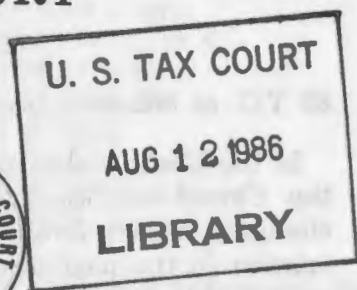


**REPORTS
OF THE
UNITED STATES
TAX COURT**



July 1, 1985, to December 31, 1985

Volume 85

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REPORTS
OF THE
UNITED STATES
TAX COURT

U. S. TAX COURT

ERRATUM

83 T.C. at 582-583 (*Graham v. Commissioner*):

In the *Graham* slip opinion, page references were made to the *Church of Scientology of California* slip opinion. In changing page references from the pagination in the slip opinion to the pagination in the printed opinion, incorrect page numbers were printed.

On page 582, in footnote 10, line 2, "83 T.C. at 447-454." should read "83 T.C. at 460-465." Footnote 10 should read as follows:

¹⁰Petitioners raise similar establishment clause arguments in *Church of Scientology of California v. Commissioner*, 83 T.C. at 460-465. While that case dealt with the constitutionality of sec. 501(c)(3), its rationale is fully applicable to sec. 170 and we incorporate herein by this reference that portion of the opinion.

On page 583, in footnote 11, line 2, "83 T.C. at 453-454." should read "83 T.C. at 447-454." Footnote 11 should read as follows:

¹¹This issue of selective enforcement was also raised and rejected in *Church of Scientology of California v. Commissioner*, 83 T.C. at 447-454.

JUDGES OF THE UNITED STATES TAX COURT

Chief Judge

SAMUEL B. STERRETT

Judges

CHARLES R. SIMPSON
WILLIAM A. GOFFE
RICHARD C. WILBUR
HERBERT L. CHABOT
ARTHUR L. NIMS III
EDNA G. PARKER
MEADE WHITAKER
JULES G. KÖRNER III
PERRY SHIELDS

LAPSLEY W. HAMBLIN, JR.
MARY ANN COHEN
CHARLES E. CLAPP II
STEPHEN J. SWIFT
JULIAN I. JACOBS
JOEL GERBER
LAWRENCE A. WRIGHT
CAROLYN MILLER PARR¹
B. JOHN WILLIAMS, JR.²

Senior judges recalled to perform judicial duties under the provisions of section 7447 of the Internal Revenue Code of 1954:

ARNOLD RAUM
WILLIAM M. DRENNEN
IRENE F. SCOTT
THEODORE TANNENWALD, JR.

C. MOXLEY FEATHERSTON
DARRELL D. WILES
WILLIAM M. FAY
HOWARD A. DAWSON, JR.

Special Trial Judges

JOHN J. PAJAK, *Chief Special Trial Judge*

JAMES M. GUSSIS
FRANCIS J. CANTREL
DANIEL J. DINAN
MARVIN F. PETERSON
FRED R. TANSILL
RANDOLPH F. CALDWELL, JR.³
LEE M. GALLOWAY
HELEN A. BUCKLEY

PETER J. PANUTHOS
JOAN SEITZ PATE
HU S. VANDERVORT
LEHMAN C. AARONS
D. IRVIN COUVILLION⁴
NORMAN H. WOLFE⁵
STANLEY J. GOLDBERG⁶
CARLETON D. POWELL⁷

CHARLES S. CASAZZA, *Clerk*

PAUL NEJELSKI, *Court Administrator*

¹Judge Parr took oath of office November 25, 1985.

²Judge Williams took oath of office December 2, 1985.

³Resigned August 31, 1985.

⁴Appointed July 1, 1985.

⁵Appointed July 1, 1985.

⁶Appointed August 4, 1985.

⁷Appointed August 25, 1985.

AMENDMENTS
to
RULES OF PRACTICE AND PROCEDURE
of the
UNITED STATES TAX COURT

Rules 3, 10, 13, 20, 25, 33, 70, 71, 90, 104, 134, 140, 143, 151, 175, and 182 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 Bar. They are not officially part of the Rules and are not included in the printed publication prepared for general distribution.

UNITED STATES TAX COURT

of the

RULES OF PRACTICE AND PROCEDURE

Rules 2, 10, 13, 36, 37, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

TITLE I

SCOPE OF RULES; CONSTRUCTION; EFFECTIVE DATE; DEFINITIONS

RULE 3. DEFINITIONS

(a) - (c) [Not changed]

(d) **Special Trial Judge:** The term Special Trial Judge as used in these Rules refers to a judicial officer appointed pursuant to Section 7456(c) of the Code. See Rule 180.

