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OF THE

UNITED STATES

TAX COURT



October 1, 1978, to March 31, 1979

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Volume VI

U.S. TAX COURT

1979-1978

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JUDGES OF THE UNITED STATES TAX COURT

Chief Judge

C. MOXLEY FEATHERSTON

Judges

ARNOLD RAUM ¹	SAMUEL B. STERRETT
WILLIAM M. DRENNEN	WILLIAM H. QUEALY
IRENE F. SCOTT	WILLIAM A. GOFFE
WILLIAM M. FAY	CYNTHIA HOLCOMB HALL
HOWARD A. DAWSON, JR.	DARRELL D. WILES
THEODORE TANNENWALD, JR.	RICHARD C. WILBUR
CHARLES R. SIMPSON	HERBERT L. CHABOT
LEO H. IRWIN	

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

J. GREGORY BRUCE	BRUCE M. FORRESTER
NORMAN O. TIETJEN	

Special Trial Judges

JAMES M. GUSSIS	EDNA G. PARKER
CHARLES R. JOHNSTON	FRED S. GILBERT, JR.
RANDOLPH F. CALDWELL, JR.	FRANCIS J. CANTREL
LEHMAN C. AARONS	DANIEL J. DINAN ²
MURRAY H. FALK	MARVIN F. PETERSON ³

CHARLES S. CASAZZA, *Clerk*

¹Judge Raum retired October 27, recalled October 28, 1978.

²Appointed February 6, 1979.

³Appointed March 9, 1979.

UNITED STATES TAX COURT

WASHINGTON, D.C.

GENERAL ORDER NO. 7

Entry of Decisions by Commissioners in "Small Tax Cases"

Pursuant to the provisions of Section 7463(g), Internal Revenue Code of 1954, as amended, the Commissioners (*i.e.*, Special Trial Judges) of this Court, in the performance of their duties and the exercise of their function, are hereby authorized to make the decision of this Court in any proceeding pending before them as a "Small Tax Case," as that term is defined in Section 7463(a), Internal Revenue Code of 1954, as amended. In the cases in which summary opinions are issued, this authorization is subject to the provisions of Rule 183, Tax Court Rules of Practice and Procedure.

Implementation of this Order shall be effective immediately upon its issuance.

C. MOXLEY FEATHERSTON

Chief Judge.

Dated: November 9, 1978

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

The Rules of Practice and Procedure of the United States Tax Court are amended by adding Rules 74 and 92 and amending Rules 2, 3, 10, 13, 20, 21, 25, 32, 34, 36, 37, 38, 40, 60, 61, 70, 71, 72, 80, 81, 90, 91, 100, 102, 104, 121, 122, 134, 141, 145, 147, 148, 151, 155, 171, 172, 173, 175, 177, 180, 181, 182, 183, 200, 210, 211, 212, 213, 215, 217, 218, 220, and 230, as hereinafter set forth.

The foregoing amendments and additions to the Rules are effective from May 1, 1979.

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.

TITLE I

SCOPE OF RULES; CONSTRUCTION; EFFECTIVE DATE; DEFINITIONS

RULE 2. EFFECTIVE DATE

(a) **Adoption:** These Rules, as revised by amendments adopted on September 8, 1978, and January 3, 1979 (71 T.C. 1177), will take effect on May 1, 1979.* They govern all proceedings and cases commenced after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the Court their application, in a particular case pending when the Rules take effect, would not be feasible or would work injustice, in which event the former procedure applies.

* * * * *

Note

Par. (a) of this Rule has been revised to provide the effective date of these Rules, as amended.

RULE 3. DEFINITIONS

(c) **Commissioner:** Reference to Commissioner in these Rules means the Commissioner of Internal Revenue.

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

(e) **Time:** As provided in these Rules and in orders and notices

*Titles I through XX and Appendices I through IV in their original form were effective January 1, 1974, 60 T.C. 1069.

Title XXI was added, effective September 2, 1975, 64 T.C. 1180, and was amended, effective July 1, 1977, 68 T.C. 1031.

Title XXII was added, effective August 1, 1977, 68 T.C. 1052.

Various other Rules and certain forms in Appendix I were amended, effective May 1, 1979, 71 T.C. 1177.

of the Court, time means standard time in the location mentioned, except when advanced time is substituted therefor by law. For computation of time, see Rule 25.

(f) Business Hours: As to the Court's business hours, see Rule 10(d).

(g) Filing: For requirements as to filing with the Court, see Rule 22.

(h) Code: Any reference or citation to the Code relates to the Internal Revenue Code of 1954, as amended.

Note

The changes in this Rule result from the new designation of commissioners of the Court as Special Trial Judges. See General Order No. 4, 65 T.C. IV. Par. (c) is amended to delete the material dealing with such commissioners, and par. (d) inserts a new definition to reflect the new nomenclature. The designation of the paragraphs after (d) is changed to follow in sequence.

TITLE II THE COURT

RULE 10. NAME, OFFICE, AND SESSIONS

(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 legal holidays, for the purpose of receiving petitions, pleadings, motions, and other papers. Business hours are from 8:30 a.m. to 5:00 p.m. For legal holidays, see Rule 25(b).

Note

Par. (d) of this Rule substitutes slightly changed business hours.

(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.

Note

Par. (e) of this Rule is a new provision setting forth the exclusive mailing address of the Court.

RULE 13. JURISDICTION

(a) Notice of Deficiency or of Transferee or Fiduciary Liability Required: Except in actions for declaratory judgment or for disclosure (see Titles XXI and XXII), the jurisdiction of the Court depends (1) in a case commenced in the Court by a taxpayer, upon the issuance by the Commissioner of a notice of deficiency in income, gift, or estate tax or in the taxes under Chapter 41, 42, 43, or 44 of the Code (relating to the excise taxes on certain organizations and persons dealing with them); and (2) in a case commenced in the Court by a transferee or fiduciary, upon the issuance by the Commissioner of a notice of liability to the transferee or fiduciary. See Code Sections 6212, 6213, and 6901.

Note

Par. (a) of this Rule has been revised to reflect the Court's new jurisdiction in the areas of declaratory judgments and disclosure, as well as the enlargement of its jurisdiction to embrace certain recently imposed excise taxes.

(b) Declaratory Judgment or Disclosure Actions: For the jurisdictional requirements in an action for declaratory judgment or for disclosure, see Rules 210(c) and 220(c).

(c) Timely Petition Required: In all cases, the jurisdiction of the Court also depends on the timely filing of a petition. See Code Sections 6213, 7502; with respect to declaratory judgment actions, see Code Sections 7428, 7476, 7477, and 7478; and with respect to disclosure actions, see Code Section 6110.

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

Note

Par. (b) of this Rule has been added and par. (c) has been revised to reflect the Court's new jurisdiction in the areas of declaratory judgments and disclosure. Par. (c) is changed to par. (d) to follow in sequence.

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) General: A case is commenced in the Court by filing a petition with the Court 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 a disclosure. See Rule 13, Jurisdiction.

* * * * *

Note

An addition is made to par. (a) of this Rule to include reference to actions for declaratory judgments or for disclosure.

RULE 21. SERVICE OF PAPERS

(b) Manner of Service: (1) *General:* All petitions shall be served by the Clerk. All other papers required to be served on a party shall also be served by the Clerk unless otherwise provided in these Rules or directed by the Court, or unless the original paper is filed with a certificate by a party or his counsel that service of that paper has been made on the party to be served or his counsel. For the form of such certificate of service, see Form 13, Appendix I. Such service may be made by mail directed to the party or his counsel at his last known address. Service by mail is complete upon mailing, and the date of such mailing shall be the date of such service. As an alternative to service by mail, service may be made by delivery to a party, or his counsel or authorized representative in the case of a party other than an individual (see Rule 24(b)). Service shall be made on the

Commissioner by service on, or directed to, his counsel at the office address shown in his answer filed in the case or, if no answer has been filed, on the Chief Counsel, Internal Revenue Service, Washington, D.C. 20224. Service on a person other than a party shall be made in the same manner as service on a party, except as otherwise provided in these Rules or directed by the Court. In cases consolidated pursuant to Rule 141, a party making direct service of a paper shall serve each of the other parties or his counsel, and the original and copies thereof required to be filed with the Court shall each have a certificate of service attached.

Note

Par. (b)(1) of this amended Rule preserves the option of service by the Clerk of the Court of papers other than the petition. The parties are urged and expected, however, to make direct service of such papers to the maximum extent feasible, in the interest of economizing the resources of the Court and the time of its personnel. The business of the Court has grown substantially, and it is not practical for the Court to continue to assume the burden of routine service of papers.

The amendment to the Rule regarding consolidated cases is declaratory of present requirements, and has been added only because of a frequent failure to observe those requirements in consolidated cases.

