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UNITED STATES TAX COURT

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SHEILA A. MURPHY
REPORTER OF DECISIONS

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JUDGES AND SENIOR JUDGES

Seated from left—Robert P. Ruwe, Joel Gerber, Stephen J. Swift, Howard A. Dawson, Jr., Michael B. Thornton, Herbert L. Chabot, Julian I. Jacobs, Thomas B. Wells, Laurence J. Whalen

Standing front row from left—John O. Colvin, Harry A. Haines, Carolyn P. Chiechi, David Laro, Mary Ann Cohen, James S. Halpern

Standing back row from left—Maurice B. Foley, Kathleen Kerrigan, Elizabeth Crewson Paris, Mark V. Holmes, Robert A. Wherry, Jr., L. Paige Marvel, Juan F. Vasquez, Joseph H. Gale, Joseph Robert Goeke, Diane L. Kroupa, David Gustafson, Richard T. Morrison

JUDGES OF THE UNITED STATES TAX COURT

Chief Judge

MICHAEL B. THORNTON

Judges

JOHN O. COLVIN
JAMES S. HALPERN
MAURICE B. FOLEY
JUAN F. VASQUEZ
JOSEPH H. GALE
L. PAIGE MARVEL
JOSEPH ROBERT GOEKE
ROBERT A. WHERRY, JR.
DIANE L. KROUPA
MARK V. HOLMES
DAVID GUSTAFSON
ELIZABETH CREWSON PARIS
RICHARD T. MORRISON
KATHLEEN KERRIGAN

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

HOWARD A. DAWSON, JR.
HERBERT L. CHABOT
ARTHUR L. NIMS III [1]
MARY ANN COHEN [2]
STEPHEN J. SWIFT
JULIAN I. JACOBS
JOEL GERBER
THOMAS B. WELLS
ROBERT P. RUWE
LAURENCE J. WHALEN
RENATO BEGHE [3]
CAROLYN P. CHIECHI
DAVID LARO
HARRY A. HAINES

Special Trial Judges

PETER J. PANUTHOS, *Chief Special Trial Judge*

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

ROBERT R. DI TROLIO, *Clerk*

SHEILA A. MURPHY, *Reporter of Decisions*

[1] Termination of recall August 4, 2012.

[2] Judge Cohen was recalled on October 1, 2012, after the expiration of her term on September 30, 2012.

[3] Judge Beghe died July 7, 2012.

SPECIAL TRIAL JUDGES

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

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

Rules 20, 23, 26, 33, 57, 70, 71, 74, 121, 143, 155, 173, 231, 232, 241, 271, 274, 281, and 301 of the Rules of Practice and Procedure of the United States Tax Court are amended, and new Rule 345 and new Form 18 are added as hereinafter set forth. Additionally, Rule 175 is deleted. Except as otherwise noted, these changes generally are effective as of July 6, 2012.

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

RULE 20. COMMENCEMENT OF CASE

(a) General: A case is commenced in the Court by filing a petition with the Court, inter alia, to redetermine a deficiency set forth in a notice of deficiency issued by the Commissioner, or to redetermine the liability of a transferee or fiduciary set forth in a notice of liability issued by the Commissioner to the transferee or fiduciary, or to obtain a declaratory judgment, or to obtain or restrain a disclosure, or to adjust or readjust partnership items, or to obtain an award for reasonable administrative costs, or to obtain a review of the Commissioner's failure to abate interest. See Rule 13.

(b) Statement of Taxpayer Identification Number: The petitioner shall submit with the petition a statement of the petitioner's taxpayer identification number (e.g., Social Security number or employer identification number), or lack thereof. The statement shall be substantially in accordance with Form 4 shown in Appendix I.

(c) Disclosure Statement: A nongovernmental corporation, large partnership, or limited liability company, or a tax matters partner or partner other than the tax matters partner of a nongovernmental partnership filing a petition with the Court shall file with the petition a separate disclosure statement. In the case of a nongovernmental corporation, the disclosure statement shall identify any parent corporation and any publicly held entity owning 10 percent or more of petitioner's stock or state that there is no such entity. In the case of a nongovernmental large partnership or limited liability company, or a tax matters partner or partner other than a tax matters partner of a nongovernmental partnership, the disclosure statement shall identify any publicly held entity owning an interest in the large partnership, the limited liability company, or the partnership, or state that there is no such entity. A petitioner shall promptly file a supplemental statement if there is any change in the information required under this rule. For the form of such disclosure statement, see Form 6, Appendix I. For the definition of a large partnership, see Rule 300(b)(1). For the definitions of a partnership and a tax matters partner, see Rule 240(b)(1), (4). A partner other than a tax matters partner is a notice partner or a 5-percent group as defined in Rule 240(b)(8) and (9).

(d) Filing Fee: At the time of filing a petition, a fee of $60 shall be paid. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information the inability to make such payment.

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 20(d) is amended to refer to a declaration in addition to an affidavit. The amendment is effective as of July 6, 2012.