Note

Par. (d) of Rule 3 has been amended to reflect that the title "commissioner" formerly used in Code Section 7456(c) has been changed to "special trial judge." See Section 464 of the Tax Reform Act of 1984, Public Law 98-369, 98 Stat. 494, 824-825 (July 18, 1984).

TITLE II

THE COURT

RULE 10. NAME, OFFICE, AND SESSIONS

(a) - (d) [Not changed]

(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

Par. (e) of Rule 10 has been amended to provide that the Court may direct that mail be addressed to locations other than the Court in Washington. The amendment is effective January 2, 1985.

RULE 13. JURISDICTION

(a) - (c) [Not changed]

(d) **Contempt of Court:** Contempt of Court may be punished by fine or imprisonment within the scope of Code Section 7456(e).

Note

Par. (d) of Rule 13 has been amended to reflect that former subsection (d) of Code Section 7456 has been redesignated as subsection (e). See Section 106(c)(2) of the Miscellaneous Revenue Act of 1982, Public Law 97-362, 96 Stat. 1726, 1730 (Oct. 25, 1982).

TITLE III

COMMENCEMENT OF CASE; SERVICE AND FILING OF PAPERS; FORM AND STYLE OF PAPERS; APPEARANCE AND REPRESENTATION; COMPUTATION OF TIME

RULE 20. COMMENCEMENT OF CASE

(a) [Not changed]

(b) **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 that he is unable to make such payment.

Note

Rule 20(b) has been amended to require a fee of \$60 for the commencement of any case before the Court. Formerly, a fee of only \$10 was required if the petitioner elected to have the case treated as a small tax case. The amendment applies to cases commenced after April 30, 1985. Petitioners who are unable to pay the \$60 filing fee may request a waiver of the fee.

RULE 25. COMPUTATION OF TIME

(b) District of Columbia Legal Holidays: The legal holidays within the District of Columbia, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows:

New Year's Day—January 1

Birthday of Martin Luther King, Jr.—Third Monday in January

[No other changes in holidays]

Note

Par. (b) of Rule 25 has been amended to reflect the enactment of Public Law 98-144, 97 Stat. 917 (1983), designating the birthday of Martin Luther King, Jr., the third Monday in January, a legal public holiday. The amendment is effective January 1986.

TITLE IV

PLEADINGS

RULE 33. SIGNING OF PLEADINGS

(a) [Not changed]

(b) Effect of Signature: The signature of counsel or a party constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it

is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The signature of counsel also constitutes a representation by him that he is authorized to represent the party or parties on whose behalf the pleading is filed. If a pleading is not signed, it shall be stricken, unless it is signed promptly after the omission is called to the attention of the pleader. If a pleading is signed in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable counsel's fees.

Note

The amendment to par. (b) of Rule 33 is derived from the 1983 amendment to Rule 11 of the Federal Rules of Civil Procedure. It is designed to emphasize the responsibilities of counsel and deter dilatory and abusive tactics by imposing effective sanctions therefor. The amendment imposes upon counsel the duty to make reasonable inquiry as to both the facts and the law prior to the filing of any pleading. The standard is one of reasonableness under the circumstances. What constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the underlying facts; whether the pleading was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar. Although the Rule as amended also applies to unrepresented parties, the Court has discretion to take into account the special circumstances that may arise in *pro se* situations.

The provision in former Rule 33(b) regarding the striking of pleadings and of scandalous or indecent material has been stricken. Such problems may be dealt with under Rule 52.

The requirements of amended Rule 33(b) with respect to signing of pleadings are equally applicable to motions. See Rule 50(a).

The amendment is effective July 1, 1986.

TITLE VII

DISCOVERY

RULE 70. GENERAL PROVISIONS

(a) [Not changed]

(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 response 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: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) 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.

(c) - (d) [Not changed]

(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 he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry, it is (i) consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (iii) 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, 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, 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 procedures, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

Note

A new subpar. (2) has been added to Rule 70(b). The amendment is intended to guard against discovery that is redundant or disproportionate to the amount of money or the importance of the issues at stake by giving the Court authority to reduce the amount of discovery of matters that otherwise are proper subjects of discovery. The amendment is derived from the 1983 amendment to Rule 26(b) of the Federal Rules of Civil Procedure.