(2) *Counsel of Record*: Whenever under these Rules service is required or permitted to be made upon a party represented by counsel who has entered an appearance, service shall be made upon such counsel unless service upon the party himself is directed by the Court. Where more than one counsel appear for a party, service will be made only on that counsel whose appearance was first entered of record, unless that counsel designates, in a writing filed with the Court, other counsel of record to receive service, in which event service will be made only on the person so designated.

* * * * *

Note

The language added to the end of par. (b)(2) of this Rule makes no change in substance. It is intended to emphasize that only one counsel for a party will be served.

(4) *Change of Address*: The Court shall be promptly notified, in a writing filed with the Court, of the change of mailing address of any party, his counsel or duly authorized representa-

tive in the case of a party other than an individual. (See Rule 24(a) (2), (3) and (b).)

Note

Par. (b)(4) of this Rule is a new provision which has been added to assure prompt notice to the Court of a change in a mailing address filed with the court.

RULE 25. COMPUTATION OF TIME

(a) **Computation:** In computing any period of time prescribed or allowed by these Rules or by direction of the Court or by any applicable statute which does not provide otherwise, the day of the act, event, or default from which a designated period of time begins to run shall not be included. In the event of service made by mail, a period of time computed with respect to the service shall begin on the day after the date of mailing. Saturdays, Sundays, and all legal holidays shall be counted; provided, however, that, when the period prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays in the District of Columbia shall be excluded in the computation; and, provided further, that the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such a legal holiday. When such legal holiday falls on a Sunday, the next day shall be considered a holiday; and, when such a legal holiday falls on a Saturday, the preceding day shall be considered a holiday. For computation of the period within which to file a petition with the Court to redetermine a deficiency or liability, see Code Section 6213; for the period within which to file a petition in a declaratory judgment action, see Code Sections 7428, 7476, 7477, and 7478; and for the period within which to file a petition in a disclosure action, see Code Section 6110. See also Code Section 7502.

Note

Additions are made at the end of par. (a) of this Rule to call attention to the time periods applicable to the new declaratory judgment and disclosure actions.

(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
 Martin Luther King Day January 15
 Inauguration Day—Every fourth year
 Washington's Birthday—Third Monday in February
 Memorial Day Last Monday in May
 Independence Day July 4
 Labor Day—First Monday in September
 Columbus Day—Second Monday in October
 Veterans Day—November 11
 Thanksgiving Day—Fourth Thursday in November
 Christmas Day—December 25

* * * * *

Note

In par. (b) of this Rule, the date for Veterans Day has been changed in accordance with Pub. L. 94-97, 89 Stat. 479, Sept. 18, 1975. Martin Luther King Day has also been added as a legal holiday in the District of Columbia.

(d) Miscellaneous: With respect to computation of time, see also Rule 3(e) (definition), Rule 10(d) (business hours of the Court), Rule 13(c) (filing of petition), and Rule 134 (continuances).

Note

Par. (d) of this Rule has been amended to change the cross-reference from Rule 3(d) to Rule 3(e), to coordinate with the redesignation of paragraphs of that Rule.

TITLE IV

PLEADINGS

RULE 32. FORM OF PLEADINGS

(d) Other Provisions: With respect to other provisions relating to the form and style of papers filed with the Court, see Rules 23, 210(d), and 220(d).

Note

A reference in par. (d) of this Rule to the new Rules on declaratory judgment and disclosure actions has been added.

RULE 34. PETITION

(a) General: (1) *Deficiency or Liability Actions:* The petition with respect to a notice of deficiency or a notice of liability shall be substantially in accordance with Form 1 shown in Appendix I, and shall comply with the requirements of these Rules relating to pleadings. Ordinarily, a separate petition shall be filed with respect to each notice of deficiency or each notice of liability. However, a single petition may be filed seeking a redetermination with respect to all notices of deficiency or liability directed to one person alone or to him and one or more other persons, except that the Court may require a severance and a separate case to be maintained with respect to one or more of such notices. Where the notice of deficiency or liability is directed to more than one person, each such person desiring to contest it shall file a petition on his own behalf, either separately or jointly with any such other person, and each such person must satisfy all the requirements of this Rule with respect to himself in order for the petition to be treated as filed by or for him. The petition shall be complete, so as to enable ascertainment of the issues intended to be presented. No telegram, cablegram, radiogram, telephone call, or similar communication will be recognized as a petition. Failure of the petition to satisfy applicable requirements may be ground for dismissal of the case. As to the joinder of parties, see Rule 61; and as to the effect of misjoinder of parties, see Rule 62.

(2) *Other Actions:* For the requirements relating to the petition in declaratory judgment actions or in disclosure actions, see Rules 211(b) and 221(b), respectively. As to joinder of parties in such actions, see Rules 215 and 226, respectively.

(b) Content of Petition in Deficiency or Liability Actions: The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):

(1) The petitioner's name and legal residence, in the case of a petitioner other than a corporation; in the case of a corporate petitioner, its name and principal place of business or principal

office or agency; and, in all cases, the petitioner's identification number (e.g., Social Security number or employer identification number) and the office of the Internal Revenue Service with which the tax return for the period in controversy was filed. The legal residence, principal place of business, or principal office or agency shall be stated as of the date of filing the petition. In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition.

(2) The date of the notice of deficiency or liability, or other proper allegations showing jurisdiction in the Court, and the City and State of the office of the Internal Revenue Service which issued the notice.

* * * * *

(7) The signature of each petitioner or his counsel.

* * * * *

(c) Content of Petition in Other Actions: For the requirements as to the content of the petition in other actions, see Rule 211(c), (d), (e), and (f) and Rule 221(c), (d), and (e).

Note

Pars. (a) and (b) of this Rule are changed, and par. (c) is added, to reflect expansion of the Court's jurisdiction into declaratory judgment and disclosure actions, and to make the existing provisions accurate in the new context.

Par. (b)(1) is amended to require inclusion of the petitioner's tax identification number as an item of information which is useful in the processing of the case.

The last sentence of par. (b)(7) is deleted because it is redundant, and not with any intent to make a change in substance.

RULE 36. ANSWER

(d) Declaratory Judgment and Disclosure Actions: For the requirements applicable to the answer in declaratory judgment actions and in disclosure actions, see Rules 213(a) and 223(a), respectively.

Note

Par. (d) of this Rule is added to reflect the Court's new jurisdiction in the declaratory judgment and disclosure areas.

RULE 37. REPLY

(e) Declaratory Judgment and Disclosure Actions: For the requirements applicable to the reply in declaratory judgment actions and in disclosure actions, see Rules 213(b) and 223(b), respectively.

Note

Par. (e) of this Rule is added to reflect the Court's new jurisdiction in the declaratory judgment and disclosure areas.

RULE 38. JOINDER OF ISSUE

A case shall be deemed at issue upon the filing of the answer, unless a reply is required under Rule 37, in which event it shall be deemed at issue upon the filing of a reply or the entry of an order disposing of a motion under Rule 37(c) or the expiration of the period specified in Rule 37(c) in case the Commissioner fails to move. With respect to declaratory judgment actions and disclosure actions, see Rules 214 and 224, respectively.

Note

This Rule is amended by adding the last sentence to reflect the Court's new jurisdiction in the declaratory judgment and disclosure areas.

RULE 40. DEFENSES AND OBJECTIONS MADE BY PLEADING OR MOTION

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion: (a) lack of jurisdiction; and (b) failure to state a claim upon which relief can be granted. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting failure to state a claim on which relief can be granted, matters outside the pleading are to be presented, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 121, and the parties shall be

given an opportunity to present all material made pertinent to a motion under Rule 121.

Note

In the second sentence of this Rule, referring to claims to which a responsive pleading is not required, "file" is substituted for "serve," but no change in the effect of the Rule is intended.

TITLE VI

PARTIES

RULE 60. PROPER PARTIES; CAPACITY

(a) Petitioner: (1) *Deficiency or Liability Actions:* A case shall be brought by and in the name of the person against whom the Commissioner determined the deficiency (in the case of a notice of deficiency) or liability (in the case of a notice of liability), or by and with the full descriptive name of the fiduciary entitled to institute a case on behalf of such person. See Rule 23(a)(1). A case timely brought shall not be dismissed on the ground that it is not properly brought on behalf of a party until a reasonable time has been allowed after objection for ratification by such party of the bringing of the case; and such ratification shall have the same effect as if the case had been properly brought by such party. Where the deficiency or liability is determined against more than one person in the notice by the Commissioner, only such of those persons who shall duly act to bring a case shall be deemed a party or parties.

(2) *Other Actions:* For the person who may bring a case as a petitioner in a declaratory judgment action, see Rules 210(b) (12), 211, and 216. For the person who may bring a case as a petitioner in a disclosure action, see Rules 220(b) (5), 221, and 225.

