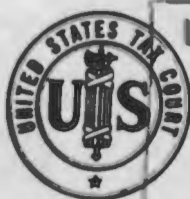


REPORTS

OF THE

UNITED STATES

TAX COURT



U. S. TAX COURT

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July 1, 1983, to December 31, 1983

Volume 81

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MARY T. PITTMAN
REPORTER OF DECISIONS

U.S. GOVERNMENT PRINTING OFFICE
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REPORTS OF THE UNITED STATES TAX COURT



July 1, 1981, to December 31, 1981

Volume 81

(For 81 Tax)

MARY T. FITZMAN
Reporter of Decisions

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON 1981

JUDGES OF THE UNITED STATES TAX COURT

Chief Judge

HOWARD A. DAWSON, JR.¹

Judges

WILLIAM M. FAY	EDNA G. PARKER
CHARLES R. SIMPSON	MEADE WHITAKER
C. MOXLEY FEATHERSTON ²	JULES G. KÖRNER III
SAMUEL B. STERRETT	PERRY SHIELDS
WILLIAM A. GOFFE	LAPSLEY W. HAMBLÉN, JR.
DARRELL D. WILES	MARY ANN COHEN
RICHARD C. WILBUR	CHARLES E. CLAPP II ³
HERBERT L. CHABOT	STEPHEN J. SWIFT ⁴
ARTHUR L. NIMS III	_____ (VACANCY)

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

NORMAN O. TIETJENS ⁵	IRENE F. SCOTT
BRUCE M. FORRESTER	LEO H. IRWIN
ARNOLD RAUM	THEODORE TANNENWALD, JR. ⁶
WILLIAM M. DRENNEN	

Special Trial Judges

JAMES M. GUSSIS	FRED R. TANSILL
FRED S. GILBERT, JR.	RANDOLPH F. CALDWELL, JR.
FRANCIS J. CANTREL	LEE M. GALLOWAY
DANIEL J. DINAN	HELEN A. BUCKLEY
MARVIN F. PETERSON	PETER J. PANUTHOS
JOHN J. PAJAK	JOAN SEITZ PATE ⁸
DARRELL D. HALLETT ⁷	

CHARLES S. CASAZZA, *Clerk*

¹Judge Dawson succeeded Judge Tannenwald as Chief Judge on July 1, 1983

²Judge Featherston retired December 24, recalled December 25, 1983

³Judge Clapp took oath of office August 15, 1983

⁴Judge Swift took oath of office August 16, 1983

⁵Judge Tietjens died September 2, 1983

⁶Judge Tannenwald retired June 30, recalled July 1, 1983

⁷Resigned July 1, 1983

⁸Appointed September 1, 1983.

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

Rules 2, 13, 21, 23, 24, 25, 32, 34, 37, 50, 54, 70, 72, 74, 75, 81, 84, 104, 121, 122, 132, 140, 143, 151, 172, 177, 182, 183, 200, 202, 211, 212, 218, 221, 222, 229A, and 232 of the Rules of Practice and Procedure of the United States Tax Court are amended as hereinafter set forth.

The foregoing amendments to the Rules are effective from January 16, 1984.

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.

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

Pages 1 to 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

The foregoing amendments to the Rules are effective from January 18, 1954.

The Notes accompanying these amendments were prepared by the House Committee and are included herein for the convenience of the Bar. They are not officially part of the Rules and are not intended to be printed publication prepared by the House of Representatives.

TITLE I

SCOPE OF RULES; CONSTRUCTION; EFFECTIVE DATE; DEFINITIONS

RULE 2. EFFECTIVE DATE

(a) **Adoption:** These Rules, as revised by amendments adopted on September 7, 1983, United States Tax Court Reports, Volume 81, will take effect on January 16, 1984.* 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.

* Titles I through XX and Appendices I through IV in their original form were effective January 1, 1974, 60 T.C. 1089.

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, and March 1, 1982, 77 T.C. 1425.

Rule 75 was added, effective January 3, 1983, 79 T.C. 1135.

Rule 152 was added, effective March 1, 1983, 79 T.C. 1135.

Title XXIII was added, effective February 25, 1983, 79 T.C. 1135.

Rule 171 was amended, effective October 25, 1982, 79 T.C. 1135.

Various other Rules, certain forms in Appendix I, and Appendices II, III, and IV were amended, effective January 16, 1984, United States Tax Court Reports, Volume 81.

TITLE II

THE COURT

RULE 13. JURISDICTION

(e) **Bankruptcy:** With respect to the filing of a petition or the continuation of proceedings in this Court after the filing of a bankruptcy petition, see 11 U.S.C. section 362(a)(8) and Code Section 6213(f)(1).

Note

A new par. (e) has been added to Rule 13, incorporating references to the statutory provisions regarding the commencement or continuation of a proceeding before this Court after a bankruptcy petition has been filed.

TITLE III

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

RULE 21. SERVICE OF PAPERS

(a) **When Required:** Except as otherwise required by these Rules or directed by the Court, all pleadings, motions, orders, decisions, notices, demands, briefs, appearances, or other similar documents or papers relating to a case, including a disciplinary matter under Rule 202, also referred to as the papers in a case, shall be served on each of the parties or other persons involved in the matter to which the paper relates other than the party who filed the paper.

(b) **Manner of Service:** (1) * * *

(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 notifies the Court, by a designation of counsel to receive service filed with the Court, that other counsel of record is to receive service, in which event service will be made on the person so designated.

* * * * *

(4) *Change of Address*: The Court shall be promptly notified, by a notice of change of address filed with the Court, of the change of mailing address of any party, his counsel, or duly authorized representative in the case of a party other than an individual (see Rule 24(a)(2), (3), and (b)). A separate notice of change of address shall be filed for each docket number.

