filed, see Code section 7502.

Note

Rule 22 currently does not include a Special Trial Judge as an individual who can permit or require the filing of documents at a trial session. The lack of a reference in Rule 22 to a Special Trial Judge reflects the inconsistent use of terms in other Rules; e.g., Rules 12(a), 150(a), and 151(a) and (b) also do not refer to Special Trial Judges, while Rules 70(a)(2) and (b), 74, 124, 143, and 152 refer to both a Judge and a Special Trial Judge. Accordingly, Rule 22 is amended to include a reference to a Special Trial Judge. The amendment is effective as of May 5, 2011.

RULE 24. APPEARANCE AND REPRESENTATION

(a) Appearance: (1) *General:* Counsel may enter an appearance either by subscribing the petition or other initial pleading or document in accordance with subparagraph (2) hereof, or thereafter by filing an entry of appearance in accordance with subparagraph (3) hereof or, in a case not calendared for trial or hearing, a substitution of counsel in accordance with paragraph (d) hereof.

(2) *Appearance in Initial Pleading:* If (A) the petition or other paper initiating the participation of a party in a case is subscribed by counsel admitted to practice before the Court, and (B) such initial paper contains the mailing address and Tax Court bar number of counsel and other

information required for entry of appearance (see subparagraph (3)), then (C) that counsel shall be recognized as representing that party and no separate entry of appearance shall be necessary. Thereafter counsel shall be required to notify the Clerk of any changes in applicable information to the same extent as if counsel had filed a separate entry of appearance.

(3) *Subsequent Appearance:* Where counsel has not previously appeared, counsel shall file an entry of appearance in duplicate, signed by counsel individually, containing the name and docket number of the case, the name, mailing address, telephone number, and Tax Court bar number of counsel so appearing, and a statement that counsel is admitted to practice before the Court. A separate entry of appearance, in duplicate, shall be filed for each additional docket number in which counsel shall appear. The entry of appearance shall be substantially in the form set forth in Appendix I. The Clerk shall be given prompt written notice, filed in duplicate for each docket number, of any change in the foregoing information.

(4) *Counsel Not Admitted to Practice:* No entry of appearance by counsel not admitted to practice before this Court will be effective until counsel shall have been admitted, but counsel may be recognized as counsel in a pending case to the extent permitted by the Court and then only where it appears that counsel can and will be promptly admitted. For the procedure for admission to practice before the Court, see Rule 200.

(5) *Law Student Assistance:* With the permission of the presiding Judge or Special Trial Judge, and under the direct supervision of counsel in a case, a law student may assist such counsel by presenting all or any part of the party's case at a hearing or trial. In addition, a law student may assist counsel in a case in drafting a pleading or other document to be filed with the Court. A law student may not, however, enter an appearance in any case, be recognized as counsel in a case, or sign a pleading or other document filed with the Court. The Court may acknowledge the law student assistance.

(b) Personal Representation Without Counsel: In the absence of appearance by counsel, a party will be deemed to appear on the party's own behalf. An individual party may

represent himself or herself. A corporation or an unincorporated association may be represented by an authorized officer of the corporation or by an authorized member of the association. An estate or trust may be represented by a fiduciary thereof. Any such person shall state, in the initial pleading or other paper filed by or for the party, such person's name, address, and telephone number, and thereafter shall promptly notify the Clerk in writing, in duplicate for each docket number involving that party, of any change in that information.

(c) Withdrawal of Counsel: Counsel of record desiring to withdraw such counsel's appearance, or any party desiring to withdraw the appearance of counsel of record for such party, must file a motion with the Court requesting leave therefor, showing that prior notice of the motion has been given by such counsel to such counsel's client, or such party's counsel, as the case may be, and to each of the other parties to the case or their counsel, and stating whether there is any objection to the motion. A motion to withdraw as counsel and a motion to withdraw counsel shall each also state the then-current mailing address and telephone number of the party in respect of whom or by whom the motion is filed. The Court may, in its discretion, deny such motion.

(d) Substitution of Counsel: In a case not calendared for trial or hearing, counsel of record for a party may withdraw such counsel's appearance, and counsel who has not previously appeared may enter an appearance, by filing a substitution of counsel, showing that prior notice of the substitution has been given by counsel of record to such counsel's client, and to each of the other parties to the case or their counsel, and that there is no objection to the substitution. The substitution of counsel shall be signed by counsel of record and substituted counsel individually, and shall contain the information required by subparagraph (3) of paragraph (a). The substitution of counsel shall be substantially in the form set forth in Appendix I. Thereafter substituted counsel shall be required to notify the Clerk of any changes in applicable information to the same extent as if such counsel had filed a separate entry of appearance.

(e) Death of Counsel: If counsel of record dies, the Court shall be so notified, and other counsel may enter an appearance in accordance with this Rule.