* * * * *

Note

Par. (a) of this Rule is amended to reflect the Court's new jurisdiction in the declaratory judgment and disclosure areas.

RULE 61. PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder: Any person, to whom a notice of deficiency or notice of liability has been issued, may join with any other such person in filing a petition in the Court which is timely with respect to the notice issued to each joining party. Joinder is permitted only where all or part of each participating party's tax liability arises out of the same transaction, occurrence, or series of transactions and occurrences and, in addition, there is a common question of law or fact relating to those parties. As to the filing of a joint petition, see also Rule 34. With respect to the joinder of parties in declaratory judgment actions and in disclosure actions, see Rules 215 and 226, respectively.

* * * * *

Note

The joinder or addition of a party to a petition after it has been filed has been eliminated from part (a) of this Rule as a permissible procedure. Such "post-petition joinder" creates unnecessary complexity in pleading and procedure. The proper course in such situations is for that party to file a separate petition and then seek consolidation of the cases.

Par. (a) is also amended to add the last sentence, to reflect the Court's new jurisdiction in the declaratory judgment and disclosure areas.

TITLE VII DISCOVERY

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 or things (Rules 72 and 73), or by depositions upon consent of the parties (Rule 74). However, the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before utilizing 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), and shall be completed, 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.

Note

The deadline for completing discovery is moved to a later time under par. (a)(2) of this Rule, being changed from 75 to 45 days prior to the trial session. Par. (a)(1) has been amended to reflect the addition of Rule 74, relating to discovery depositions.

(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, and Title VIII, or in Title X, shall mean any party to any of the consolidated cases involving such common matter.

* * * * *

Note

Par. (a)(3) of this Rule is a new provision, added to Rule 70, relating to discovery in consolidated cases. The intention is to make the discovery techniques under the Rules available to any party against any other party to consolidated cases with respect to matter which is common to such cases. With respect to consolidated cases, see also Rule 92.

(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, and 73, 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.

* * * * *

Note

Par. (d) of this Rule limits assertion of objections at trial with respect to the described discovery matters unless they were timely made under the applicable

discovery procedure. Since the Rules require that such objections be made initially to the other side rather than to the Court, par. (d) is amended accordingly.

RULE 71. INTERROGATORIES

(c) Procedure: Each interrogatory shall be answered separately and fully under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of the answer. The answers are to be signed by the person making them, and the objections shall be signed by the party or his counsel. The party, on whom the interrogatories have been served, shall serve a copy of his answers, and objections if any, upon the propounding party within 45 days after service of the interrogatories upon him. The Court may allow a shorter or longer time. The burden shall be on the party submitting the interrogatories to move for an order with respect to any objection or other failure to answer an interrogatory, and in that connection the moving party shall annex to his motion the interrogatories, with proof of service on the other party, together with the answers and objections if any. Prior to moving for such an order, neither the interrogatories nor the response shall be filed with the Court.

Note

Par. (c) of this Rule is amended to make clear that the interrogatories are not to be filed with the Court when propounded and the response to them is not to be filed with the Court when made. Such filing may be made when a party seeks an order relating to the interrogatories.

(d) Experts: (1) By means of written interrogatories in conformity with this Rule, a party may require any other party (i) to identify each person whom the other party expects to call as an expert witness at the trial of the case, giving his name, address, vocation or occupation, and a statement of his qualifications, and (ii) to state the subject matter and the substance of the facts and opinions to which the expert is expected to testify, and give a summary of the grounds for each such opinion, or, in lieu of such statement to furnish a copy of a report of such expert presenting the foregoing information.

(2) If not furnished earlier, each party who expects to call an expert witness shall furnish 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 reports intended to be used in conjunction with the testimony of the witness at the trial of the case.

* * * * *

Note

Par. (d)(2) of this Rule is a new provision which requires a party to furnish the other parties, and to file with the Court, a copy of all reports of his expert witnesses who will testify at trial. Par. (d)(1) has been amended at the same time to permit such a report to be used in response to interrogatories in lieu of the information specified in par. (d)(1).

RULE 72. PRODUCTION OF DOCUMENTS AND THINGS

(b) Procedure: The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. It shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, the requesting party shall file an appropriate motion with the Court and shall annex thereto his request, with proof of service on the other party, together with the response and objections if any. Prior to moving for such a ruling, neither the request nor the response shall be filed with the Court.

* * * * *

Note

Par. (b) of this Rule is amended to make clear that neither the request to produce nor the response thereto is to be filed when served, but both are to be appended to a motion seeking a ruling relating to the request to produce.

RULE 74. DEPOSITIONS FOR DISCOVERY PURPOSES

(a) Depositions in Pending Cases: 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 either of a party or a non-party 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). Unless the Court shall determine otherwise for good cause shown, the taking of such a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set.

(b) Notice to Non-Party Witness: A notice of deposition shall be served on a non-party witness setting forth the name of the party or parties seeking the deposition, the time and place proposed for the deposition, and the name of the officer before whom the deposition is to be taken. If the deposition is to be taken on written questions, a copy of the questions shall be annexed to the notice. 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.

(c) Objection by Non-Party Witness: Within 15 days after service of the notice of deposition, a non-party 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 non-party witness, and such party shall annex to his motion the notice of deposition with proof of service thereof, together with a copy of the response and objections if any.

(d) Transcript: A transcript shall be made of every deposition taken under this Rule, but the transcript and exhibits introduced in connection with the deposition shall not be filed unless and until ordered or permitted by the Court.

(e) Depositions Upon Written Questions: Depositions under this Rule may be taken upon written questions rather than upon oral examination. 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 are provided in Rule 84(b) (starting with service of the notice of deposition rather than service of an application). With respect to taking the deposition, the procedure of Rule 84(c) shall apply.

(f) Other Applicable Rules: Depositions for discovery purposes shall be governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 81(e) (persons before whom deposition taken), 81(f) (taking of deposition), 81(g) (expenses), 81(h)(1) and (2) (execution and form of deposition), 81(i) (use of deposition), and 85(b), (c), (d), and (e) (objections 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.

Note

Rule 74 is entirely new, permitting discovery depositions within the narrow framework prescribed by the Rule. The basic condition required by the Rule is that all the parties to the case shall consent to the taking of the deposition. By limiting the availability of discovery depositions in this manner, the Court intends to avoid the excessive and abusive use of discovery depositions.

The consent of the parties is to be shown in a stipulation filed with the Court. In the absence of such consent, a discovery deposition is not permitted. Where there is such consent, the deposition of a non-party witness may be taken as well, under the notice procedure provided in par. (b), and subject to the Court's ruling on objections made by such a witness under par. (c).

The Rule does not prescribe the method by which the deposition is to be recorded; but, regardless of that method, a transcript is to be prepared in every case, although the transcript is not to be filed until permitted or ordered by the Court.

Many of the procedural Rules applicable to depositions to preserve evidence, under Title VIII, have been made applicable or adapted to these discovery depositions, as set forth in par. (f).

TITLE VIII

DEPOSITIONS

RULE 80. GENERAL PROVISIONS

(a) **General:** On complying with the applicable requirements, depositions to perpetuate evidence may be taken in a pending case before trial (Rule 81), or in anticipation of commencing a case in this Court (Rule 82), or in connection with the trial (Rule 83). Depositions under this Title may be taken only for the purpose of making testimony or any document or thing available as evidence in the circumstances herein authorized by the applicable Rules. Depositions for discovery purposes may be taken only in accordance with Rule 74.

* * * * *

Note

Par. (a) of this Rule is amended to reflect the addition of Rule 74, relating to discovery depositions, and to emphasize such depositions are available only within the limitations of that Rule.

RULE 81. DEPOSITIONS IN PENDING CASE

(b) **The Application:** * * *

* * * * *

(2) *Filing and Disposition of Application:* The application may be filed with the Court at any time after the case is docketed in the Court, but must be filed at least 45 days prior to the date set for the trial of the case. The deposition must be completed and filed with the Court at least 10 days prior to the trial date. The application and a conformed copy thereof, together with an additional conformed copy for each additional docket number involved, shall be filed with the Clerk of the Court. The applicant shall serve a copy of the application on each of the other parties to the case, as well as on such other persons who are to be examined pursuant to the application, and shall file with the Clerk a certificate showing such service. Such other parties or persons shall file their objections or other response, with the same number of copies and with a certificate of service

thereof on the other parties and such other persons, within 15 days after such service of the application. A hearing on the application will be held only if directed by the Court. Unless the Court shall determine otherwise for good cause shown, an application to take a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set. If the Court approves the taking of a deposition, it will issue an order which will include 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.