A new par. (e) also has been added to Rule 70, requiring that every discovery request, response, or objection be signed by counsel or the party. It also is derived from the 1983 amendment to Rule 26 of the Federal Rules of Civil Procedure, which added a new paragraph (g). The certification requirement of Rule 70(e) is intended to deter both excessive discovery and evasion or resistance to reasonable discovery requests by requiring the party or counsel to make reasonable inquiry into the factual and legal basis for his request, response, or objection, as well as to consider the reasonableness thereof. The latter requirement compels the party or counsel to weigh the need for discovery in a particular case against the cost and other burdens thereof.

The duty to make a "reasonable inquiry" is satisfied if the inquiry that is made is reasonable under the circumstances. The standard is an objective one similar to that under Rule 33.

Former par. (e) of Rule 70 has been redesignated as par. (f).

The amendment is effective July 1, 1986.

RULE 71. INTERROGATORIES

(d) Experts: (1) [Not Changed]

(2) For provisions regarding the submission and exchange of expert witness reports, see Rule 143(f).

Note

Par. (d) (2) of Rule 71 has been amended to delete provisions regarding submission and exchange of expert witness reports. Those provisions, as amended, are now set forth in Rule 143(f). The amendment is effective July 1, 1986.

TITLE IX

ADMISSIONS AND STIPULATIONS

RULE 90. REQUESTS FOR ADMISSION

(a) - (b) [Not changed]

(c) Response to Request: Each matter is deemed admitted unless, within 30 days after service of the request or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the requesting

party (1) a written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or (2) an objection, stating in detail the reasons therefor. The response shall be signed by the party or his counsel, and the original thereof, with proof of service on the other party, shall be filed with the Court. A denial shall fairly meet the substance of the requested admission; and, when good faith requires that a party qualify his answer or deny only a part of a matter, he shall specify so much of it as is true and deny or qualify the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter, of which an admission has been requested, presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provision of paragraph (g) of this Rule, deny the matter or set forth reasons why he cannot admit or deny it. An objection on the ground of relevance may be noted by any party but is not to be regarded as just cause for refusal to admit or deny.

(d) Effect of Signature: (1) The signature of counsel or a party constitutes a certification that he has read the request for admission or response or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry, it is (i) consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (iii) 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, 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, 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.

(e) Motion to Review: The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. In lieu of any such order, the Court may determine that final disposition of the request shall be made at some later time which may be more appropriate for disposing of the question involved.

(f) Effect of Admission: Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or modification of the admission. Subject to any other orders made in the case by the Court, withdrawal or modification may be permitted when the presentation of the merits of the case will be subserved thereby, and the party who obtained the admission fails to satisfy the Court that the withdrawal or modification will prejudice him in prosecuting his case or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by him for any other purpose, nor may it be used against him in any other proceeding.

(g) Sanctions: If any party unjustifiably fails to admit the genuineness of any document or the truth of any matter as requested in accordance with this Rule, the party requesting the admission may apply to the Court for an order imposing such sanction on the other party or his counsel as the Court may find appropriate in the circumstances, including but not limited to the sanctions provided in Title X. The failure to admit may be found unjustifiable unless the Court finds that (1) the request was held objectionable pursuant to this Rule, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to doubt the truth of the matter or the genuineness of the document in

respect of which the admission was sought, or (4) there was other good reason for failure to admit.

(h) Other Applicable Rules: For Rules concerned with frequency and timing of requests for admissions in relation to other procedures, supplementation of answers, effect of evasive or incomplete answers or responses, protective orders, and sanctions and enforcements, see Title X.

Note

A new par. (d), regarding the effect of signature of a party or counsel, has been added to Rule 90. See the Note to Rule 70.

Former pars. (d), (e), (f), and (g) have been redesignated as pars. (e), (f), (g), and (h), respectively. The amendment is effective July 1, 1986.

TITLE X

GENERAL PROVISIONS GOVERNING DISCOVERY, DEPOSITIONS, AND REQUESTS FOR ADMISSION

RULE 104. ENFORCEMENT ACTION AND SANCTIONS

(a) and (b) [Not changed]

(c) Sanctions: If a party or an officer, director, or managing agent of a party or a person designated in accordance with Rule 74(b), 75(c), or 81(c) fails to obey an order made by the Court with respect to the provisions of Rule 71, 72, 73, 74, 75, 81, 82, 83, 84, or 90, the Court may make such orders as to the failure as are just, and among others the following:

(1) - (3) [Not changed]

(4) In lieu of the foregoing orders or in addition thereto, the Court may treat as a contempt of the Court the failure to obey any such order, and the Court may also require the party failing to obey the order or counsel advising him, or both, to pay the reasonable expenses, including counsel's fees, caused by the failure, unless the Court finds that the failure was

substantially justified or that other circumstances make an award of expenses unjust.