Note

Par. (a) of this Rule has been amended to incorporate a reference to disciplinary matters under Rule 202 and to provide for service on each of the parties or other persons involved in a matter to which a paper relates.

Subpar. (2) of par. (b) has been amended to provide that where first counsel of record wants other counsel to receive service, first counsel of record shall file with the Court a designation of counsel to receive service.

Subpar. (4) of par. (b) has been amended to require that the Court be notified of a change of address of any party, his counsel, or authorized representative by a notice of change of address filed with the Court and that a separate notice be filed for each docket number.

RULE 23. FORM AND STYLE OF PAPERS

(a) Caption, Date, and Signature Required: All papers filed with the Court shall have a caption, shall be dated, and shall be signed as follows:

(1) * * *

(3) *Signature*: The original signature, either of the party or his counsel, shall be subscribed in writing to the original of every paper filed by or for that party with the Court, except as otherwise provided by these Rules. An individual rather than a firm name shall be used, except that the signature of a petitioner corporation or unincorporated association shall be in the name of the corporation or association by one of its active and authorized officers or members, as for example

"John Doe, Inc., by Richard Roe, President." The name, mailing address, and telephone number of the party or his counsel shall be typed or printed immediately beneath the written signature. The mailing address of a signatory shall include a firm name if it is an essential part of the accurate mailing address.

(b) **Number Filed:** For each paper filed in Court, there shall be filed four conformed copies together with the signed original thereof, except as otherwise provided in these Rules. Where filing is in more than one case (as a motion to consolidate, or in cases already consolidated), the number filed shall include one additional copy for each docket number in excess of one. As to stipulations, see Rule 91(b).

* * * * *

(e) **Binding and Covers:** All papers shall be bound together on the upper left-hand side only and shall have no backs or covers.

* * * * *

(g) **Return of Papers for Failure to Conform to Rule:** The Clerk may return without filing any paper that does not conform to the requirements of this Rule.

Note

Subpar. (3) of par. (a) of this Rule has been amended to make clear that the original signature of the party or his counsel is required to be subscribed to the original of every paper filed with the Court.

Par. (e) has been amended to provide that papers filed with the Court shall be bound together on the upper left-hand side only and to eliminate the previous exception which permitted backs and covers on briefs. Under par. (e) as amended, all papers, including briefs, shall have no backs or covers.

A new par. (g) has been added authorizing the Clerk of the Court to return without filing any paper that does not conform to the requirements of Rule 23.

RULE 24. APPEARANCE AND REPRESENTATION

(a) **Appearance:** (1) * * *

(3) **Subsequent Appearance:** Where counsel has not previously appeared, he shall file an entry of appearance in duplicate, signed by counsel individually, containing the name and docket number of the case, the name, mailing address, and

telephone number of counsel so appearing, and a statement that counsel is admitted to practice before the Court. A separate entry of appearance, in duplicate, shall be filed for each additional docket number in which counsel shall appear. The entry of appearance shall be substantially in the form set forth in Appendix I. The Clerk shall be given prompt written notice, filed in duplicate for each docket number, of any change in the foregoing information. An entry of appearance shall not be joined to or made part of a motion to withdraw as counsel.

* * * * *

(c) **Withdrawal of Counsel:** Counsel of record desiring to withdraw his appearance, or any party desiring to withdraw the appearance of counsel of record for him, must file a motion with the Court requesting leave therefor, showing that prior notice of the motion has been given by him to his client, or his counsel, as the case may be, and to each of the other parties to the case or their counsel, and stating whether there is any objection to the motion. A motion to withdraw as counsel shall not be joined to or made part of an entry of appearance. The Court may, in its discretion, deny such motion.

Note

Subpar. (3) of par. (a) of this Rule has been amended to provide that an entry of appearance shall not be joined to or made part of a motion to withdraw as counsel. A similar provision has been added to par. (c) regarding motions to withdraw as counsel. Par. (c) also has been amended to require that a motion to withdraw as counsel show that prior notice thereof has been given to each of the other parties to the case or to their counsel as well as to the client, and state whether there is any objection to the motion.

RULE 25. COMPUTATION OF TIME

(c) **Enlargement or Reduction of Time:** Unless precluded by statute, the Court in its discretion may make longer or shorter any period provided by these Rules. As to continuances, see Rule 134. Where a motion is made concerning jurisdiction or the sufficiency of a pleading, the time for filing a response to that pleading shall begin to run from the date of service of the order disposing of the motion by the Court, unless the Court shall direct otherwise. Where the dates for filing briefs are fixed, an extension of time for filing a brief or

the granting of leave to file a brief after the due date shall correspondingly extend the time for filing any other brief due at the same time and for filing succeeding briefs, unless the Court shall order otherwise. The period fixed by statute, within which to file a petition with the Court to redetermine a deficiency or liability, cannot be extended by the Court.

Note

Par. (c) of this Rule has been amended to provide that late filing of a brief shall correspondingly extend the time for filing any other brief due simultaneously and for filing succeeding briefs.

TITLE IV

PLEADINGS

RULE 32. FORM OF PLEADINGS

(a) Caption; Names of Parties: Every pleading shall contain a caption setting forth the name of the Court (United States Tax Court), the title of the case, the docket number after it becomes available (see Rule 35), and a designation to show the nature of the pleading. In the petition, the title of the case shall include the names of all parties, but shall not include as a party-petitioner the name of any person other than the person or persons by or on whose behalf the petition is filed. In other pleadings, it is sufficient to state the name of the first party with an appropriate indication of other parties.

Note

Par. (a) of this Rule has been amended to make clear that in the petition the title of the case should not include as a party-petitioner the name of any person other than the person or persons by or on whose behalf the petition is filed. For example, where a single notice of deficiency is directed to John and Mary Doe, counsel filing a petition for Mary only should title the case "Mary Doe, Petitioner v. Commissioner of Internal Revenue, Respondent." John Doe's name should not be included in the title of the case.