* * * * *

Note

Par. (b)(2) of this Rule has been changed to require that the application to take the deposition to preserve evidence is to be served on the required parties by the applicant rather than by the Clerk of the Court. Similarly, the party or person making objections or other response to the application is to make service of those items.

(e) Person Before Whom Deposition Taken: * * *

(2) *Foreign Depositions:* In a foreign country, depositions may be taken (i) before a person authorized to administer oaths or affirmations in the place in which the examination is held, either by the law thereof or by the law of the United States, or (ii) before a person commissioned by the Court, and a person so commissioned shall have the power, by virtue of his commission, to administer any necessary oath and take testimony, or (iii) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained by deposition or in response to a letter rogatory need not be excluded merely for reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions within the United States under these Rules.

* * * * *

Note

Par. (e)(2) of this Rule has been changed to delete the words "on notice" with respect to such depositions taken in a foreign country, since depositions to preserve testimony can be taken only on application to the Court rather than on notice to the parties or other affected persons.

(g) Expenses: (1) *General:* The party taking the deposition shall pay all the expenses, fees, and charges of the witness whose deposition is taken by him, any charges of the officer presiding at or recording the deposition other than for copies of the deposition, and any expenses involved in providing a place for the deposition. The party taking the deposition shall pay for the original of the deposition to be filed in Court; and, upon payment of reasonable charges therefor, the officer shall also furnish a copy of the deposition to any party or the deponent. By stipulation between the parties or on order of the Court, provision may be made for any costs, charges, or expenses relating to the deposition.

* * * * *

Note

Par. (g) (1) of this Rule has been clarified to provide that the party taking the deposition is to pay for and obtain filing of the original of the deposition rather than a copy.

TITLE IX

ADMISSIONS AND STIPULATIONS

RULE 90. REQUESTS FOR ADMISSION

(a) Scope and Time of Requests: A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters which are not privileged and are relevant to the subject matter involved in the pending action, provided such matters are set forth in the request and relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. However, the Court expects

the parties to attempt to attain the objectives of such a request through informal consultation or communication before utilizing the procedures provided in this Rule. Requests for admission must be commenced and completed within the same period provided in Rule 70(a)(2) for commencement and completion of discovery.

* * * * *

Note

There has been incorporated in par. (a) of this Rule the same requirement which appears in Rule 70(a), namely, that parties are to attempt to attain the objective of the Rule informally before resorting to the compulsory procedure under the Rule.

RULE 91. STIPULATIONS FOR TRIAL

(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 his adversary with respect to entering into a stipulation in accordance with this Rule, or he 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 (i) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (ii) 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; (iii) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; (iv) 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; and (v) show proof of service of a copy of the motion on opposing counsel or the other parties.

* * * * *

Note

Par. (f)(1) of this Rule has been amended in three respects with regard to the period governing a motion relating to a delinquent stipulation. The first is only a clarifying linguistic change, substituting "after" for "at," to show that the initial reference is to a period which begins with the issuance of the trial notice. The second change deletes the 75-day reference point as the earliest time for making the motion, and thereby leaves the beginning of that period for that purpose at the point noted above, which is the time of issuance of the trial notice. The third change extends the end of that period from 50 to 45 days prior to the date of the call of the trial calendar.

RULE 92. CASES CONSOLIDATED FOR TRIAL

With respect to a common matter in cases consolidated for trial, the reference to a "party" in this Title IX or in Title X shall mean any party to any of the consolidated cases involving such common matter.

Note

This is a new Rule, added to make clear the application to consolidated cases of requests for admissions and the related provisions of Title X. With respect to consolidated cases, see also Rule 70(a)(3).

TITLE X

GENERAL PROVISIONS GOVERNING DISCOVERY, DEPOSITIONS, AND REQUESTS FOR ADMISSION

RULE 100. APPLICABILITY

The Rules in this Title apply according to their terms to written interrogatories (Rule 71), production of documents or things (Rule 72), examination by transferees (Rule 73), depositions (Rules 74, 81, 82, 83, and 84), and requests for admissions (Rule 90). Such procedures may be used in anticipation of the stipulation of facts required by Rule 91, but the existence of such procedures or their use does not excuse failure to comply with the requirements of that Rule. See Rule 91(a)(2).

Note

This Rule has been amended to include a reference to new Rule 74 (discovery depositions).

RULE 102. SUPPLEMENTATION OF RESPONSES

A party who has responded to a request for discovery (under Rules 71, 72, 73, or 74) or to a request for admission (under Rule 90) in a manner which was complete when made, is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any matter directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony. In respect of the requirement to furnish reports of expert witnesses, see Rule 71(d)(2).

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which he knows that (A) the response was incorrect when made, or (B) the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Note

This Rule has been amended to extend it to discovery depositions under new Rule 74, and to add a cross-reference to the new provisions of Rule 71(d)(2) relating to reports of expert witnesses.

RULE 104. ENFORCEMENT ACTION AND SANCTIONS

(a) Failure To Attend Deposition or To Answer Interrogatories or Respond to Request for Inspection or Production: If a

party or an officer, director or managing agent of a party or a person designated in accordance with Rule 74(b) or 81(c) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition pursuant to Rule 74, 81, 82, 83, or 84, or (2) to serve answers or objections to interrogatories submitted under Rule 71, after proper service thereof, or (3) to serve a written response to a request for production or inspection submitted under Rule 72 or 73 after proper service of the request, the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraph (b) or (c) of this Rule. If any person, after being served with a subpoena or having waived such service, willfully fails to appear before the officer who is to take his deposition or refuses to be sworn, or if any person willfully fails to obey an order requiring him to answer designated interrogatories or questions, such failure may be considered contempt of court. The failure to act described in this paragraph (a) may not be excused on the ground that the deposition sought, or the interrogatory submitted, or the production or inspection sought, is objectionable, unless the party failing to act has theretofore raised the objection, or has applied for a protective order under Rule 103, with respect thereto at the proper time and in the proper manner, and the Court has either sustained or granted or not yet ruled on the objection or the application for the order.

(b) Failure To Answer: If a person fails to answer a question or interrogatory propounded or submitted in accordance with Rule 71, 74, 81, 82, 83, or 84, or fails to respond to a request to produce or inspect or fails to produce or permit the inspection in accordance with Rule 72 or 73, or fails to make a designation in accordance with Rule 74(b) or 81(c), the aggrieved party may move the Court for an order compelling an answer, response, or compliance with the request, as the case may be. When taking a deposition on oral examination, the examination may be completed on other matters or the examination adjourned, as the proponent of the question may prefer, before he applies for such order.

(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) or 81(c) fails to obey an order made by the Court with respect to the provisions of Rule 71, 72, 73, 74, 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) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the case in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the case or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of the Court the failure to obey any such order.

(d) Evasive or Incomplete Answer or Response: For purposes of this Rule and Rules 71, 72, 73, 74, 81, 82, 83, 84, and 90, an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

Note

This Rule has been amended to include references to new Rule 74 (discovery depositions).

TITLE XII

DECISION WITHOUT TRIAL

RULE 121. SUMMARY JUDGMENT

(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 not later than 10 days prior to the date set for hearing. 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.

* * * * *

Note

In the second sentence of part (b) of this Rule, "An" is substituted for "Any" to stress that the Court expects, where a motion for summary judgment is filed, that an opposing response will be filed by all parties who do not agree to the relief sought by the motion.

RULE 122. SUBMISSION WITHOUT TRIAL

(a) General: Any case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way), may be submitted at any time by notice of the parties filed with the Court. The parties need not wait for the case to be calendared for trial and need not appear in Court. The Chief Judge will assign such a case to a Judge or Special Trial Judge, who will fix a time for filing briefs or for oral argument.

* * * * *

Note

Par. (a) of this Rule is amended to refer to a "Judge or Special Trial Judge" instead of referring to a "Division."

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. Court action, on cases or matters set for hearing or trial or other consideration, will not be delayed by a motion for continuance

unless it is timely, sets forth good and sufficient cause, and complies with all applicable Rules. Conflicting engagements of counsel or employment of new counsel will not be regarded as ground for continuance unless the motion for continuance, in addition to otherwise satisfying this Rule, is filed promptly after notice is given of the hearing or trial or other scheduled matter, or unless extenuating circumstances for later filing are shown which the Court deems adequate. 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 the extensions of time, see Rule 25(c).

Note

This Rule is amended, first, to require the party seeking a continuance to inform the Court, in the manner provided by the Rule, of his adversary's position on the motion. The burden is on the moving party to obtain that information where it is not otherwise on file.

The second change, made at the end of the Rule, is intended to deter delinquent motions for continuance and, in particular, to deal with a condition which penalizes the diligent party who is ready for trial as required by the Court. In such instances, a party may be prepared for trial and may find himself wasting time and money because his adversary obtains a continuance at the last moment for reasons which existed for some time and on which he could have moved sooner. Such motions ordinarily will be considered dilatory and treated accordingly.