Note

Subpar. (4) of par. (c) of Rule 104 has been amended to authorize the Court, in its discretion, to require a party who fails to obey a Court order, or counsel advising him, or both, to pay reasonable expenses, including counsel's fees, occasioned by the failure. The amendment is derived from Rule 37(b)(2) of the Federal Rules of Civil Procedure. The amendment is effective July 1, 1986.

TITLE XIII

CALENDARS AND CONTINUANCES

RULE 134. CONTINUANCES

A case or matter scheduled on a calendar may be continued by the Court upon motion or at its own initiative. A motion for continuance shall inform the Court of the position of the other parties with respect thereto, either by endorsement thereon by the other parties or by a representation of the moving party. A motion for continuance based upon the pendency in a court of a related case or cases shall include the name and docket number of any such related case, the names of counsel for the parties in such case, and the status of such case, and shall identify all issues common to any such related case. Continuances will be granted only in exceptional circumstances. Conflicting engagements of counsel or employment of new counsel ordinarily will not be regarded as ground for continuance. A motion for continuance, filed 30 days or less prior to the date to which it is directed, may be set for hearing on that date, but ordinarily will be deemed dilatory and will be denied unless the ground therefor arose during that period or there was good reason for not making the motion sooner. As to extensions of time, see Rule 25(c).

Note

Rule 134 has been revised to reflect a new policy toward continuances. The Rule as amended provides that continuances will be granted only in exceptional circumstances. The parties should not anticipate that the Court will grant the first requested continuance. Under the revised Rule, continuances ordinarily will not be granted on account of conflicting engagements of counsel or employment of new counsel.

The amendment also requires that a motion for continuance based upon the pendency of a related case or cases shall include certain identifying information with respect to any such related case. The amendment is effective July 1, 1986.

TITLE XIV

TRIALS

RULE 140. PLACE OF TRIAL

(a) [Not changed]

(b) **Form:** Such designation shall be set forth on a paper separate from the petition or answer and shall consist of an original and two copies. See Form 4, Appendix I.

(c) [Not changed]

Note

Rule 140(b) has been amended to delete the provision that the designation of place of trial satisfy the requirements of form applicable to motions. The amendment also provides that such designation shall be separately stated. The amendment is effective July 1, 1986.

RULE 143. EVIDENCE

(a) - (e) [Not changed]

(f) **Expert Witness Reports:** (1) Unless otherwise permitted by the Court upon timely request, any party who calls an expert witness shall cause that witness to prepare a written report for submission to the Court and to the opposing party. The report shall set forth the qualifications of the expert witness and shall state his opinion and the facts or data on

which that opinion is based. The report shall set forth in detail the reasons for the conclusion, and it will be marked as an exhibit, identified by the witness, and received in evidence as the direct testimony of the expert witness, unless the Court determines that he is not qualified as an expert. Additional direct testimony with respect to the report may be allowed to clarify or emphasize matters in the report, to cover matters arising after the preparation of the report, or otherwise at the discretion of the Court. If not furnished earlier, each party who calls any expert witness shall furnish to each other party, and shall submit to the Court, not later than 15 days prior to the call of the trial calendar on which the case shall appear, a copy of all expert witness reports prepared pursuant to this subparagraph. An expert witness' testimony will be excluded altogether for failure to comply with the provisions of this paragraph, unless the failure is shown to be due to good cause and unless the failure does not unduly prejudice the opposing party, such as by significantly impairing his ability to cross-examine the expert witness or by denying the opposing party the reasonable opportunity to obtain evidence in rebuttal to the expert witness' testimony.

(2) The Court ordinarily will not grant a request to permit an expert witness to testify without a written report where the expert witness' testimony is based on third-party contacts, comparable sales, statistical data, or other detailed, technical information. The Court may grant such a request, for example, where the expert witness testifies only with respect to industry practice or only in rebuttal to another expert witness.