(f) Change in Party or Authorized Representative or Fiduciary: Where (1) a party other than an individual participates in a case through an authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in such representative or fiduciary, or (2) there is a substitution of parties in a pending case, counsel subscribing the motion resulting in the Court's approval of the change or substitution shall thereafter be deemed first counsel of record for the representative, fiduciary, or party. Counsel of record for the former representative, fiduciary, or party, desiring to withdraw such counsel's appearance, shall file a motion in accordance with paragraph (c).

(g) Conflict of Interest: If any counsel of record (1) was involved in planning or promoting a transaction or operating an entity that is connected to any issue in a case, (2) represents more than one person with differing interests with respect to any issue in a case, or (3) is a potential witness in a case, then such counsel must either secure the informed consent of the client (but only as to items (1) and (2)); withdraw from the case; or take whatever other steps are necessary to obviate a conflict of interest or other violation of the ABA Model Rules of Professional Conduct, and particularly Rules 1.7, 1.8, and 3.7 thereof. The Court may inquire into the circumstances of counsel's employment in order to deter such violations. See Rule 201.

Note

The Court's Internet Web site provides requirements for participation in the Court's Clinic, Student Practice, and Bar-Related Pro Bono Programs, including procedures for assistance by law students, and the Court in its opinions routinely recognizes law students who assist in the presentation of cases. New paragraph (a)(5) of Rule 24 is adopted to conform the Court's Rules with its practice and to provide a description of the traditional role of law students under the direct supervision of attorneys in academic clinics and in the student practice program sponsored by the Office of Chief Counsel of the Internal Revenue Service.

Current Rule 24(f) does not specify the treatment of any counsel of the representative, fiduciary, or party for whom a change or substitution has been made. Paragraph (f) of Rule

24 is amended to require counsel for the former representative, fiduciary, or party to file a motion to withdraw when appropriate, using phrasing similar to that contained in paragraph (c), Withdrawal of Counsel.

New paragraph (a)(5) and the amendment to paragraph (f) are effective as of May 5, 2011.

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 may 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

While historically motions generally were heard in Washington, D.C., in recent years Judges and Special Trial Judges frequently have held hearings on motions at trial sessions in all of the Court's places of trial, and they often act on motions on the basis of the file. Paragraph (b)(2) of Rule 50 is amended by modifying the phrase that hearings on motions (if held) "normally will be held in Washington, D.C." to read that hearings "may be held in Washington, D.C." The amendments are effective as of May 5, 2011.

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 uti-

lizing 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 or any other motion with respect to 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 or any other motion with respect to 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 or any other motion with respect to 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 re-

sponse 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 writing 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 subject matter of the case and is in the possession or control of another party to the case.

Note

Rule 70(a)(2) provides that 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 before the start of the trial session. Because the Rule refers only to a motion to compel, it is unclear whether the general 45-day limit applies to discovery-related motions other than motions to compel. Accordingly, paragraph (a)(2) of Rule 70 is amended to clarify that the 45-day limit applies not only to motions to compel discovery but also to any motion with respect to discovery. The amendments add phrasing similar to that of Rule 71(c), which permits a party submitting interrogatories to move for an order "with respect to" any objection. The amendments are effective as of May 5, 2011.

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. An application for an order to take a deposition is required only with respect to depositions to perpetuate evidence. See Rules 80 through 84.

(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, electronically 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

Questions have arisen whether Rule 74(a) adequately advises parties of the differences between the Court's procedures regarding depositions for discovery purposes and those for depositions to perpetuate evidence and that Form 15, Application for Order To Take Deposition, is not available for discovery depositions. Paragraph (a) of Rule 74 is amended to clarify that the Court's procedures regarding depositions for discovery purposes differ from those for depositions to perpetuate evidence and that Form 15 is not appropriately used to obtain a deposition for discovery purposes. Separate amendments are made to the title of Title VIII and to Form 15. The amendments to paragraph (a) are effective as of May 5, 2011.

TITLE VIII

DEPOSITIONS TO PERPETUATE EVIDENCE

Note

The title of Title VIII is amended from "Depositions" to "Depositions To Perpetuate Evidence" to clarify the differences between the Court's procedures regarding depositions for discovery purposes and those for depositions to perpetuate evidence. The amendment is effective as of May 5, 2011.

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 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. A failure to include in the stipulation a matter admitted under Rule 90(f) does not affect the Court's ability to consider such admitted matter.

(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 stip-

ulation, 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(a)(2) requires previously admitted facts to be included in a stipulation in order for the facts to be considered by the Court, in contrast to Rule 90(f), which states that any matter admitted under that Rule is conclusively established unless it is formally withdrawn or modified. Paragraph (a)(2) of Rule 91 is amended to clarify that omission of an admitted fact from the stipulation does not impair the Court's ability to consider the fact. The amendments are effective as of May 5, 2011.

