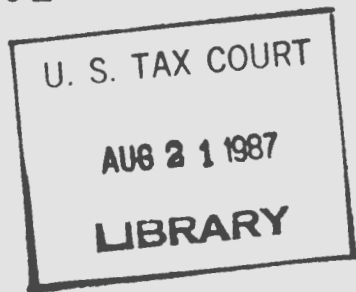


REPORTS  
OF THE  
UNITED STATES  
TAX COURT



July 1, 1986, to December 31, 1986

Volume 87

(Cite 87 T.C.)

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MARY T. PITTMAN  
REPORTER OF DECISIONS

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U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON: 1987

REPORTS  
OF THE  
UNITED STATES  
TAX COURT

ERRATUM

86 T.C. at 1065 (*Law v. Commissioner*):

This opinion is shown as "Filed May 22, 1986." The correct filed date is May 28, 1986.

II

July 1, 1986, to December 31, 1986

Volume 87

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MARY T. BETTMAN

Executive Vice President

THE NATIONAL TAX ASSOCIATION

WASHINGTON, D.C.

# JUDGES OF THE UNITED STATES TAX COURT

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## *Chief Judge*

SAMUEL B. STERRETT

## *Judges*

CHARLES R. SIMPSON

WILLIAM A. GOFFE<sup>1</sup>

HERBERT L. CHABOT

ARTHUR L. NIMS III

EDNA G. PARKER

MEADE WHITAKER

JULES G. KÖRNER III

PERRY SHIELDS

LAPSLEY W. HAMBLÉN, JR.

MARY ANN COHEN

CHARLES E. CLAPP II

STEPHEN J. SWIFT

JULIAN I. JACOBS

JOEL GERBER

LAWRENCE A. WRIGHT

CAROLYN MILLER PARR

B. JOHN WILLIAMS, JR.

THOMAS B. WELLS<sup>2</sup>

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

ARNOLD RAUM

WILLIAM M. DRENNEN

IRENE F. SCOTT

THEODORE TANNENWALD, JR.

C. MOXLEY FEATHERSTON

DARRELL D. WILES

WILLIAM M. FAY

HOWARD A. DAWSON, JR.<sup>3</sup>

RICHARD C. WILBUR

## *Special Trial Judges*

JOHN J. PAJAK, *Chief Special Trial Judge*

JAMES M. GUSSIS

FRANCIS J. CANTREL

DANIEL J. DINAN

MARVIN F. PETERSON

LEE M. GALLOWAY

HELEN A. BUCKLEY

PETER J. PANUTHOS

JOAN SEITZ PATE

HU S. VANDERVORT

LEHMAN C. AARONS<sup>4</sup>

D. IRVIN COUVILLION

NORMAN H. WOLFE

STANLEY J. GOLDBERG

CARLETON D. POWELL

LARRY L. NAMEROFF

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CHARLES S. CASAZZA, *Clerk*

PAUL NEJELSKI, *Court Administrator*

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<sup>1</sup>The term of office of Judge Goffe expired November 3; he was recalled November 4, 1986.

<sup>2</sup>Judge Wells took oath of office October 13, 1986.

<sup>3</sup>Termination of recall Aug. 18, 1986.

<sup>4</sup>Resigned October 4, 1986.

**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 Rule 193, and by amending Rules 11, 34, and 200.

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 II**

### **THE COURT**

#### **RULE 11. PAYMENTS TO COURT**

\*All payments to the Court for fees or charges of the Court shall be made either in cash or by check, money order, or other draft made payable to the order of "Clerk, United States Tax Court," and shall be mailed or delivered to the Clerk of the Court at Washington, D.C. 20217. For particular payments, see Rules 12(c) (copies of Court records), 20(b) (filing of petition), 175(a)(2) (small tax cases), 200(e) (application to practice before Court), and 200(i) (periodic registration fee).

#### *Note*

The Rule has been amended to include a cross reference to Rule 200(i).

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\*The amendment is effective as of February 6, 1987.

## TITLE IV

### PLEADINGS

#### 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, electronically transmitted copy, 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. For the circumstances under which a timely mailed petition will be treated as having been timely filed, see Code Section 7502.

#### *Note*

Subpar. (1) of par. (a) of Rule 34 has been amended to reflect the Court's holding in *Blum v. Commissioner*, 86 T.C. 1128 (1986). In *Blum*

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\*The amendment is effective as of May 29, 1986.

the Court held that an electronically transmitted copy of a petition is a communication similar to a telegram, cablegram, radiogram, or telephone call and will not be recognized as a petition.