Note

Par. (f) of Rule 143 has been amended to include provisions regarding the submission and exchange of expert witness reports. The Rule generally requires all expert witnesses to prepare a written report for submission to the Court and to the opposing party. The Court, in its discretion, may permit otherwise. The Rule requires that the report set forth in detail the reasons for the expert's conclusion. The report will be marked as an exhibit, identified, and received in evidence as the direct testimony of the expert witness, unless the Court determines that he is not qualified as an expert. Under the Rule, the Court may allow additional direct testimony with respect to the report to clarify or emphasize matters in the report, or as to new developments, or at the discretion of the Court. The Rule also requires each party to furnish to each other party and to submit to the Court, not

later than 15 days prior to the call of the calendar, a copy of all expert witness reports. The Court will exclude an expert witness' testimony for failure to comply with the Rule, unless: (1) such failure is shown to be due to good cause; and (2) such failure will not cause the opposing party undue prejudice, for example, by significantly impairing his ability to cross-examine the expert or denying him the reasonable opportunity to obtain rebuttal evidence.

A party who wishes to be excused from the requirement of the Rule with respect to preparation and submission of a written report must request the permission of the Court. If such a request is granted, the Court may impose such terms and conditions as it sees fit; for example, the Court may require counsel or the party to furnish to each other party and to submit to the Court a brief statement describing the opinion that the expert witness is expected to render at trial.

The amendment is effective July 1, 1986.

RULE 151. BRIEFS

(b) **Time for Filing Briefs:** Briefs may be filed simultaneously or seriatim, as the presiding Judge directs. The following times for filing briefs shall prevail in the absence of any different direction by the presiding 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 his adversary and whether or not he objects to the motion. As to the effect of extensions of time, see Rule 25(c).

Note

Par. (b) of Rule 151 has been amended to extend the time for filing briefs. The amendment is intended in part to discourage requests for extensions of time to file briefs by providing ample time for filing. The amendment is effective September 1, 1985.

TITLE XVII

SMALL TAX CASES*

RULE 175. PLEADINGS

(a) **Petition:** (1) *Form and Content:* [Not changed]

(2) *Filing Fee:* The fee for filing a petition shall be \$60, payable at the time of filing. 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 that he is unable to make such payment.

Note

Rule 175(a)(2) has been amended to require a fee of \$60 for the commencement of a small tax case. See Note to Rule 20(b).

*The maximum amount of the deficiency in dispute, for a taxable or calendar year, has been increased from \$5,000 to \$10,000, effective July 18, 1984. See Section 461 of the Tax Reform Act of 1984, Public Law 98-369 (July 18, 1984).

TITLE XVIII

SPECIAL TRIAL JUDGES*

RULE 182. CASES INVOLVING \$10,000 OR LESS

Except as otherwise directed by the Chief Judge, the following procedure shall be observed in small tax cases (as defined in Rule 171) and in all other cases where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$10,000:

(a) and (b) [Not changed]

(c) **Decision:** The Chief Judge may authorize the Special Trial Judge to make the decision of the Court in any small tax case (as defined in Rule 171) and in any other case where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$10,000, subject to such conditions and review as the Chief Judge may provide.

Note

Par. (c) of Rule 182 has been amended to provide that the Chief Judge may authorize the Special Trial Judge to make the decision of the Court in any small tax case and in any other case where neither the amount of the deficiency in dispute nor the amount of any claimed overpayment exceeds \$10,000, subject to such conditions and review as the Chief Judge may provide. The amendment is intended to make clear that the Chief Judge may authorize the Special Trial Judge to make the decision of the Court in cases where no trial is held, for example, in cases submitted under Rule 122 and in cases disposed of by motion, provided the dollar limits set forth above are satisfied. The amendment is effective January 16, 1984.

*The maximum amount of the deficiency in dispute, for a taxable or calendar year, in cases in which the Special Trial Judges are authorized to make the decision of the Court, has been increased from \$5,000 to \$10,000, effective October 25, 1982. See Section 463 of the Tax Reform Act of 1984, Public Law 98-369 (July 18, 1984).

TITLE XXI

DECLARATORY JUDGMENTS*

[No change in Rules in this Title]

*Code Section 7477, which provided for declaratory judgments with respect to transfers of property from the United States, has been repealed. The repeal applies generally to transfers or exchanges after December 31, 1984, in tax years ending after such date, but such repeal does not apply to any transfer or exchange of property described in a request filed before March 1, 1984, under Code Section 367(a). Section 131(e)(1), (g)(1) and (3), Tax Reform Act of 1984, Public Law 98-369, 98 Stat. 494, 664-665 (July 18, 1984).