RULE 121. SUMMARY JUDGMENT

(a) General: Either party may move, with or without supporting affidavits, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time com-

mencing 30 days after the pleadings are closed but within such time as not to delay the trial, and in any event no later than 60 days before the first day of the Court's session at which the case is calendared for trial, unless otherwise permitted by the Court.

(b) Motion and Proceedings Thereon: The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. An opposing written response, with or without supporting affidavits, shall be filed within such period as the Court may direct. A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. A partial summary adjudication may be made which does not dispose of all the issues in the case.

(c) Case Not Fully Adjudicated on Motion: If, on motion under this Rule, decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be concluded accordingly.

(d) Form of Affidavits; Further Testimony; Defense Required: Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The Court may permit affidavits to be supplemented or opposed by answers to interrogatories, depositions, further affidavits, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for

summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

(e) When Affidavits Are Unavailable: If it appears from the affidavits of a party opposing the motion that such party cannot for reasons stated present by affidavit facts essential to justify such party's opposition, then the Court may deny the motion or may order a continuance to permit affidavits to be obtained or other steps to be taken or may make such other order as is just. If it appears from the affidavits of a party opposing the motion that such party's only legally available method of contravening the facts set forth in the supporting affidavits of the moving party is through cross-examination of such affiants or the testimony of third parties from whom affidavits cannot be secured, then such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits are genuinely disputed.

(f) Affidavits Made in Bad Faith: If it appears to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or for the purpose of delay, then the Court may order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable counsel's fees, and any offending party or counsel may be adjudged guilty of contempt or otherwise disciplined by the Court.

Note

Paragraph (a) of Rule 121 is amended to define better the pretrial deadline for filing a motion for summary judgment. The 60-day limit for filing a motion for summary judgment will allow time for the Court to issue any orders with respect to the motion, for the parties to file any responses, and for the Court to consider action on the motion before trial. The amendment is effective with respect to cases in which Notices of Trial are issued after May 5, 2011.

RULE 124. ALTERNATIVE DISPUTE RESOLUTION

(a) Voluntary Binding Arbitration: The parties may move that any factual issue in controversy be resolved through voluntary binding arbitration. Such a motion may be made at any time after a case is at issue and before trial. Upon the filing of such a motion, the Chief Judge will assign the case to a Judge or Special Trial Judge for disposition of the motion and supervision of any subsequent arbitration.

(1) *Stipulation Required:* The parties shall attach to any motion filed under paragraph (a) a stipulation executed by each party or counsel for each party. Such stipulation shall include the matters specified in subparagraph (2).

(2) *Content of Stipulation:* The stipulation required by subparagraph (1) shall include the following:

(A) A statement of the issues to be resolved by the arbitrator;

(B) an agreement by the parties to be bound by the findings of the arbitrator in respect of the issues to be resolved;

(C) the identity of the arbitrator or the procedure to be used to select the arbitrator;

(D) the manner in which payment of the arbitrator's compensation and expenses, as well as any related fees and costs, is to be allocated among the parties;

(E) a prohibition against ex parte communication with the arbitrator; and

(F) such other matters as the parties deem to be appropriate.

(3) *Order by Court:* The arbitrator will be appointed by order of the Court, which order may contain such directions to the arbitrator and to the parties as the Judge or Special Trial Judge considers to be appropriate.

(4) *Report by Parties:* The parties shall promptly report to the Court the findings made by the arbitrator and shall attach to their report any written report or summary that the arbitrator may have prepared.

(b) Voluntary Nonbinding Mediation: The parties may move by joint or unopposed motion that any issue in controversy be resolved through voluntary nonbinding mediation. Such a motion may be made at any time after a case is at issue and before the decision in the case is final.

(1) *Order by Court:* The mediation shall proceed in accordance with an order of the Court setting forth such directions to the parties as the Court considers to be appropriate.

(2) *Tax Court Judge or Special Trial Judge as Mediator:* A Judge or Special Trial Judge of the Court may act as mediator in any case pending before the Court if:

(A) the motion makes a specific request that a Judge or Special Trial Judge be designated as such, and

(B) a Judge or Special Trial Judge is so designated by order of the Chief Judge.

(c) Other Methods of Dispute Resolution: Nothing contained in this Rule shall be construed to exclude use by the parties of other forms of voluntary disposition of cases.