TITLE XIV

TRIALS

RULE 141. CONSOLIDATION; SEPARATE TRIALS

(a) Consolidation: When cases involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue; it may order all the cases consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay or duplication. Similar action may be taken where cases involve different tax liabilities of the same parties, notwithstanding the absence of a common issue. Unless otherwise

permitted by the Court for good cause shown, a motion to consolidate cases may be filed only, after all the cases sought to be consolidated have become at issue. As to joinder of parties, see Rule 61(a).

* * * * *

Note

Par. (a) of this Rule is amended to require the permission of the Court, on a showing of good cause, if cases are to be consolidated before they are all at issue. Prior to that stage of the case, it is generally wasteful and cumbersome to consolidate cases, and it is even premature with respect to cases that are terminated by settlement or otherwise.

RULE 145. EXCLUSION OF PROPOSED WITNESSES

(a) Exclusion: At the request of a party, the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses and it may make the order of its own motion. This Rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

* * * * *

Note

Par. (a) of this Rule has been deleted and replaced, so that treatment of witnesses will be consistent with Rule 615 of the Federal Rules of Evidence.

RULE 147. SUBPOENAS

(d) Subpoena for Taking Depositions: (1) *Issuance and Response:* The order of the Court approving the taking of a deposition pursuant to Rule 81(b)(2), or the executed stipulation pursuant to Rule 81(d), or the service of the notice of deposition pursuant to Rule 74(b), constitutes authorization for issuance of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things, which come within the

scope of the order or stipulation pursuant to which the deposition is taken. Within 10 days after service of the subpoena or such earlier time designated therein for compliance, the person to whom the subpoena is directed may serve upon the party on whose behalf the subpoena has been issued written objections to compliance with the subpoena in any or all respects. Such objections should not include objections made, or which might have been made, to the application to take the deposition pursuant to Rule 81(b)(2) or to the notice of deposition under Rule 74(c). If an objection is made, the party serving the subpoena shall not be entitled to compliance therewith to the extent of such objection, except as the Court may order otherwise upon application to it. Such application for an order may be made, with notice to the other party and to any other objecting persons, at any time before or during the taking of the deposition, subject to the time requirements of Rule 70(a)(2) or Rule 81(b)(2). As to availability of protective orders, see Rule 103; and, as to enforcement of such subpoenas, see Rule 104.

(2) *Place of Examination:* The place designated in the subpoena for examination of the deponent shall be the place specified in the notice of deposition served pursuant to Rule 74(b) or in the order of the Court referred to in Rule 81(b)(2) or in the executed stipulation referred to in Rule 81(d). With respect to a deposition to be taken in a foreign country, see Rules 74(c), 81(e)(2), and 84(a).

* * * * *

Note

Par. (d) of this Rule has been amended to provide for issuance of a subpoena to enforce attendance of a nonparty witness at a discovery deposition, upon the service of a notice of deposition, under new Rule 74. Related references to Rule 74 and to the notice of deposition are incorporated in the Rule.

There has also been inserted in par. (d)(1) a reference to the period for discovery provided in Rule 70(a)(2), within which the application for the subpoena must be made with respect to the nonparty witness.

RULE 148. FEES AND MILEAGE

(a) **Amount:** Any witness summoned to a hearing or trial, or whose deposition is taken, shall receive the same fees and mileage as witnesses in the United States District Courts.

* * * * *

Note

Par. (a) of this Rule has been modified by deleting the reference therein to the table of fees and mileage payable to witnesses, as provided by 28 U.S.C. sec. 1821, contained in par. (b) of Appendix III. Such deletion has been necessitated by the enactment of Pub. L. 95-535 (Oct. 27, 1978), which amended 28 U.S.C. sec. 1821. As so amended, that statute no longer provides specific amounts for mileage and per diem in lieu of subsistence. Those amounts are now to be geared to the amounts prescribed from time to time by the Administrator of General Services, pursuant to 5 U.S.C. sec. 5704, with respect to official travel of employees of the Federal Government. Par. (b) of Appendix III will concomitantly be deleted.

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 60 days after the conclusion of the trial, and answering briefs 30 days thereafter.

(2) *Seriatim Briefs:* Opening brief within 60 days after the conclusion of the trial, answering brief within 30 days thereafter, and reply brief within 20 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

The time within which to file opening briefs, whether they are simultaneous or seriatim, has been extended in par. (b) of this Rule from 45 days to 60 days in order to take into account the time for obtaining transcripts. The filing times for subsequent briefs have not been changed.

A second amendment deletes the requirement that a motion to extend any of those times has to be filed at least 5 days prior to the due date. However, such a motion must be filed, and the other parties have to be notified of the

motion, prior to the due date. The motion will not be timely if it is filed on the due date.

TITLE XV

DECISION*

RULE 155. COMPUTATIONS BY PARTIES FOR ENTRY OF DECISION

(b) Procedure in Absence of Agreement: If, however, the parties are not in agreement as to the amount of the deficiency, liability, or overpayment to be entered as the decision in accordance with the findings and conclusions of the Court, either of them may file with the Court a computation of the deficiency, liability, or overpayment believed by him to be in accordance with the Court's findings and conclusions. The Clerk will serve upon the opposite party a notice of such filing accompanied by a copy of such computation. If the opposite party fails to file objection, accompanied or preceded by an alternative computation, on or before a date specified in the Clerk's notice, 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, 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 deficiency, liability, or overpayment and will enter its decision accordingly.

* * * * *

Note

Par. (b) of this Rule has been changed in order to eliminate the requirement that all unagreed computations be calendared for argument. Experience has shown that the calendaring of all unagreed computations has not resulted in an appearance by the opposite party in the overwhelming majority of instances of such calendaring. The changes will give the Court more flexibility in handling

*For statutory provisions relating to entry, date, and finality of decision, see Code Sections 7459, 7463(b), and 7481.

these matters by scheduling for hearing only those computations which appear to involve a genuine dispute.

TITLE XVII

SMALL TAX CASES*

RULE 171. SMALL TAX CASE DEFINED

The term "small tax case" means a case in which:

(a) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds—

- (1) \$5,000 for any one taxable year in the case of income taxes.
- (2) \$5,000 in the case of estate taxes, or
- (3) \$5,000 for any one calendar year in the case of gift taxes;

* * * * *

Note

Par. (a) of this Rule has been amended to reflect the increased amount of deficiencies in dispute in cases eligible for the small tax case procedure. See section 502(a)(1) of the Revenue Act of 1978, Pub. L. 95-600 (Nov. 6, 1978).

RULE 172. ELECTION OF SMALL TAX CASE PROCEDURE

With respect to classification of a case as a small tax case under Code Section 7463, the following shall apply:

(a) A petitioner who wishes to have the proceedings in his case conducted under Code Section 7463 may so request at the time he files his petition. See Rule 175.

(b) If the Commissioner opposes the petitioner's request to have the proceedings conducted under Code Section 7463, he shall within 30 days after service of the petition, file a motion in which he shall set forth the reasons for his opposition.

*The maximum amount of the deficiency in dispute, for a taxable or calendar year, has been increased from \$1,500 to \$5,000 effective June 1, 1979. See Section 502(d)(1) of the Revenue Act of 1978, Public Law 95-600 (Nov. 6, 1978).

* * * * *

Note

Par. (b) of this Rule is amended to reflect the fact that an answer may not be required of the Commissioner under the new provision of amended Rule 175(b). The period for the Commissioner's opposition to small tax status is therefore made to run from the service of the petition instead of being tied into the filing of his answer.

RULE 173. DISCONTINUANCE OF PROCEEDINGS

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section 7463, and that the case be tried under the Rules of Practice other than the Small Tax Case Rules, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed \$5,000 and (2) the Court finds that justice requires the discontinuance of the proceedings under Code Section 7463, taking into consideration the convenience and expenses for both parties that would result from the order.

Note

See Note to Rule 171(a).

RULE 175. PLEADINGS

(a) Petition: (1) *Form and Content:* The petition in a small tax case shall be substantially in accordance with Form 2 shown in Appendix I, or shall, in the alternative, comply with the requirements of Rule 34(b), and contain additionally (A) the location of the office of the Internal Revenue Service which issued the deficiency notice, (B) the taxpayer identification number (e.g., social security number) of each petitioner, and (C) a request that the proceedings be conducted under Code Section 7463.

* * * * *

Note

Par. (a)(1) of this Rule is amended to make clear, in referring to the Internal Revenue Service Office issuing the deficiency notice, that the location of the Office is to be stated.

(b) Answer: No answer is required to be filed in a small tax case, except where there is an issue on which the Commissioner bears the burden of proof or where the Court otherwise directs. Where an answer is filed, the provisions of Rule 36 shall apply. In a case where no answer is filed, the allegations of error and facts relating thereto set forth in the petition shall be deemed denied.