Subpar. (1) has also been amended to include a reference to the timely mailing/timely filing provisions of Code Section 7502.

The amendments are effective May 29, 1986, the date on which the Court's report in *Blum v. Commissioner*, *supra*, was filed.

## TITLE XIX

### APPEALS

#### \*RULE 193. APPEALS FROM INTERLOCUTORY ORDERS

(a) General: For the purpose of seeking the review of any order of the Tax Court which is not otherwise immediately appealable, a party may request the Court to include, or the Court on its own motion may include, a statement in such order that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation. Any such request by a party shall be made by motion which shall set forth with particularity the grounds therefor and note whether there is any objection thereto. Any order by a Judge or Special Trial Judge of the Tax Court which includes the above statement shall be entered upon the records of the Court and served forthwith by the Clerk. See Code Section 7482(a)(2). For appeals from interlocutory orders generally, see Rules 5 and 14 of the Federal Rules of Appellate Procedure.

(b) Venue: For the circuit of the Court of Appeals to which an appeal from an interlocutory order may be taken, see Code Section 7482(a)(2)(B) and 7482(b).

(c) Stay of Proceedings: Unless so ordered, proceedings in the Tax Court shall not be stayed by virtue of any

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\*Rule 193 is effective as to interlocutory orders entered after October 22, 1986.



interlocutory order that is or may be the subject of an appeal. See Code Section 7482(a)(2)(A).

### *Note*

This is a new Rule based upon Code Section 7482(a)(2), which was added by section 1558(a) of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2757. Section 7482(a)(2) expressly authorizes the United States Courts of Appeals to permit, in their discretion, an appeal to be taken from certain interlocutory orders of this Court. See *Shapiro v. Commissioner*, 632 F.2d 170 (2d Cir. 1980), for a discussion of prior law.

Par. (a) of Rule 193 contemplates that a party seeking review of an order which is not otherwise appealable must satisfy a Judge or Special Trial Judge of the Tax Court (1) that a controlling issue of law is involved, (2) that with respect to the controlling issue of law, there is a substantial ground for difference of opinion, and (3) that an immediate appeal from that order may materially advance the ultimate termination of the litigation. A party seeking review shall proceed by motion, which may be filed before or after the interlocutory order with respect to which appeal is or may be sought. The provisions of Rule 50 should be consulted for general requirements pertaining to motions.

Par. (b) of Rule 193 refers the parties to the statutory provisions governing venue on appeal from an interlocutory order of this Court.

Par. (c) of Rule 193 provides that proceedings in this Court shall not be automatically stayed by virtue of any interlocutory order that is or may be the subject of an appeal. A party who wants to stay proceedings should file an appropriate motion.

Rule 193 applies to interlocutory orders entered after October 22, 1986.

## **TITLE XX**

### **PRACTICE BEFORE THE COURT**

#### **\*RULE 200. ADMISSION TO PRACTICE AND PERIODIC REGISTRATION FEE**

(a) - (h) [Not changed]

(i) **Periodic Registration Fee:** (1) Each practitioner admitted to practice before the Court shall pay a periodic

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\*The amendment is effective February 6, 1987.

registration fee. The frequency and amount of such fee shall be determined by the Court, except that such amount shall not exceed \$30 per calendar year. The Clerk of the Court shall maintain an Ineligible List containing the names of all practitioners failing to comply with the provisions of this Rule. No practitioner shall be permitted to commence a case in the Court or enter an appearance in a pending case while on the Ineligible List. The name of any practitioner appearing on the Ineligible List shall not be removed from the List until the currently due registration fee has been paid and all arrearages have been made current. The periodic registration fee must be paid by all persons admitted to practice before the Court, whether or not engaged in private practice. As to forms of payment, see Rule 11.

(2) The fees described in Rule 200(i)(1) shall be used by the Court to employ independent counsel to pursue disciplinary matters.

### *Note*

A new par. (i) has been added to Rule 200, based upon Code Section 7475, which was added by section 1553 of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2754. Section 7475 authorizes the Court to impose a periodic registration fee on practitioners admitted to practice before it. The Court is to establish the level of the fee and the frequency of its collection, but the fee may not exceed \$30 per year. These funds are available to the Court to pay independent counsel engaged by the Court to pursue disciplinary matters.

Under the Rule the Clerk of the Court will maintain an Ineligible List containing the names of practitioners failing to comply with the provisions of the Rule. No practitioner whose periodic registration fee payments are not current will be permitted to commence a case in the Court or enter an appearance in a pending case. All persons admitted to practice before the Court are required to pay the periodic registration fee, whether or not engaged in private practice.