Note

Currently, Rule 124 is titled "Voluntary Binding Arbitration", and mediation is referenced as an optional form of dispute resolution in paragraph (b)(5). In the Court's experience, only a few arbitrations were conducted during the past 20 years, as opposed to a more substantial number of mediations. Accordingly, Rule 124 is amended to remove arbitration as the focus of the Rule. The amendments to Rule 124 change the title to "Alternative Dispute Resolution" and more clearly state that the Rule is applicable to both arbitration and mediation by, inter alia, inserting new paragraph (b) providing for the filing of a motion to proceed with mediation. Because a motion for mediation may be an agreed motion or simply unopposed, a joint motion is not required by the amendments. As contrasted with voluntary binding arbitration under what is now Rule 124(a), the issues susceptible of resolution through mediation are not limited to factual ones, and the mediation is nonbinding. Consequently, the amendments require no stipulation by the parties. The amendments to Rule 124 are not intended to prevent the parties from engaging in informal mediation or other forms of dispute resolution, with or without involvement by the Court. The amendments are effective as of May 5, 2011.

RULE 130. MOTIONS AND OTHER MATTERS

(a) Calendars: If a hearing is to be held on a motion or other matter, apart from a trial on the merits, then such hearing may be held on a motion calendar in Washington, D.C., unless the Court, on its own motion or on the motion of a party, shall direct otherwise. As to hearings at other places, see Rule 50(b)(2). The parties will be given notice of the place and time of hearing.

(b) Failure To Attend: The Court may hear a matter ex parte where a party fails to appear at such a hearing. With respect to attendance at such hearings, see Rule 50(c).

Note

The amendments to paragraph (a) of Rule 130 are conforming changes resulting from the amendments to Rule 50(b)(2). The amendments are effective as of May 5, 2011.

RULE 150. RECORD OF PROCEEDINGS

(a) General: Hearings and trials before the Court shall be recorded or otherwise reported, and a transcript thereof shall be made if, in the opinion of the Court or the Judge or Special Trial Judge presiding at a hearing or trial, a permanent record is deemed appropriate. Transcripts shall be supplied to the parties and other persons at such charges as may be fixed or approved by the Court.

(b) Transcript as Evidence: Whenever the testimony of a witness at a trial or hearing which was recorded or otherwise reported is admissible in evidence at a later trial or hearing, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

Note

Paragraph (a) of Rule 150 does not include a Special Trial Judge as an individual who can direct the making of a transcript. The lack of a reference in Rule 150(a) to a Special Trial Judge reflects the inconsistent use of terms in other Rules; e.g., Rules 12(a), 22, and 151(a) and (b) also do not refer to Special Trial Judges, while Rules 70(a)(2) and (b), 74, 124, 143, and 152 refer to both a Judge and a Special Trial

Judge. Accordingly, paragraph (a) of Rule 150 is amended to include a reference to a Special Trial Judge. The amendment is effective as of May 5, 2011.

RULE 151. BRIEFS

(a) General: Briefs shall be filed after trial or submission of a case, except as otherwise directed by the presiding Judge or Special Trial Judge. In addition to or in lieu of briefs, the presiding Judge or Special Trial 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 or Special Trial Judge directs. The following times for filing briefs shall prevail in the absence of any different direction by the presiding Judge or Special Trial 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

Paragraphs (a) and (b) of Rule 151 do not include a Special Trial Judge as an individual who can direct the filing of briefs or memoranda. The lack of any reference in Rule 151(a) and (b) to a Special Trial Judge reflects the inconsistent use of terms in other Rules; e.g., Rules 12(a), 22, and

150(a) also do not refer to Special Trial Judges, while Rules 70(a)(2) and (b), 74, 124, 143, and 152 refer to both a Judge and a Special Trial Judge. Paragraphs (a) and (b) of Rule 151 are amended to include references to a Special Trial Judge. The amendments are effective as of May 5, 2011.

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. Unless otherwise directed by the Court, 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 with the Court within 90 days of service of the opinion 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 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 each party shall 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. A party shall file such party's computation within 90 days of service of the opinion, unless otherwise directed by the Court. 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 or 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 is amended to provide deadlines for filing computations for entry of decision in accordance with an opinion of the Court. It has been the Court's experience that there may be inordinate delay in the parties' filing their computations for decision unless the Judge or Special Trial Judge issues an order directing when the computations shall be filed. The amendments require the parties to file computations within 90 days after service of the opinion unless otherwise directed by the Court. The amendments also clarify that if a party files an alternative computation, then a separate objection to the other party's computation is not required. The amendments are effective with respect to cases in which entry of decision is withheld pending the filing of computations pursuant to opinions filed or orders issued after May 5, 2011.

RULE 171. ELECTION OF SMALL TAX CASE PROCEDURE

With respect to classification of a case as a small tax case, the following shall apply:

(a) A petitioner who wishes to have the proceedings in the case conducted as a small tax case may so request at the time the petition is filed. See Rule 173.

(b) If the Commissioner opposes the petitioner's request to have the proceedings conducted as a small tax case, then

the Commissioner shall file with the answer a motion that the proceedings not be conducted as a small tax case.

(c) A petitioner may, at any time after the petition is filed and before the trial commences, request that the proceedings be conducted as a small tax case. If such request is made after the answer is filed, then the Commissioner may move without leave of the Court that the proceedings not be conducted as a small tax case.