RULE 34. PETITION

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

[Paragraphs (1) through (6) have not been changed.]

(7) The signature, mailing address, and telephone number of each petitioner or his counsel.

(8) * * *

Note

Subpar. (7) of par. (b) of this Rule has been amended to require that the mailing address and telephone number of each petitioner or his counsel be included in the petition.

RULE 37. REPLY

(c) **Effect of Reply or Failure Thereof:** Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply, shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied unless the Commissioner, within 45 days after expiration of the time for filing the reply, files a motion that specified allegations in the answer be deemed admitted. That motion will be served on the petitioner and may be granted unless the required reply is filed within the time directed by the Court.

Note

Par. (c) of Rule 37 has been amended to eliminate the hearing on the Commissioner's motion that the allegations in the answer be deemed admitted. The Rule as amended provides that the Commissioner's motion may be granted unless a reply is filed.

TITLE V

MOTIONS

RULE 50. GENERAL REQUIREMENTS

(a) **Form and Content of Motion:** An application to the Court for an order shall be by motion in writing, which shall

state with particularity the grounds therefor and shall set forth the relief or order sought. The motion shall show that prior notice thereof has been given to each other party or his counsel and shall state whether there is any objection to the motion. If a motion does not include such a statement, the Court will assume that there is an objection to the motion. Unless the Court directs otherwise, motions made during a hearing or trial need not be in writing. The rules applicable to captions, signing, and other matters of form and style of pleadings apply to all motions. See Rules 23, 32, and 33.

Note

Par. (a) of this Rule has been amended to require that a motion show that prior notice thereof has been given to each other party or his counsel and state whether there is any objection. In the absence of such a statement, it will be assumed that there is an objection.

RULE 54. TIMELY FILING AND JOINDER OF MOTIONS

Motions must be made timely, unless the Court shall permit otherwise. Motions shall be separately stated and not joined together, except that motions under Rules 51 and 52 directed to the same pleading or other paper may be joined.

Note

The word "Generally" has been deleted from the second sentence of Rule 54 to make clear that all motions must be separately stated, except for motions under Rules 51 and 52 directed to the same pleading or other paper.

TITLE VII DISCOVERY

RULE 70. GENERAL PROVISIONS

(a) **General:** (1) * * *

(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. Discovery by a deposition under Rule 75 may not be commenced before a notice of trial has been issued or the case has been assigned to a Judge or Special Trial Judge and shall be completed within the time provided by the preceding sentence. See Rule 75(a). Discovery of matters which are relevant only to the issue of a party's entitlement to reasonable litigation costs shall not be commenced, without leave of Court, before a motion for reasonable litigation costs has been noticed for a hearing, and shall be completed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for hearing.

Note

The reference to the time for taking a deposition under Rule 75 in subpar. (2) of par. (a) of Rule 70 has been amended to clarify that the time for completion of discovery set forth in Rule 70 applies to a deposition under Rule 75.

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, on a failure to respond, or on a failure to produce or permit

inspection, 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 has been amended to incorporate a reference to a failure to respond to a request for production or inspection or other failure to produce or permit inspection, to make clear that the requesting party should file a motion to obtain a ruling on a failure to respond or to produce or permit inspection. See Rule 104(b).

RULE 74. DEPOSITIONS FOR DISCOVERY PURPOSES—UPON CONSENT OF PARTIES

(b) Notice to Non-Party Witness: A notice of deposition shall be served on a non-party witness. The notice shall state that the deposition is to be taken under Rule 74 and shall set 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.

* * * * *

(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 with the Court. See Rule 81(h)(3).

* * * * *

(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) (execution, form, and return 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

Par. (b) of this Rule has been amended to require that the notice of deposition state that the deposition is to be taken under Rule 74. Thus, it will be possible to identify the Rule under which the deposition is to be taken and to determine whether the requirements of that Rule have been satisfied.

Par. (d) has been amended to conform to the amendments to Rule 81(h)(3) regarding return of a deposition. Pars. (d) and (f) have been amended to incorporate references to Rule 81(h)(3).

RULE 75. DEPOSITIONS FOR DISCOVERY PURPOSES—WITHOUT CONSENT OF PARTIES IN CERTAIN CASES

(a) When Depositions May Be Taken: After a notice of trial has been issued or after a case has been assigned to a Judge or Special Trial Judge of the Court, and within the time for completion of discovery under Rule 70(a)(2), any party may, without leave of Court, take a deposition for discovery purposes of a non-party witness in the circumstances described in paragraph (b) of this Rule. 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) Availability: The taking of a deposition of a non-party witness under this Rule is an extraordinary method of discovery and may be used only where a non-party witness can give testimony or possesses documents or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, or things practicably cannot be obtained through informal consultation or communication (Rule 70(a)(1)) or by a deposition taken with consent of the parties (Rule 74). If such requirements are satisfied, a deposition may be taken under this Rule, for example, where a party is a member of a partnership and an issue in the case involves an adjustment with respect to such partnership, or a party is a shareholder of an electing small business corporation (as

defined in Code Section 1371(b) prior to the enactment of the Subchapter S Revision Act of 1982) and an issue in the case involves an adjustment with respect to such corporation.

(c) **Notice:** A party desiring to take a deposition under this Rule shall give notice in writing to every other party to the case and to the non-party witness to be deposed. The notice shall state that the deposition is to be taken under Rule 75 and shall set forth the name of the party seeking the deposition, the name and address of the person to be deposed, the time and place proposed for the deposition, and 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.