* * * * *

Note

Par. (b) of this Rule is amended to change the existing requirement that the Commissioner file an answer to the petition in all small tax cases. Under the new provision, the general rule is that the Commissioner need not file an answer in such cases, unless there is matter on which he has the burden of proof, as, for example, where he relies on an affirmative defense or the determination of fraud on the part of the petitioner. However, even though not required to do so, the Commissioner may file an answer if he so desires.

The experience of the Court under its preexisting procedure has shown that the filing of answers in all small tax cases has not been helpful in the disposition of such cases and has resulted generally in merely calling for unnecessary additional paperwork, particularly in the light of the fact that most of these cases are actually disposed of without trial. Furthermore, the Commissioner has assured the Court that, in the relatively small number of cases expected to be tried, he will file with the Court and serve upon the petitioner an informative statement amplifying the matters in dispute that are to be adjudicated.

RULE 177. TRIAL

(a) Place of Trial: At the time of filing the petition, the petitioner may, in accordance with Form 4 in Appendix I or by other separate writing, request the place where he would prefer the trial to be held. If the petitioner has not filed such a request, the Commissioner shall, within 30 days after the date of service of the petition, file a request showing the place of trial preferred by him. The Court will make every effort to designate the place of trial at the location most convenient to that requested where suitable facilities are available.

* * * * *

Note

The time at which the Commissioner is to file his request for the place of trial is changed in par. (a) of this Rule. Previously the request was to be made with the Commissioner's answer, but an answer may no longer be necessary under amended Rule 175(b), and the Commissioner's time for such a request now is 30 days from the service of the petition.

TITLE XVIII

SPECIAL TRIAL JUDGES

RULE 180. ASSIGNMENT

The Chief Judge may from time to time designate a Special Trial Judge (see Rule 3(d)) to deal with any matter pending before the Court in accordance with these Rules and such directions as may be prescribed by the Chief Judge.

Note

This Rule has been amended to reflect the changed designation of commissioners as Special Trial Judges.

RULE 181. POWERS AND DUTIES

Subject to the specifications and limitations in the order designating a Special Trial Judge and in accordance with the applicable provisions of these Rules, the Special Trial Judge has and shall exercise the power to regulate all proceedings in any matter before him, including the conduct of trials, pretrial conferences, and hearings on motions, and to do all acts and take all measures necessary or proper for the efficient performance of his duties. He may require the production before him of evidence upon all matters embraced within his assignment, including the production of all books, papers, vouchers, documents, and writings applicable thereto, and he has the authority to put witnesses on oath and to examine them. He may rule upon the admissibility of evidence, in accordance with provisions of Code Sections 7453 and 7463, and may exercise such further and

incidental authority, including ordering the issuance of subpoenas, as may be necessary for the conduct of trials or other proceedings.

Note

This Rule has been amended to reflect the changed designation of commissioners as Special Trial Judges.

RULE 182. POST-TRIAL PROCEDURE

Except in small tax cases (see Rule 183) or as otherwise provided, the following procedure shall be observed in cases tried before a Special Trial Judge:

(a) Proposed Findings and Briefs: Each party shall file his initial brief, including his proposed findings of fact and legal argument, within 60 days after the date on which the trial is concluded, unless otherwise directed. A party thereafter desiring to file a responsive brief shall do so, including any objections to any proposed findings of fact, within 30 days after the expiration of the period for filing the initial brief, unless otherwise directed. With respect to the content, form, number of copies, and other applicable requirements, the proposed findings of fact and the briefs shall conform to the provisions of Rule 151.

(b) Special Trial Judge's Report: After all the briefs have been filed by all the parties or the time for doing so has expired, the Special Trial Judge shall file his report, including his findings of fact and opinion. A copy of the report shall forthwith be served on each party.

(c) Exceptions: Within 45 days after service of the Special Trial Judge's report, a party may file with the Court a brief setting forth any exceptions of law or of fact to that report. Within 30 days of service upon him of such brief, any other party may file a brief in response thereto. In any brief filed pursuant to this paragraph, a party may rely in whole or in part upon the briefs previously submitted by him to the Special Trial Judge under paragraph (a) of this Rule 182. Unless a party shall have proposed a particular finding of fact, or unless he shall have objected to another party's proposed finding of fact, the Court may refuse to consider his exception to the Special Trial Judge's report for failure to make such a finding desired by him or for

inclusion of such finding proposed by the other party, as the case may be.

(d) Oral Argument and Decision: The Division to which the case is assigned may, upon motion of any party or on its own motion, direct oral argument. The Division *inter alia* may adopt the Special Trial Judge's report or may modify it or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions. Due regard shall be given to the circumstance that the Special Trial Judge had the opportunity to evaluate the credibility of witnesses; and the findings of fact recommended by the Special Trial Judge shall be presumed to be correct.

Note

This Rule has been amended to reflect the changed designation of commissioners as Special Trial Judges.

RULE 183. SMALL TAX CASES

Rule 182 shall not apply to small tax cases, as defined in Rule 171. A Special Trial Judge who conducts the trial of such a small tax case shall, as soon after such trial as shall be practicable, prepare a summary of the facts and reasons for his proposed disposition of the case, which then shall be submitted promptly to the Chief Judge or to a Judge or Division of the Court, if the Chief Judge shall so direct.

Note

This Rule has been amended to reflect the changed designation of commissioners as Special Trial Judges.

TITLE XX

PRACTICE BEFORE THE COURT

RULE 200. ADMISSION TO PRACTICE

(a) Qualifications: (1) *General:* An applicant for admission to practice before the Court must establish to the satisfaction of the Court that he is of good moral character and repute and is

possessed of the requisite qualifications to represent others in the preparation and trial of cases. In addition, the applicant must satisfy the further requirements of this Rule 200.

* * * * *

Note

Par. (a)(1) of this Rule is amended to delete United States citizenship as a condition for admission to practice before the Court. The change is made as a result of *In Re Griffiths*, 413 U.S. 717 (1973), in which a similar condition for admission to a State Bar was held to be unconstitutional.

(d) Written Examinations: Written examinations, for applicants other than attorneys at law, will be held no less often than every two years. By public announcement at least six months prior to the date of the examination, the Court will announce the time and place of such examination. The Court will notify each applicant, whose application is in order, of the time and place at which he is to present himself for examination, and the applicant must present that notice to the examiner as his authority for taking such an examination.

* * * * *

Note

Par. (d) of this Rule has been amended to provide that examinations for admission to practice by applicants other than attorneys at law will be held no less often than every two years, rather than annually as has previously been done.

TITLE XXI

DECLARATORY JUDGMENTS

RULE 210. GENERAL

(a) Applicability: The Rules of this Title XXI set forth the special provisions which apply to declaratory judgment actions, relating to the qualification of retirement plans, exchanges described in Code Section 367(a)(1), the status of certain governmental obligations, and the initial or continuing qualification of certain exempt organizations or the initial or continuing classification of certain private foundations. Except as otherwise

provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for declaratory judgment.

(b) Definitions: * * *

* * * * *

(3) "Governmental obligation" means an obligation the status of which under Code Section 103(a) is in issue.

* * * * *

(8) A "determination" means—

* * * * *

(iii) A determination as to whether prospective governmental obligations are described in Code Section 103(a); or

* * * * *

(10) "Action for declaratory judgment" is either a retirement plan action, a Section 367 action, a governmental obligation action, or an exempt organization action, as follows:

* * * * *

(iii) A "governmental obligation action" means an action for declaratory judgment provided for in Code Section 7478 with respect to the status of certain prospective governmental obligations.

* * * * *

(12) "Party" includes a petitioner and the respondent Commissioner of Internal Revenue. In a retirement plan action, an intervenor is also a party. In an exempt organization action, only the organization may be a petitioner; and in a governmental obligation action, only the prospective issuer may be a petitioner.

(13) "Declaratory judgment" is the decision of the Court in a retirement plan action, a Section 367 action, a governmental obligation action, or an exempt organization action.

(c) Jurisdictional Requirements: The Court does not have jurisdiction of an action for declaratory judgment under this Title unless the following conditions are satisfied:

(1) The Commissioner has issued a notice of determination, or has been requested to make a determination and failed to do so for a period of at least 270 days (180 days in the case of a request for determination as to status of prospective governmental obligations) after the request for such determination was made. In the case of a retirement plan action, the Court has jurisdiction over an action brought because of the Commissioner's failure to

make a determination with respect to the continuing qualification of the plan only if the controversy arises as a result of an amendment or termination of such plan. See Code Section 7476(a)(2)(B).