(d) If such request is made in accordance with the provisions of this Rule 171, then the case will be docketed as a small tax case. The Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, issue an order directing that the small tax case designation be removed and that the proceedings not be conducted as a small tax case. If no such order is issued, then the petitioner will be considered to have exercised the petitioner's option and the Court shall be deemed to have concurred therein.

Note

Between 1970 and 1983, former Rule 172(b)[1] (and its predecessor Rule 36(c)) required the Commissioner to file any motion opposing the petitioner's request to elect small tax case status at the time the Commissioner filed the answer in the case.[2] 60 T.C. 1145–1146. As a result of this procedure, soon after the petition was filed the Commissioner filed any motions relating to matters such as whether a case qualified for the small tax case procedure and whether other considerations were present regarding the election, such as whether the case presented novel issues and should be subject to appeal. See S. Rept. 91–552 (1969), 1969–3 C.B. 423, 615 (use of the small tax case procedure is at the option of the petitioner unless the Court, presumably upon the request of the Internal Revenue Service, decides before the hearing that the case involves an important tax issue which should be heard under normal procedures and subject to appeal).

[1] Former Rule 172 was renumbered Rule 171 in 2003. 120 T.C. 605.

[2] Former Rule 172(d) (current Rule 171(c)) also allowed the Court, on its own motion or on the motion of a party to the case, to order at any time before commencement of the trial that a case be tried as a regular case.

Former Rule 172(b) was eliminated in 1983, 81 T.C. 1067, apparently as a result of the Court's elimination of required answers in small tax cases in 1979. 71 T.C. 1212. In amending Code section 7463 in 1998 and in 2000, Congress explained that the Court should give careful consideration to motions by the Internal Revenue Service to remove the small tax case designation based upon the potential precedential implications of the case. H. Conf. Rept. 106–1004, at 388 (2000), 2000–3 C.B. 390, 443; H. Conf. Rept. 105–599, at 245 (1998), 1998–3 C.B. 747, 999. Because the Court in 2007 reinstated the requirement of answers in small tax cases, 130 T.C. 486–487, it is appropriate to reinstate former Rule 172(b). Accordingly, Rule 171 is amended by adding new paragraph (b), which is substantially identical to former Rule 172(b).

Reasons exist for reinstating former Rule 172(b) in addition to the original reasons for providing that Rule. The number of jurisdictional dollar limits provided by Code section 7463 for small tax case eligibility increased in 1998 with the enlargement of the Court's jurisdiction to decide appeals in lien and levy cases and requests for relief from joint liability. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, secs. 3201, 3401, 112 Stat. 734, 746. These additional and somewhat varied jurisdictional limits have added to the petitioners' task in understanding whether they are entitled to elect the small tax case procedures in lien and levy actions and actions for determination of relief from joint liability. [1] Because notices of determination issued by the Internal Revenue Service in lien and levy and relief from joint liability proceedings often do not state the dollar amounts in dispute, petitioners may have additional difficulty in applying the statutory rules. [2] If a petitioner has in-

[1] Under Code sec. 7463(f)(1), the applicable dollar amount for Code sec. 6015 cases is the total relief sought on the date of the filing of the petition, including tax, additions to tax, penalties, interest, and accrued but unassessed interest. *Petrane v. Commissioner*, 129 T.C. 1 (2007). The applicable dollar amount under Code sec. 7463(f)(2) for lien and levy actions is the total amount of unpaid tax, calculated as of the date of the notice of determination, including tax, additions to tax, penalties, and interest. *Leahy v. Commissioner*, 129 T.C. 71 (2007); *Schwartz v. Commissioner*, 128 T.C. 6 (2007).

[2] In *Leahy v. Commissioner*, 129 T.C. at 76 n. 11, the Court noted that "the Commissioner could assist taxpayers and the Court if he were to cal-

correctly applied the jurisdictional limits in electing the small tax case procedures, early action on the error is in the interests of the Court and the parties and will assist in the management and the calendaring of the case.

Conforming changes relettering current paragraphs (b) and (c) of Rule 171 are also made.[1] Relettered paragraph (c) is amended to clarify that a petitioner may elect to have the proceedings conducted as a small tax case at any time before the trial commences, even after the case has been calendared for trial, and that the Commissioner does not then need leave of the Court to move that the proceedings not be so conducted. Relettered paragraph (d) of Rule 171 is amended to clarify that the closing of a small tax case by decision or dismissal prior to trial of the case does not invalidate the petitioner's small tax case election.

New paragraph (b) is effective with respect to petitions filed after May 5, 2011. The amendments to paragraphs (c) and (d) are effective as of May 5, 2011.

---

culate the total unpaid tax as of the date of the sec. 6330 notice of determination and include it in the notice."