* * * * *

(e) **Other Applicable Rules:** Depositions for discovery purposes under this Rule shall be governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 74(d) (transcript), 74(e) (depositions upon written questions); Rule 81(c) (designation of person to testify), 81(e) (person before whom deposition taken), 81(f) (taking of deposition), 81(g) (expenses), 81(h) (execution, form, and return of deposition), 81(i) (use of deposition); and Rule 85(a), (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

Par. (a) of this Rule has been amended to clarify that a deposition under Rule 75 is subject to the time limit for the completion of discovery provided in Rule 70(a)(2).

Par. (b) has been amended to reflect the elimination of the term "electing small business corporation" by the Subchapter S Revision Act of 1982, Pub. L. 95-354, 96 Stat. 1669.

Par. (c) has been amended to require that the notice of deposition state that the deposition is to be taken under Rule 75. Thus, it will be possible to identify the Rule under which the deposition is to be taken and to determine whether the requirements of that Rule have been satisfied.

Par. (e) has been amended to incorporate a reference to Rule 81(h)(3), return of deposition.

TITLE VIII

DEPOSITIONS

RULE 81. DEPOSITIONS IN PENDING CASE

(b) The Application: (1) *Content of Application:* The application to take a deposition pursuant to paragraph (a) of this Rule shall be signed by the party seeking the deposition or his counsel, and shall show the following:

- (i) the names and addresses of the persons to be examined;
- (ii) the reasons for deposing those persons rather than waiting to call them as witnesses at the trial;

- (iii) the substance of the testimony which the party expects to elicit from each of those persons;

- (iv) a statement showing how the proposed testimony or document or thing is material to a matter in controversy;

- (v) a statement describing any books, papers, documents, or tangible things to be produced at the deposition by the persons to be examined;

- (vi) the time and place proposed for the deposition;

- (vii) the officer before whom the deposition is to be taken;

- (viii) the date on which the petition was filed with the Court, and whether the pleadings have been closed and the case placed on a trial calendar;

- (ix) any provision desired with respect to payment of expenses, fees, and charges relating to the deposition (see paragraph (g) of this Rule, and Rule 103); and

- (x) if the applicant proposes to videotape the deposition, the application shall so state, and shall show the name and address of the videotape operator and of his employer. (The videotape operator and the officer before whom the deposition is to be taken may be the same person. See subparagraph (2) of paragraph (j) of this Rule.)

The application shall also have annexed to it a copy of the questions to be propounded, if the deposition is to be taken on written questions. For the form of application to take a deposition, see Appendix I.

(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 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. If the deposition is to be videotaped, the Court's order will so state.

* * * * *

(d) Use of Stipulation: The parties or their counsel may execute and file a stipulation to take a deposition by agreement instead of filing an application as hereinabove provided. Such a stipulation shall be filed with the Court in duplicate, and shall contain the same information as is required in items (i), (vi), (vii), (ix), and (x) of Rule 81(b)(1), but shall not require the approval or an order of the Court unless the effect is to delay the trial of the case. A deposition taken pursuant to a stipulation shall in all respects conform to the requirements of these Rules.

(e) Person Before Whom Deposition Taken: (1) * * *

(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. The party seeking the commission or letter rogatory shall contact the United States Department of State to ascertain any requirements imposed by it or by the foreign country in which the deposition is to be taken, including any required foreign language translations and any fees or costs, and shall submit to the Court, along with the application, any such foreign language translations, fees, costs, or other materials required. 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 the 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.

* * * * *

(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; 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.

* * * * *

(h) Execution and Return of Deposition: (1) * * *

(3) *Return of Deposition:* The deposition and exhibits shall not be filed with the Court. Unless otherwise directed by the Court, the officer shall deliver the original deposition and

exhibits to the party taking the deposition or his counsel, who shall take custody of and be responsible for the safeguarding of the original deposition and exhibits. Upon payment of reasonable charges therefor, the officer also shall deliver a copy of the deposition and exhibits to any party or the deponent, or to counsel for any party or for the deponent. As to use of a deposition at the trial or in any other proceeding in the case, see paragraph (i) of this Rule. As to introduction of a deposition in evidence, see Rule 143(c).

* * * * *

(j) Videotape Depositions: (1) *General:* By stipulation of the parties or upon order of the Court, a deposition to perpetuate testimony to be taken upon oral examination may be recorded by videotape. Except as otherwise provided by this paragraph, all other provisions of these Rules governing the practice and procedure in depositions shall apply.

(2) *Procedure:* The deposition shall begin by the operator stating on camera (i) his name and address, (ii) the name and address of his employer, (iii) the date, time, and place of the deposition, (iv) the caption and docket number of the case, (v) the name of the witness, and (vi) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself and swear the witness on camera. At the conclusion of the deposition, the operator shall state on camera that the deposition is concluded. The officer before whom the deposition is taken and the operator may be the same person. When the length of the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on camera by the operator. The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute, and second of each tape of the deposition.

(3) *Transcript:* If requested by one of the parties, the testimony shall be transcribed at the cost of such party; but no signature of the witness shall be required, and the transcript shall not be filed with the Court.

(4) *Custody:* The party taking the deposition or his counsel shall take custody of and be responsible for the safeguarding of the videotape together with any exhibits, and such party shall permit the viewing of or shall provide a copy of the videotape

and any exhibits upon the request and at the cost of any other party.

(5) *Use:* A videotape deposition may be used at a trial or hearing in the manner and to the extent provided in paragraph (i) of this Rule. The party who offers the videotape in evidence shall provide all necessary equipment for viewing the videotape and personnel to operate such equipment. At a trial or hearing, that part of the audio portion of a videotape deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The videotape shall be marked as an exhibit and, subject to the provisions of Rule 143(d)(2), shall remain in the custody of the Court.