(2) There is an actual controversy. In that connection—

* * * * *

(iii) In the case of a governmental obligation action, the prospective issuer has, prior to the commencement of the action, adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations.

* * * * *

(3) A petition for declaratory judgment is filed with the Court within the period specified by Code Section 7476(b)(5) with respect to a retirement plan action, or the period specified by Code Section 7477(b)(4) with respect to a Section 367 action, or the period specified in Code Section 7478(b)(3) with respect to a governmental obligation action, or the period specified by Code Section 7428(b)(3) with respect to an exempt organization action. See Code Section 7502.

* * * * *

Note

Amendments have been made to pars. (a), (b), and (c) to reflect the Court's jurisdiction under Code Section 7478 (see section 336(a) of the Revenue Act of 1978, Pub. L. 95-600 (Nov. 6, 1978)) to grant declaratory judgments with respect to the status of certain prospective governmental obligations. In addition, the last sentence of par. (a), prescribing the effective date, has been eliminated to coordinate with the change in Rule 2(a).

RULE 211. COMMENCEMENT OF ACTION FOR DECLARATORY JUDGMENT

(b) Contents of Petition: Every petition shall be entitled "Petition for Declaratory Judgment (Retirement Plan)" or "Petition for Declaratory Judgment (Section 367 Exchange)" or "Petition for Declaratory Judgment (Governmental Obligation)" or "Petition for Declaratory Judgment (Exempt Organization)." Each such petition shall contain the allegations described in paragraph (c), (d), (e), or (f) of this Rule.

(c) Petition in Retirement Plan Action: The petition in a retirement plan action shall contain:

(1) *All Petitions:* All petitions in retirement plan actions shall contain the following:

(i) The petitioner's name and address, and the name and principal place of business, or principal office or agency of the employer at the time the petition is filed; and

(ii) The office of the Internal Revenue Service with which the request for determination, if any, was filed and the date of such filing.

(2) *Employer Petitions:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employer shall also contain:

(i) A separate numbered paragraph stating that he has complied with the requirements of the regulations issued under Code Section 7476(b)(2) with respect to notice to other interested parties;

(ii) A separate numbered paragraph stating that he has exhausted his administrative remedies within the Internal Revenue Service;

(iii) A separate numbered paragraph stating that the retirement plan has been put into effect in accordance with Code Section 7476(b)(4);

(iv) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify

(A) the date of the notice of his determination,

(B) a copy of such notice of determination,

(C) in a separate numbered paragraph, a clear and concise assignment of each error, set forth in a separate lettered subparagraph, which he alleges to have been committed by the Commissioner in the determination, and

(D) a statement of facts upon which petitioner relies to support each such claim;

(v) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, separate numbered paragraphs stating that

(A) the requested determination is of the type described in Code Section 7476(a)(1) or (2),

(B) no determination has been made by the Commissioner in response thereto, and

(C) the retirement plan does qualify;

(vi) An appropriate prayer for relief; and

(vii) The signature of each petitioner or his counsel.

(3) *Petitions Filed by Plan Administrators:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by a plan administrator shall contain:

(i) The name, address, and principal place of business, or principal office or agency, of each employer who is required to contribute under the plan; and

(ii) In separate numbered paragraphs, the statements or information required in the case of employer petitions in paragraph (c)(2) of this Rule.

(4) *Employee Petitions:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employee shall also contain:

(i) A separate numbered paragraph setting forth a statement that he has qualified as an interested party in accordance with the regulations issued under Code Section 7476(b)(1);

(ii) In separate numbered paragraphs, the statements described in subparagraph (2)(ii) and (iii) of paragraph (c) of this Rule;

(iii) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify, a copy of such notice of determination, and in separate numbered paragraphs, the statements described in subparagraph (2)(iv)(A), (C), and (D) of paragraph (c) of this Rule;

(iv) Where the Commissioner has issued a notice of determination that a retirement plan does qualify, a copy of such notice of determination, and in separate numbered paragraphs, the date of such notice of determination, and a clear and concise statement of each ground, set forth in a separate lettered subparagraph, upon which he relies to assert that such plan does not qualify and the facts to support each ground;

(v) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, a statement, in a separate numbered paragraph, as to whether the retirement plan qualifies

(A) if he alleges that the retirement plan does qualify, such paragraph shall also include the statements described in paragraph (c)(2)(v) of this Rule, or

(B) if he alleges that the retirement plan does not qualify, in addition to the statements described in paragraph (c)(2)(v) of this Rule, such paragraph shall also include a clear and concise statement of each ground, in a separate lettered subparagraph,

upon which he relies to support his allegation that such plan does not qualify and the facts upon which he relies to support each ground; and

(vi) In separate numbered paragraphs, the statements described in paragraph (c)(2)(vi) and (vii) of this Rule.

(5) *Petitions Filed by the Pension Benefit Guaranty Corporation*: In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by the Pension Benefit Guaranty Corporation shall also contain in separate numbered paragraphs the statements described in paragraph (c)(4)(ii), (iii), (iv), (v), and (vi) of this Rule.

(d) Petition in Section 367 Action: The petition in a Section 367 action shall contain:

(1) The petitioner's name and legal residence, in the case of a petitioner other than a corporation; in the case of a corporate petitioner, its name and principal place of business or principal office or agency;

(2) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing;

(3) A statement that the petitioner is a transferor or transferee of stock, securities, or property transferred in an exchange described in Code Section 367(a)(1);

(4) Separate numbered paragraphs stating (i) that the petitioner has exhausted his administrative remedies within the Internal Revenue Service;

(ii) that the exchange has begun in accordance with Code Section 7477(b)(3); and

(iii) the date on which the exchange began;

(5) Where the Commissioner has issued a determination

(i) the date of the notice of determination;

(ii) a copy of such notice of determination;

(iii) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination was not reasonable; and

(iv) a statement of facts upon which petitioner relies to support each of such reasons;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating

(i) that no such determination has been made by the Commissioner;

(ii) that the exchange is not in pursuance of a plan having as

one of its principal purposes the avoidance of Federal income taxes; and

(iii) the terms and conditions, if any, which he deems reasonable;

(7) An appropriate prayer for relief; and

(8) The signature of each petitioner or his counsel.

(e) Petition in a Governmental Obligation Action: The petition in a governmental obligation action shall contain:

(1) The petitioner's name and address;

(2) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing;

(3) A statement that the petitioner is a prospective issuer of governmental obligations described in Code Section 103(a) which has adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations;

(4) A statement that the petitioner has exhausted its administrative remedies;

(5) Where the Commissioner has issued a determination—

(i) the date of the notice of determination;

(ii) a copy of such notice of determination;

(iii) in a separate numbered paragraph, a clear and concise statement of each error, in separate lettered subparagraphs, which the petitioner alleges to have been committed by the Commissioner in the determination; and

(iv) a statement of facts upon which the petitioner relies to support each such claim;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating—

(i) that no such determination has been made by the Commissioner; and

(ii) that the prospective governmental obligations are described in Code Section 103(a);

(7) An appropriate prayer for relief; and

(8) The signature of the petitioner or its counsel.

(f) Petition in Exempt Organization Action: The petition in an exempt organization action shall contain:

(1) The petitioner's name and principal place of business or principal office or agency;

(2) The date upon which the request for determination, if any, was mailed to the Internal Revenue Service, and the office to which it was mailed;

(3) A statement that the petitioner is an exempt organization or a private foundation or a private operating foundation, as the case may be, the qualification or classification of which is at issue;

(4) A statement that the petitioner has exhausted its administrative remedies within the Internal Revenue Service;

(5) Where the Commissioner has issued a determination

(i) the date of the notice of determination;

(ii) a copy of such notice of determination;

(iii) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination is erroneous; and

(iv) a statement of facts upon which petitioner relies to support each of such reasons;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating that -

(i) no such determination has been made by the Commissioner; and

(ii) the organization is qualified under Code Section 501(c)(3) or 170(c)(2), or should be classified with respect to Code Section 509(a) or 4942(j)(3) in the manner set forth by the petitioner in its request for determination;

(7) An appropriate prayer for relief; and

(8) The signature of the petitioner or its counsel.

(g) Service: For the provisions relating to service of the petition and other papers, see Rule 21.

Note

Par. (c) of this Rule has been amended to remove the distinction between retirement plan actions in par. (c)(1)(ii) and exempt organization actions in par. (c)(2), relating to jurisdiction in the case of revocations of prior favorable rulings. The amendment conforms the Rules to the statutory changes made by section 701(dd) of the Revenue Act of 1978, in effect, making inapplicable *Sheppard & Myers, Inc. v. Commissioner*, 67 T.C. 26 (1976). See S. Rept. 95-745 (to accompany H.R. 6715, which became title VII of the Revenue Act of 1978), pp. 65-66

Pars. (e) and (f) have been redesignated pars. (f) and (g) and a new paragraph (e) has been added to describe the contents of a petition in an action for declaratory judgment with respect to governmental obligations. In addition, a clerical amendment has been made to par. (b) to reflect this new jurisdiction.