[1] Current Rule 171(c) is substantially the same as former Rule 172(d) and allows the Court, on its own motion or on the motion of a party, to remove the small tax case designation at any time before trial.

FORM 1

PETITION (Sample Format)*

(See Rules 30 through 34.)

www.ustaxcourt.gov

UNITED STATES TAX COURT

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

PETITION

Petitioner hereby petitions for a redetermination of the deficiency (or liability) set forth by the Commissioner of Internal Revenue in the Commissioner's notice of deficiency (or liability) dated ....., and as the basis for petitioner's case alleges as follows:

1. Petitioner is [set forth whether an individual, corporation, etc., as provided in Rule 60] with mailing address now at

..... (Street (or P.O. Box) City State ZIP Code)

and with the State of legal residence (or principal office) now in (if different from the mailing address)

.....

The return for the period here involved was filed with the Office of the Internal Revenue Service at ..... (City State)

2. The notice of deficiency (or liability) was mailed to petitioner on ....., and was issued by the Office of the Internal Revenue Service at ..... (City State)

A copy of the notice of deficiency (or liability), including so much of the statement and schedules accompanying the notice as is material, should be redacted as provided by Rule 27 and attached to the petition as Exhibit A. Petitioner must submit with the petition a Form 4, Statement of Taxpayer Identification Number.

3. The deficiencies (or liabilities) as determined by the Commissioner are in income (estate, gift, or certain excise) taxes for the calendar (or fiscal) year ....., in the amount of $ ....., of which $ ..... is in dispute.

4. The determination of the tax set forth in the said notice of deficiency (or liability) is based upon the following errors: [Here set forth specifically in lettered subparagraphs the assignments of error in a concise manner. Do not plead facts, which properly belong in the succeeding paragraph.]

5. The facts upon which petitioner relies, as the basis of petitioner's case, are as follows: [Here set forth allegations of fact, but not the evidence, sufficient to inform the Court and the Commissioner of the positions taken and the bases therefor. Set forth the allegations in orderly and logical sequence, with subparagraphs lettered,

*Form 1 provides a sample format that is especially appropriate for use by counsel in complex deficiency and liability cases. See Rule 34(a)(1), (b)(1). To adapt Form 1 for use in the following types of actions, see also the applicable Rules, as indicated: Declaratory judgment actions (Rule 211); disclosure actions (Rule 221); partnership actions (Rules 241, 301); interest abatement actions (Rule 281); employment status actions (Rule 291); actions for determination of relief from joint and several liability (Rule 321); lien and levy actions (Rule 331); and whistleblower actions (Rule 341). See Form 2 for a fillable form that may be useful for self-represented petitioners and may also be used by counsel in simple cases with limited issues. See Form 3 for a fillable form that may be used for administrative costs actions.

so as to enable the Commissioner to admit or deny each allegation. See Rules 31(a), 34(b)(5).]

WHEREFORE, petitioner prays that [here set forth the relief desired].

(Signed) .....
Petitioner or Counsel

.....
Present Address—City, State, ZIP Code

Dated: ....
(Area code) Telephone No.

.....
Counsel's Tax Court Bar No.

Note

The amendment to the footnote in Form 1 replaces the term "pro se" with the term "self-represented" to conform the language in Form 1 more closely to the language in the second sentence in Rule 24(b). The amended form is effective as of May 5, 2011.

FORM 2

PETITION (Simplified Form)
UNITED STATES TAX COURT
www.ustaxcourt.gov

(FIRST) (MIDDLE) (LAST)

.....
(PLEASE TYPE OR PRINT) Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

} Docket No.

PETITION

1. Please check the appropriate box(es) to show which IRS NOTICE(S) you dispute:

☐ Notice of Deficiency

☐ Notice of Determination Concerning Your Request for Relief From Joint and Several Liability. (If you requested relief from joint and several liability but the IRS has not made a determination, please see the Information for Persons Representing Themselves Before the U.S. Tax Court booklet or the Tax Court's Web site.)

☐ Notice of Determination Concerning Collection Action

☐ Notice of Determination of Worker Classification

2. Provide the date(s) the IRS issued the NOTICE(S) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): .....

3. Provide the year(s) or period(s) for which the NOTICE(S) was/were issued: .....

4. SELECT ONE OF THE FOLLOWING:

If you want your case conducted under small tax case procedures, check here: ☐(CHECK
If you want your case conducted under regular tax case procedures, check here: ☐ONE BOX)

NOTE: A decision in a "small tax case" cannot be appealed to a Court of Appeals by the taxpayer or the IRS. If you do not check either box, the Court will file your case as a regular tax case.

5. Explain why you disagree with the IRS determination in this case (please list each point separately):

.....
.....
.....
.....
.....
.....

6. State the facts upon which you rely (please list each point separately):

.....
.....
.....
.....
.....
.....