Note

The requirements regarding return of a deposition set forth in this Rule have been revised substantially. The prior provision of subpar. (2) of par. (b) requiring that a deposition be completed and filed with the Court at least 10 days prior to the trial date has been eliminated. Subpar. (3) of par. (h) has been amended to provide that a deposition shall not be filed with the Court. Under the amended Rule, the original deposition (together with any exhibits) is to be delivered to the party taking the deposition or his counsel, who shall be responsible for its safekeeping. The officer also will furnish copies to the deponent and to the other parties to the case upon payment of reasonable charges therefor.

Subpar. (2) or par. (e) of this Rule, relating to foreign depositions, has been amended to require that a party seeking a commission or letter rogatory contact the U.S. State Department to determine any requirements imposed by it or by the foreign country in which the deposition is to be taken and that the party submit to the Court, together with the application, any materials so required, including any necessary foreign language translations and any fees or costs.

Par. (j) of Rule 81, providing for videotape depositions, is new. By stipulation of the parties, or order of the Court, a deposition to perpetuate testimony to be taken upon oral examination may be videotaped. Special procedures are set forth with respect to stating certain information on camera and with respect to timing of the deposition. The testimony will be transcribed only if requested by one of the parties; no signature of the witness is required, and the transcript is not to be filed with the Court. The party taking the deposition or his counsel is responsible for the custody and safekeeping of the videotape and any exhibits and must make the videotape and exhibits available to other parties. A videotape deposition may be used at a trial or hearing in the same manner and to the same extent as any other deposition, but the party who offers the videotape in evidence must provide

all necessary equipment for viewing the videotape and personnel to operate such equipment.

Par. (b) of Rule 81, relating to the application to take a deposition, has been amended to require that an applicant who proposes to videotape a deposition so state in the application, and also set forth the name and address of the videotape operator and his employer. Par. (d) has been amended to require the same information in a stipulation to take a deposition.

RULE 84. DEPOSITIONS UPON WRITTEN QUESTIONS

(d) Execution and Return: The execution and return of the deposition shall conform to the requirements of paragraph (h) of Rule 81.

Note

In conformity with the changes made in Rule 81, par. (d) of this Rule has been amended to delete references to the filing of a deposition.

TITLE X

GENERAL PROVISIONS GOVERNING DISCOVERY, DEPOSITIONS, AND REQUESTS FOR ADMISSION

RULE 104. ENFORCEMENT ACTION AND SANCTIONS

(b) Failure to Answer: If a person fails to answer a question or interrogatory propounded or submitted in accordance with Rule 71, 74, 75, 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, within the time for completion of discovery under Rule 70(a)(2), 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.

Note

Par. (b) of this Rule has been amended to provide that a motion for an order compelling discovery shall be filed within the time for completion of discovery under Rule 70(a)(2).

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 within such period as the Court may direct. A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. A partial summary adjudication may be made which does not dispose of all the issues in the case.

Note

Par. (b) of this Rule has been amended to require that the opposing written response to a motion for summary judgment be filed within such period as the Court may direct and to eliminate the prior reference to the date set for hearing. A motion for summary judgment will be noticed for a hearing only if the Court in its discretion so directs. See Rule 50(b).

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 motion 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 has been amended to provide that any case not requiring a trial may be submitted by motion of the parties, rather than by notice as was previously provided.

TITLE XIII

CALENDARS AND CONTINUANCES

RULE 132. TRIAL CALENDARS

(a) **General:** Each case, when at issue, will be placed upon a calendar for trial at the place designated in accordance with Rule 140. The Clerk shall notify the parties of the place and time for which the calendar is set. Such notice ordinarily will be given not less than 90 days in advance of the trial calendar.

Note

Par. (a) of this Rule has been amended to provide more flexibility in calendaring cases for trial.

TITLE XIV

TRIALS

RULE 140. PLACE OF TRIAL

(a) **Designation of Place of Trial:** The petitioner, at the time of filing the petition, shall file a designation of place of trial showing the place at which he would prefer the trial to be held. If the petitioner has not filed such designation, the Commissioner, at the time he files his answer, shall file a

designation showing the place of trial preferred by him. The parties shall be notified of the place at which the trial will be held. For a list of places at which the Court has held trial sessions, see Appendix IV.

(b) **Form:** Such designation shall be filed separately from the petition or answer, shall be subject to the requirements of form applicable to motions, see Rule 50(a), and shall consist of an original and two copies. See Form 4, Appendix I.

(c) **Motion to Change Place of Trial:** If either party desires to change in the designation of the place of trial, he shall file a motion to that effect, stating fully his reasons therefor. Such motions, made after the notice of the time of trial has been issued, will not be deemed to have been timely filed.

Note

Par. (a) of this Rule has been amended to provide for the filing of a designation of place of trial. The prior provision for filing a request for place of trial which the Court must grant has been eliminated. A conforming change has been made in par. (b).

Former par. (c), designation of place of trial, has been eliminated. The second sentence thereof has been incorporated in par. (a) as amended. Former par. (d) has been redesignated as par. (c).

RULE 143. EVIDENCE

(d) * * *

(2) *Return of Exhibits:* Exhibits may be disposed of as the Court deems advisable. A party desiring the return at his expense of any exhibit belonging to him, shall, within 90 days after the decision of the case by the Court has become final, make written application to the Clerk, suggesting a practical manner of delivery. If such application is not timely made, the exhibits in the case will be destroyed.

(e) **Interpreters:** The parties ordinarily will be expected to make their own arrangements for obtaining and compensating interpreters. However, the Court may appoint an interpreter of its own selection and may fix his reasonable compensation, which compensation shall be paid by one or more of the parties or otherwise as the Court may direct.

(f) Expert Witness Reports: For provisions regarding the submission and exchange of expert witness reports, see Rule 71(d)(2).

Note

Subpar. (2) of par. (d) of this Rule has been amended to provide that application for return of an exhibit shall be made within 90 days after the Court's decision has become final. If a timely application is not made, exhibits will be destroyed.