RULE 212. REQUEST FOR PLACE FOR SUBMISSION TO THE COURT

At the time of filing a petition for a declaratory judgment, a request for place for submission to the Court shall be filed in accordance with Rule 140, and the provisions of that Rule shall be applied in designating such place. In addition to including in the request the information specified in Rule 140, the petitioner shall also include the date on which he expects the action will be ready for submission to the Court and his estimate of the time required therefor. In cases involving a revocation or involving the status of a governmental obligation, the Commissioner shall, at the time of filing his answer, also set forth in a separate statement the date on which he expects the action will be ready for submission to the Court and an estimate of the time required therefor. After the action becomes at issue (see Rule 214), it will ordinarily, without any further request by the Court for information as to readiness for submission, be placed on a calendar for submission to the Court. See Rule 217(b).

Note

This Rule has been amended to afford the Commissioner, at the time he files his answer in an action involving the status of a governmental obligation, the opportunity to indicate to the Court his views as to the need for augmentation of the administrative record. The petitioner should indicate to the Court its views as to such augmentation at the time it files its request for place for submission to the Court. Thereafter, the parties may invoke such pretrial procedures as may be appropriate to the end that a governmental obligation action will be put in the proper posture for submission, with or without trial. See Rule 217(a) and Note thereto in respect of augmentation of the administrative record in governmental obligation actions.

RULE 213. OTHER PLEADINGS

(a) Answer; * * *

(2) *Form and Content:* The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation of the petition. If the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation as to jurisdictional facts or as to inferences or conclusions that may be drawn from materials in

the administrative record or as to facts involved in a revocation, he may so state, and such statement shall have the effect of a denial. Facts other than jurisdictional facts, and other than facts involved in a revocation or in a governmental obligation action, may be admitted only for purposes of the pending action for declaratory judgment. If the Commissioner intends to qualify or to deny only a part of an allegation, he shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

* * * * *

Note

Par. (a)(2) of this Rule has been amended to preclude limiting the effect of admissions in the Commissioner's answer in a governmental obligation action, to the pending action only. Such amendment has been occasioned by the need for finality of the declaratory judgment in a governmental obligation action, and in that respect a governmental obligation action is similar to a revocation.

(b) Reply: Each petitioner shall file a reply in every action for declaratory judgment.

(1) *Time to Reply or Move:* * * *

(2) *Form and Content:* In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply shall contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statement shall have the effect of a denial. If the petitioner denies the affirmative allegation in the answer that a complete index of the contents of the administrative record is attached to the answer, he shall specify the reasons for such denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects, the requirements of pleading applicable to the answer provided in paragraph (a)(2) of this Rule shall apply to the reply. The paragraphs of the reply shall

be designated to correspond to those of the answer to which they relate.

* * * * *

Note

The requirement has been inserted, in par. (b)(2) of this Rule, that the reasons be stated for denying that the Commissioner has appended to his answer a complete index of the contents to the administrative record.

RULE 215. JOINDER OF PARTIES

(c) Joinder of Parties in Exempt Organization and in Governmental Obligation Actions: Joinder of parties is not permitted in an exempt organization action or in a governmental obligation action. See Code Sections 7428(b)(1) and 7478(b)(1). With respect to consolidation of actions, see Rule 141.

Note

Par. (c) of this Rule has been amended to state that no joinder of parties is permitted in an action for declaratory judgment with respect to governmental obligations.

RULE 217. DISPOSITION OF ACTIONS FOR DECLARATORY JUDGMENT

(a) General: Disposition of an action for declaratory judgment, which does not involve either a revocation or the status of a governmental obligation, will ordinarily be made on the basis of the administrative record, as defined in Rule 210(b)(11). Only with the permission of the Court, upon good cause shown, will any party be permitted to introduce before the Court any evidence other than that presented before the Internal Revenue Service and contained in the administrative record as so defined. Disposition of an action for declaratory judgment involving a revocation may be made on the basis of the administrative record alone only where the parties agree that such record contains all the relevant facts and that such facts are not in dispute. Disposition of a governmental obligation action will be made on the basis of the administrative record, augmented by additional evidence to the extent that the Court may direct.

Note

The first sentence of par. (a) of this Rule has been amended and the last sentence thereof has been added to deal with actions for declaratory judgment with respect to the status of certain prospective governmental obligations. In the disposition of such actions, it may well be appropriate for the parties to have an opportunity to augment the administrative record by presenting evidence not contained therein, for example, where that record is incomplete because the need for additional evidence was not reasonably anticipated, or because it was otherwise not feasible for such evidence to have been submitted during the administrative proceeding. See Conference Committee Report on the Revenue Act of 1978, H. Rept. 95-1800, 95th Cong., 2d Sess. (Oct. 15, 1978), p. 240. To this end, the Rule has been amended to take cognizance of the special category represented by such actions, while at the same time retaining control in the Court in order to enable it to develop viable guidelines in the light of actual experience and to synthesize the need for augmentation with the statutory requirement, see Code sec. 7478 (b)(2), that petitioner exhaust its administrative remedies. The Court expects the parties to make every effort to develop the administrative record as completely as practicable and to achieve whatever augmentation may be necessary through maximum use of the stipulation of fact process. See Rule 91.

(b) Procedure: (1) *Disposition on the Administrative Record:* The Court expects that, within 30 days after service of the answer, the parties will file with the Court the entire administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness. If, however, the parties are unable to file such a stipulated administrative record, then, not sooner than 30 days nor later than 45 days after service of the answer, the Commissioner shall file with the Court the entire administrative record, as defined in Rule 210(b)(11), appropriately certified as to its genuineness by the Commissioner or by an official authorized to act for him in such situation. See Rule 212, as to the time and place for submission of the action to the Court. The Court will thereafter issue an opinion and declaratory judgment in the action. Except in a case involving a revocation or the status of a governmental obligation, the Court's decision will be based upon the assumption that the facts as represented in the administrative record as so stipulated or so certified are true and upon any additional facts as found by the Court if the Court deems that a trial is necessary. In the case of a revocation or a governmental obligation action, the Court may, upon the basis of the evidence presented, make findings of fact which differ from the adminis-

trative record. In the case of a governmental obligation action, see the last sentence of paragraph (a) of this Rule. See subparagraph (3) of this paragraph.

* * * * *

Note

Par. (b) of this Rule has been amended in order to coordinate the procedure for disposing of governmental obligation actions with the policy statement concerning such actions contained in the last sentence of par. (a) and the Note thereto.

RULE 218. PROCEDURE IN ACTIONS HEARD BY A SPECIAL TRIAL JUDGE OF THE COURT

(a) Where Special Trial Judge Is To Make the Decision: When an action for declaratory judgment is assigned to a Special Trial Judge and he is authorized in the order of assignment to make the decision, the opinion of the Special Trial Judge and his proposed decision shall be submitted to and approved by the Chief Judge or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) Where Special Trial Judge Is Not To Make the Decision: Where an action for declaratory judgment is assigned to a Special Trial Judge but he is not authorized in the order of assignment to make the decision, the procedure provided in Rule 182 shall be followed.

Note

Pars. (a) and (b) and the Title of this Rule have been amended to reflect the changed designation of commissioners as Special Trial Judges.

TITLE XXII DISCLOSURE ACTIONS

RULE 220. GENERAL

(a) Applicability: The Rules of this Title XXII set forth the special provisions which apply to the three types of disclosure

actions relating to written determinations by the Internal Revenue Service and their background file documents, as authorized by Code Section 6110. They consist of (1) actions to restrain disclosure, (2) actions to obtain additional disclosure, and (3) actions to obtain disclosure of identity in the case of third party contacts. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such disclosure actions.

* * * * *

Note

The date has been eliminated from par. (a) of this Rule to coordinate with the change in Rule 2(a).

**RULE 230. PROCEDURE IN ACTIONS HEARD BY
A SPECIAL TRIAL JUDGE OF THE COURT**

(a) Where Special Trial Judge Is To Make the Decision: When a disclosure action is assigned to a Special Trial Judge and he is authorized in the order of assignment to make the decision, the opinion of the Special Trial Judge and his proposed decision shall be submitted to and approved by the Chief Judge, or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) Where Special Trial Judge Is Not To Make the Decision: When a disclosure action is assigned to a Special Trial Judge but he is not authorized in the order of assignment to make the decision, the procedure provided in Rule 182 shall be followed.

Note

Pars. (a) and (b) and the Title of this Rule have been amended to reflect the changed designation of commissioners as Special Trial Judges.