You may use additional pages to explain why you disagree with the IRS determination or to state additional facts. Please do not submit tax forms, receipts, or other types of evidence with this petition.

ENCLOSURES:

Please check the appropriate boxes to show that you have enclosed the following items with this petition:

☐ A copy of the NOTICE(S) the IRS issued to you
☐ Statement of Taxpayer Identification Number (Form 4)
(See PRIVACY NOTICE below.)
☐ The Request for Place of Trial (Form 5) ☐ The filing fee

PRIVACY NOTICE: Form 4 (Statement of Taxpayer Identification Number) will *not* be part of the Court's public files. All other documents filed with the Court, including this Petition and any IRS Notice that you enclose with this Petition, will become part of the Court's public files. To protect your privacy, you are *strongly* encouraged to omit or remove from this Petition, from any enclosed IRS Notice, and from any other document (other than Form 4) your taxpayer identification number (e.g., your Social Security number) and certain other confidential information as specified in the Tax Court's "Notice Regarding Privacy and Public Access to Case Files", available at *www.ustaxcourt.gov.*

....
Signature of Petitioner Date (Area Code) Telephone No.

....
Mailing Address City, State, ZIP Code

State of legal residence (if different from the mailing address): .....

....
Signature of Additional Petitioner (e.g., Spouse) Date (Area Code) Telephone No.

....
Mailing Address City, State, ZIP Code

State of legal residence (if different from the mailing address): .....

.....
Signature, Name, Address, Telephone No., and Tax Court Bar No. of Counsel, if retained by Petitioner(s)

SAMPLE

Information About Filing a Case in the United States Tax Court

Attached are the forms to use in filing your case in the United States Tax Court.

It is very important that you take time to carefully read the information on this page and that you properly complete and submit these forms to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

Small Tax Case or Regular Tax Case

If you seek review of one of the four types of IRS Notices listed in paragraph 1 of the petition form (Form 2), you may file your petition as a "small tax case" if your dispute meets certain dollar limits (described below). "Small tax cases" are handled under simpler, less formal procedures than regular cases. However, the Tax Court's decision in a small tax case *cannot be appealed* to a Court of Appeals by the IRS or by the taxpayer(s).

You can choose to have your case conducted as either a small tax case or a regular case by checking the appropriate box in paragraph 4 of the petition form (Form 2). If you check neither box, the Court will file your case as a regular case.

Dollar Limits: Dollar limits for a small tax case vary slightly depending on the type of IRS action you seek to have the Tax Court review:

(1) If you seek review of an IRS Notice of Deficiency, the amount of the deficiency (including any additions to tax or penalties) that you dispute cannot exceed $50,000 for any year.

(2) If you seek review of an IRS Notice of Determination Concerning Collection Action, the total amount of unpaid tax cannot exceed $50,000 for all years combined.

(3) If you seek review of an IRS Notice of Determination Concerning Your Request for Relief From Joint and Several Liability (or if the IRS failed to send you any Notice of Determination with respect to a request for spousal relief that you submitted to the IRS at least 6 months ago), the amount of spousal relief sought cannot exceed $50,000 for all years combined.

(4) If you seek review of an IRS Notice of Determination of Worker Classification, the amount in dispute cannot exceed $50,000 for any calendar quarter.

Enclosures

To help ensure that your case is properly processed, please enclose the following items when you mail your petition to the Tax Court:

1. A copy of the Notice of Deficiency or Notice of Determination the IRS sent you;
2. Your Statement of Taxpayer Identification Number (Form 4);
3. The Request for Place of Trial (Form 5); and
4. The $60 filing fee, payable by check, money order, or other draft, to the "Clerk, United States Tax Court"; or, if applicable, the fee waiver form.

For further important information, see the Court's Web site at *www.ustaxcourt.gov* or the "Information for Persons Representing Themselves Before the U.S. Tax Court" booklet available from the Tax Court.

Note

The amendments to Form 2 and its sample information sheet provide for the current name of the notice of determination issued by the Commissioner in actions for redetermination of employment status and substitute the name of the referenced information booklet for the name of the booklet currently used by the Court. The amended form is effective as of May 5, 2011.

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 nongovernmental large partnership or limited liability company, or a tax matters partner or a partner other than a tax matters partner of a nongovernmental partnership, provide the following information:]

All publicly held entities owning an interest in the large partnership, the limited liability company, or the partnership, or state that there is no such entity:

..... Signature of Counsel or Petitioner's Duly Authorized Representative

..... Date

Note

The amendments to Form 6 are conforming changes due to the amendments to paragraph (c) of Rule 20, and include references to a petition filed on behalf of a TEFRA partnership by a tax matters partner, a notice partner, or a 5-percent group, as a partner rather than a partnership is the petitioner in those cases. Amended Form 6 is effective as of May 5, 2011.