Par. (e) of this Rule has been amended to make clear that the parties ordinarily must make their own arrangements for obtaining and compensating interpreters. This conforms to the Court's current practice.

A new par. (f) has been added, directing the parties' attention to Rule 71(d)(2) regarding the submission and exchange of expert witness reports.

RULE 151. BRIEFS

(d) Number of Copies: A signed original and two copies of each brief, plus an additional copy for each person to be served, shall be filed.

Note

Par. (d) of this Rule has been amended to provide that a signed original and two copies of each brief, plus the required number of copies for service, shall be filed.

TITLE XVII

SMALL TAX CASES

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) A petitioner may, at any time after the petition is filed and before trial, request that the proceedings be conducted under Code Section 7463.

(c) If such request is made in accordance with the provisions of this Rule 172, the case will be docketed as a small tax case. The Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, enter an order directing that the small tax case designation shall be removed and that the proceedings shall not be conducted under the Small Tax Case Rules. If no such order is entered, the petitioner will be considered to have exercised his option and the Court shall be deemed to have concurred therein, in accordance with Code Section 7463, at the commencement of the trial.

Note

Former par. (b) of this Rule has been eliminated. Former pars. (c) and (d) have been redesignated as pars. (b) and (c), respectively. The second sentence of former par. (c) also has been eliminated.

These changes eliminate the former procedure for the filing by the Commissioner of a motion opposing a petitioner's request to have the proceedings in his case conducted under Code Section 7463. Under the Rule as amended, where such a request is made, the case will be docketed as a small tax case. However, the Commissioner may move under par. (c) for an order directing that the small tax case designation be removed and that the proceedings shall not be conducted under Code Section 7463.

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, designate the place where he would prefer the trial to be held. If the petitioner has not filed such a designation, the Commissioner shall, within 30 days after the date of service of the petition, file a designation showing the place of trial preferred by him. The Court will make every effort to conduct the trial at the location most convenient to that designated where suitable facilities are available.

Note

Par. (a) of this Rule has been amended to provide for the filing of a designation (rather than a request) of place of trial. This conforms to the change made in Rule 140.

TITLE XVIII

SPECIAL TRIAL JUDGES

RULE 182. CASES INVOLVING \$5,000 OR LESS

Except as otherwise directed by the Chief Judge, the following procedure shall be observed in small tax cases (as defined in Rule 171) and in all other cases where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$5,000:

(a) **Small Tax Cases:** Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of 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, if the Chief Judge shall so direct, to a Judge or Division of the Court.

(b) **Other Cases Involving \$5,000 or Less:** Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a case (other than a small tax case) where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$5,000 shall, as soon after such trial as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge.

(c) **Decision:** Subject to the provisions of paragraphs (a) and (b) of this Rule, the Special Trial Judge is authorized to make the decision of the Court in any small tax case (as defined in Rule 171) and in any other case where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$5,000.

Note

Former Rule 183 is redesignated Rule 182.

Par. (a) of this Rule continues the prior procedure in small tax cases tried by a Special Trial Judge.

Pars. (b) and (c) are new. Par. (b) provides for submission of the Special Trial Judge's proposed findings of fact and opinion directly to the Chief Judge in cases where the amount in dispute does not exceed \$5,000. Par. (c) authorizes the Special Trial Judges to make the decision of the Court in small tax cases and in other cases where the amount in dispute is \$5,000 or less.

RULE 183. CASES INVOLVING MORE THAN \$5,000

Except in cases subject to the provisions of Rule 182 or as otherwise provided, the following procedure shall be observed in cases tried before a Special Trial Judge:

(a) **Trial and Briefs:** A Special Trial Judge shall conduct the trial of any such case assigned to him for such purpose. After such trial, the parties shall submit their briefs in accordance with the provisions of Rule 151. Unless otherwise directed, no further briefs shall be filed.

(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 submit his report, including his findings of fact and opinion, to the Chief Judge, and the Chief Judge will assign the case to a Division of the Court.

(c) **Action on the Report:** The Division to which the case is assigned may adopt the Special Trial Judge's report or may modify it or may reject it in whole or in part, or may direct the filing of additional briefs or may receive further evidence or may direct oral argument, or may recommit the report 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

Former Rule 182 is redesignated Rule 183.

The introductory language provides that this Rule shall not apply in small tax cases or in other cases where the amount in dispute does not exceed \$5,000.

Par. (a) now provides for the submission of briefs in accordance with Rule 151, and also provides that no further briefs shall be filed unless the Court directs otherwise.

The prior provisions for service of the Special Trial Judge's report on each party and for the filing of exceptions to that report have been deleted. The prior provision for oral argument upon motion of a party also has been deleted. However, par. (c) provides that the Division to which the case is assigned may direct the filing of additional briefs, receive further evidence, or direct oral argument.

TITLE XX

PRACTICE BEFORE THE COURT

RULE 200. ADMISSION TO PRACTICE

(a) Qualifications: (1) * * *

(2) *Attorneys:* An attorney at law may be admitted to practice upon filing with the Admissions Clerk a completed application accompanied by a fee of \$25 and a current certificate from the Clerk of the appropriate court, showing that the applicant has been admitted to practice before and is a member in good standing of the Bar of the Supreme Court of the United States, or of the highest or appropriate court of any State or of the District of Columbia. A current court certificate is one executed within 60 calendar days preceding the date of the filing of the application.

(3) *Other Applicants:* An applicant, not an attorney at law, must file with the Admissions Clerk a completed application accompanied by a fee of \$25. In addition, such an applicant, as a condition of being admitted to practice, must give evidence of his qualifications satisfactory to the Court by means of a written examination given by the Court, and the Court may require such person, in addition, to give similar evidence by means of an oral examination. Any person who has thrice failed to give such evidence by means of such written examination shall not thereafter be eligible to take another examination for admission.

* * * * *

(g) **Change of Address:** Each person admitted to practice before the Court shall promptly notify the Admissions Clerk of any change in office address for mailing purposes. See also Rule 21(b)(4) regarding the filing of a separate notice for each

docket number in which such person has entered an appearance.

Note

The prior provision of subpar. (2) of par. (a) of this Rule for admission to practice before the Court of an attorney who is a member of the Bar of a Territory has been deleted as obsolete.

In light of the increasing costs of processing applications for admission to practice before the Court, the fee for admission to practice has been increased to \$25. The increased fee shall apply with respect to applications for admission to practice under subpar. (2) of par. (a) and applications to take the examination for admission to practice under subpar. (3) of par. (a) filed on and after January 16, 1984.

Par. (g) of this Rule has been amended to include a cross reference to Rule 21(b)(4) regarding the filing of a separate notice of change of address for each docket number in which counsel has entered an appearance.

RULE 202. DISQUALIFICATION, SUSPENSION, OR DISBARMENT

(a) General: The Court may deny admission to its Bar to, or suspend, or disbar, any person who in its judgment does not possess the requisite qualifications to represent others, or who is lacking in character, integrity, or proper professional conduct. Upon the conviction of any practitioner admitted to practice before this Court for a criminal violation of any provision of the Internal Revenue Code or for any crime involving moral turpitude, or where any practitioner has been suspended or disbarred from the practice of his profession in any State or the District of Columbia, the Court may, in the exercise of its discretion, forthwith suspend such practitioner from the Bar of this Court until further order of Court; but otherwise no person shall be suspended for more than 60 days or disbarred until he has been afforded an opportunity to be heard. A Judge of the Court may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any trial or hearing.

(b) Disciplinary Proceedings: (1) *Referral to Counsel:* When misconduct or allegations of misconduct which, if substantiated, would warrant discipline of a practitioner shall come to the attention of the Court, whether by complaint or otherwise, and the applicable procedure is not otherwise

mandated by these Rules (see paragraph (a) of this Rule), the Court, in its discretion, may refer the matter to counsel to the Court (appointed pursuant to the provisions of paragraph (d) of this Rule) for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

(2) *Investigation and Recommendation:* Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the practitioner because sufficient evidence is not present, or because there is pending another proceeding against the practitioner, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefor.

(3) *Initiation of Proceedings:* To initiate formal disciplinary proceedings, the Court shall enter an order (or, where counsel is appointed, such counsel shall obtain an order of the Court upon a showing of probable cause) requiring the practitioner to show cause within 30 days after service of that order upon that practitioner, why the practitioner should not be disciplined.

(4) *Hearing:* Upon the practitioner's answer to the order to show cause, if any issue of fact is raised or the practitioner wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge.

(5) *Right to Counsel:* In all proceedings conducted under the provisions of this Rule, the practitioner shall have the right to be represented by counsel.

(c) **Reinstatement:** (1) *After Disbarment or Suspension:* A practitioner suspended for 60 days or less shall be automatically reinstated at the end of the period of suspension. A practitioner suspended for more than 60 days or disbarred may not resume practice until reinstated by order of this Court.

(2) *Hearing on Application:* A petition for reinstatement by a disbarred or suspended practitioner under this Rule shall be filed with the Court. Upon receipt of the petition, the Court may promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more Judges of this Court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge. The Judge or Judges assigned to the matter shall, as promptly as the Court's business shall permit, schedule a hearing at which the practitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice before this Court and that his resumption of such practice will not be detrimental to the integrity and standing of the Bar or to the administration of justice, or subversive of the public interest.

(3) *Successive Petitions:* No petition for reinstatement under this Rule shall be filed within one year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.

(d) **Presentation to the Court:** When counsel is to be appointed pursuant to this Rule to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a practitioner, this Court shall appoint as counsel to the Court a member of the Bar of this Court who is a resident of or who practices in the same Federal judicial circuit (see 28 U.S.C. section 41), except the Federal circuit, as the Federal judicial circuit which includes the practitioner's place of residence or practice, provided, however, that the practitioner may move to disqualify a person so appointed for cause, for example, if such person is or has been engaged as an adversary of the practitioner in any matter. Counsel, once appointed, may not resign unless permission to do so is given by the Court.

(e) **Jurisdiction:** Nothing contained in this Rule shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Code Section 7456.

Note

The prior provisions of Rule 202 have been included in par. (a) of Rule 202 as amended.

Pars. (b) through (e) are new. They are derived from the Model Federal Rules of Disciplinary Enforcement, adopted and recommended by the Judicial Conference of the United States.

Par. (b) sets forth procedures for disciplinary proceedings. Misconduct by a member of the Bar of the Court, or allegations of misconduct, may be referred to counsel to the Court for investigation and recommendation. A formal disciplinary proceeding, if any, is initiated by a show cause order. The practitioner is entitled to a hearing if his answer to the show cause order raises any issue of fact or if he wishes to be heard in mitigation. In any disciplinary proceeding, the practitioner is entitled to be represented by counsel.

Par. (c) provides procedures for reinstatement of a practitioner who has been suspended for more than 60 days or disbarred. A petition for reinstatement may be referred to counsel to the Court and shall be assigned to one or more Judges for hearing. The filing of a petition for reinstatement within one year of an adverse decision upon a petition for reinstatement filed by or on behalf of the same person is prohibited.

Par. (d) provides that counsel to the Court shall be a member of the Bar of the Court who is a resident of or who practices in the same Federal judicial circuit (except the Federal circuit) as the practitioner. The practitioner may move to disqualify a person appointed as counsel to the Court for cause.

Under par. (e), nothing in Rule 202 is to be construed so as to interfere with the Court's power to maintain control over proceedings before it.