FORM 14

SUBPOENA

(See Rule 147)

www.ustaxcourt.gov

UNITED STATES TAX COURT

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

SUBPOENA

To .....

.....

YOU ARE HEREBY COMMANDED to appear before the United States Tax Court

.....
(or the name and official title of a person authorized to take depositions)

at ..... (Time) on the ..... (Date) day of ..... (Month), ... (Year) at .....

.....
Place

then and there to testify on behalf of .....
Petitioner or Respondent

in the above-entitled case, and to bring with you .....

.....

.....
Use reverse if necessary

and not to depart without leave of the Court.

Date: .....

/s/ Robert R. Di Trolio
Clerk of the Court

.....
Attorney for (Petitioner)(Respondent)

Return on Service

The above-named witness was summoned on ..... (Date) at ..... (Time) by delivering a copy of this subpoena to (him)(her), and, if a witness for the petitioner, by tendering fees and mileage to (him)(her) pursuant to Rule 148 of the Rules of Practice and Procedure of the Tax Court.

Dated..... Signed .....

Subscribed and sworn to before me this ..... day of ....., ...

.....[Seal]
Name Title

Note

The amendment to Form 14 revises the signature line to refer to the "counsel" for the party rather than the "attorney", in recognition of the fact that not all individuals admitted to practice before the Tax Court are attorneys. The amended form is effective as of May 5, 2011.

FORM 15

APPLICATION FOR ORDER TO TAKE DEPOSITION TO PERPETUATE EVIDENCE
(See Rules 81 through 84.)
www.ustaxcourt.gov
UNITED STATES TAX COURT

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

APPLICATION FOR ORDER TO TAKE DEPOSITION TO PERPETUATE EVIDENCE *

To the United States Tax Court:

1. Application is hereby made by the above-named ..... (Petitioner or Respondent) for an order to take the deposition(s) of the following-named person(s) who has (have) been served with a copy of this application, as evidenced by the attached certificate of service:

	Name of witness	Post office address
(a)	.....	.....
(b)	.....	.....
(c)	.....	.....
(d)	.....	.....

2. It is desired to take the deposition(s) of the above-named person(s) for the following reasons [With respect to each of the above-named persons, set forth the reasons for taking the depositions rather than waiting until trial to introduce the testimony or other evidence.]:

3. The substance of the testimony, to be obtained through the deposition(s), is as follows [With respect to each of the above-named persons, set forth briefly the substance of the expected testimony or other evidence.]:

4. The books, papers, documents, electronically stored information, or other tangible things to be produced at the deposition, are as follows [With respect to each of the above-named persons, describe briefly all things which the applicant desires to have produced at the deposition.]:

5. The expected testimony or other evidence is material to one or more matters in controversy, in the following respects:

6. (a) This deposition (will) (will not) be taken on written questions (see Rule 84).

(b) All such written questions are annexed to this application [attach such questions pursuant to Rule 84].

7. The petition in this case was filed with the Court on ..... (Date)

The pleadings in this case (are) (are not) closed. This case (has) (has not) been placed on a trial calendar.

---

*An application for an order to take a deposition to perpetuate evidence must be filed at least 45 days prior to the date set for the trial. When the applicant seeks to take depositions upon written questions, the title of the application shall so indicate and the application shall be accompanied by an original and five copies of the proposed questions. The taking of depositions upon written questions is not favored, except when the depositions are to be taken in foreign countries, in which case any depositions taken *must* be upon written questions, except as otherwise directed by the Court for cause shown. (See Rule 84(a).) If the parties so stipulate, depositions may be taken without application to the Court. (See Rule 81(d).) This form may not be used for depositions for discovery purposes, which may be taken only in accordance with Rule 74.

8. An arrangement as to payment of fees and expenses of the deposition is desired which departs from Rules 81(g) and 103, as follows:

.....

.....

9. It is desired to take the testimony of ..... on ..... at
Date

....., at
Time

.....
Room number, street number, street name, city and State

before .....
Name and official title

10. ..... is a person who is authorized
Name of person before whom deposition is to be taken

to administer an oath, in (his) (her) capacity as ..... Such person is not a relative or employee or counsel of any party, or a relative or employee or associate of such counsel, nor is such person financially interested in the action. (For possible waiver of this requirement, see Rule 81(e)(3).)

11. It is desired to record the testimony of ..... before ..... by video recording. The name and address of the video recorder operator and the name and address of the operator's employer are .....

.....

Dated .....

(Signed) .....
Petitioner or Counsel

.....
Post office address

.....
Counsel's Tax Court Bar No.

Note

The amendments to the title and footnote of Form 15 clarify that the form is not appropriately used for discovery depositions. The amendment to paragraph 4 of Form 15 is a technical correction to refer to electronically stored information, occasioned by amendments to Rule 72 et al., effective January 1, 2010. The amendments are effective as of May 5, 2011.