TITLE XXI

DECLARATORY JUDGMENTS

RULE 211. COMMENCEMENT OF ACTION FOR DECLARATORY JUDGMENT

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

* * * * *

(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:

* * * * *

(vii) The signature, mailing address, and telephone number of each petitioner or his counsel.

* * * * *

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

* * * * *

(8) The signature, mailing address, and telephone number of each petitioner or his counsel.

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

* * * * *

(8) The signature, mailing address, and telephone number of the petitioner or its counsel.

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

* * * * *

(8) The signature, mailing address, and telephone number of the petitioner or its counsel.

* * * * *

Note

Subpar. (2)(vii) of par. (c) and subpar. (8) or pars. (d), (e), and (f) of this Rule have been amended to require that the mailing address and telephone number of each petitioner or his counsel be included in a petition for declaratory judgment.

RULE 212. DESIGNATION OF PLACE FOR SUBMISSION TO THE COURT

At the time of filing a petition for a declaratory judgment, a designation of place for submission to the Court shall be filed in accordance with Rule 140. In addition to including in the designation 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

Rule 212 has been amended to provide for the filing of a designation for place of submission to the Court. This conforms to the change made in Rule 140.

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

(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 183 shall be followed.

Note

Par. (b) of this Rule has been amended to refer to Rule 183 instead of to Rule 182. This conforms to the renumbering of those Rules in Title XVIII.

TITLE XXII

DISCLOSURE ACTIONS

RULE 221. COMMENCEMENT OF DISCLOSURE ACTION

(b) Contents of Petition: Every petition shall be entitled "Petition for Additional Disclosure" or "Petition to Restrain Disclosure" or "Petition to Disclose Identity." Subject to the provisions of Rule 227, dealing with anonymity, each petition shall contain the petitioner's name and address, an appropriate prayer for relief, and the signature, mailing address, and telephone number of the petitioner or his counsel. In addition, each petition shall contain the allegations described in paragraph (c), (d), or (e) of this Rule.

Note

Par. (b) of this Rule has been amended to require that the mailing address and telephone number of each petitioner or his counsel be included in the petition in a disclosure action.

RULE 222. DESIGNATION OF PLACE OF HEARING

At the time of filing a petition in a disclosure action, a designation of a place of hearing shall be filed in accordance with Rule 140. In addition, the petitioner shall include the date on which he believes the action will be ready for submission to the Court and his estimate of the time required therefor. 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. An intervenor shall likewise furnish such information to the Court in a separate statement filed with his first pleading in the case. After the action is at issue (see Rule 224), 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 also Rule 229.

Note

Rule 222 has been amended to provide for the filing of a designation of a place of hearing. This conforms to the change made in Rule 140.

RULE 229A. PROCEDURE IN ACTIONS HEARD BY A SPECIAL TRIAL JUDGE OF THE COURT

(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 183 shall be followed.

Note

Par. (b) of this Rule has been amended to refer to Rule 183 instead of to Rule 182. This conforms to the renumbering of those Rules in Title XVIII.

TITLE XXIII

CLAIMS FOR LITIGATION COSTS

RULE 232. DISPOSITION OF CLAIMS FOR LITIGATION COSTS

(d) **Additional Affidavit:** Where the Commissioner's response indicates that he and the moving party are unable to agree as to the amount of attorney's fees which is reasonable, counsel for the moving party shall, within 30 days after service of the Commissioner's response, file an additional affidavit which shall include:

(1) A detailed summary of the time expended by each individual for whom fees are sought, including a description of the nature of the services performed during each period of time summarized. Each such individual is expected to maintain contemporaneous, complete, and standardized time records which accurately reflect the work done by such individual. Where the reasonableness of the hours claimed becomes an issue, counsel is expected to make such time records available for inspection by the Court or by counsel for the Commissioner upon request.

(2) The customary fee for the type of work involved. Counsel shall provide specific evidence of the prevailing community rate for the type of work involved as well as specific evidence of his actual billing practice during the time period involved. Counsel may establish the prevailing community rate by affidavits of other counsel with similar qualifications reciting the precise fees they have received from clients in comparable cases, by evidence of recent fees awarded by the courts or through settlement to counsel of comparable reputation and experience performing similar work, or by reliable legal publications.

(3) A description of the fee arrangement with the client. If any part of the fee is payable only on condition that the Court award such fee, the description shall specifically so state.

(4) The preclusion of other employment by counsel, if any, due to acceptance of the case.

(5) Any time limitations imposed by the client or by the circumstances.

(6) Any other problems resulting from the acceptance of the case.

(7) The professional qualifications and experience of each individual for whom fees are sought.

(8) The nature and length of the professional relationship with the client.

(9) Awards in similar cases, if any.

(10) Any other information counsel believes will assist the Court in evaluating his claim, which may include, but shall not be limited to, information relating to the novelty and difficulty of the questions presented, the skill required to perform the legal services properly, and any efforts to settle the case.

Where there are several counsel of record, all of whom are members of or associated with the same firm, an affidavit filed by first counsel of record or his designee (see Rule 21(b)(2)) shall satisfy the requirements of this paragraph, and an affidavit by each counsel of record shall not be required.

Note

Subpar. (1) of par. (d) has been amended to provide that each individual who works on a case for which fees are claimed will be expected to maintain time records that accurately reflect the work done by him. This subparagraph previously made maintenance of time records the responsibility of counsel.

Subpars. (1) and (7) of par. (d) have been amended to strike out "attorney" each place it appears and insert in lieu thereof "individual." Subpars. (2) and (4) of par. (d) have been amended to strike out "attorney" or "attorneys" each place they appear and insert "counsel" in lieu thereof. These amendments conform to the definition of attorney's fees in Rule 230(b)(7), which may include fees for the services of an individual who is a member of the Bar of this Court but who is not an attorney.