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) *Caption:* A proper caption shall be placed on all papers filed with the Court, and the requirements provided in Rule 32(a) shall be satisfied with respect to all such papers. All prefixes and titles, such as "Mr.", "Ms.", or "Dr.", shall be omitted from the caption. The full name and surname of each individual petitioner shall be set forth in the caption. The name of an estate or trust or other person for whom a fiduciary acts shall precede the fiduciary's name and title, as for example "Estate of Mary Doe, Deceased, Richard Roe, Executor".

(2) *Date:* The date of signature shall be placed on all papers filed with the Court.

(3) *Signature:* The original signature, either of the party or the party's 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 "Mary Doe, Inc., by Richard Roe, President". The name, mailing address, and telephone number of the party or the party's counsel, as well as counsel's Tax Court bar number, 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 document filed in paper form, there shall be filed the signed original and one conformed copy, 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. If service of a paper is to be made by the Clerk, copies of any attachments to the original of such paper shall be attached to each copy to be served by the Clerk. As to stipulations, see Rule 91(b).

(c) Legible Papers Required: Papers filed with the Court may be prepared by any process, but only if all papers, including copies, filed with the Court are clear and legible.

(d) Size and Style: Typewritten or printed papers shall be typed or printed only on one side, on opaque, unglazed paper, 8½ inches wide by 11 inches long. All such papers shall have margins on both sides of each page that are no less than 1 inch wide, and margins on the top and bottom of each page that are no less than ¾ inch wide. Text and footnotes shall appear in consistent typeface no smaller than 12 characters per inch produced by a typewriting element, 12-point type produced by a nonproportional print font (e.g., Courier), or 14-point type produced by a proportional print font (e.g., Times New Roman), with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations in excess of five lines shall be set off from the surrounding text and indented. Double-spaced lines shall be no more than three lines to the vertical inch, and single-spaced lines shall be no more than six lines to the vertical inch.

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

(f) Citations: All citations of case names shall be underscored when typewritten, and shall be in italic when printed.

(g) Acceptance by the Clerk: Except as otherwise directed by the Court, the Clerk must not refuse to file a paper solely because it is not in the form prescribed by these Rules.

Note

Number of Copies Filed

Because of the successful implementation of electronic filing, service, and access, the Court no longer needs multiple copies of documents filed in paper form with the Court. Accordingly, Rule 23(b) is amended to require only the original and one conformed copy of each document filed in paper form with the Court in unconsolidated cases. As a conforming amendment, Rule 175 is deleted because with the adoption of the amendment to Rule 23(b), there is no longer any reason to provide a special rule for small tax cases in this regard. These amendments are effective as of July 6, 2012.

Font Requirements

Rule 23(d) currently provides that, for papers filed with the Court, "[t]ext and footnotes shall appear in consistent typeface no smaller than 12 characters per inch produced by a typewriting element or 12-point type produced by a nonproportional print font (e.g., Courier)". A nonproportional (monospaced, or fixed-width) font uses the same spacing for each character, regardless of its shape or size. Rule 23(d) was last amended in 1997, effective August 1, 1998. The amendments were intended to reflect changes in document production technology and to ensure a consistent format and quantity of material per page in documents submitted to the Court, particularly where the Court, in its discretion, sets page limits on certain documents. 109 T.C. 540.

Effective January 1, 2012, opinions of the Court are filed using 14-point Times New Roman font, which is a proportional font (i.e., it contains characters of varying widths). Accordingly, Rule 23(d) is amended to eliminate the nonproportional font requirement for documents filed by the parties. The amendment continues to allow fonts such as Courier or Courier New but also allows the use of proportional fonts

such as Times New Roman. This amendment is effective as of July 6, 2012.

Return of Papers

Rule 23(g) currently provides that the Court may return without filing any paper that does not conform to the requirements of the Rule. As originally adopted in 1983, effective January 16, 1984, Rule 23(g) provided that "[t]he Clerk may return without filing any paper that does not conform to the requirements of this Rule." 81 T.C. 1048. The Rule was amended effective August 1, 1998, to clarify that the *Court*, rather than the Clerk, may return a document without filing. 109 T.C. 540.

It has been suggested that the 1998 amendment did not adequately clarify the meaning of Rule 23(g), resulting in some misunderstandings by appeals courts. See, e.g., *Urtekar v. Commissioner*, 302 Fed. Appx. 64, 66–67 & n.4 (3d Cir. 2008) (appearing to compare unfavorably Rule 23(g) with Fed. R. Civ. P. 5(d)(4) and holding that the Tax Court abused its discretion in denying the taxpayer's motion for leave to file a motion to vacate where the Court had previously rejected the taxpayer's incorrectly captioned motion to vacate or revise that would have been timely if filed). Rule 5(d)(4) of the Federal Rules of Civil Procedure provides:

> **(4) Acceptance by the Clerk.** The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

The Advisory Committee's note to the 1991 amendment to subdivision (d)(4) (formerly subdivision (e)) states:

> Several local district rules have directed the office of the clerk to refuse to accept for filing papers not conforming to certain requirements of form imposed by local rules or practice. This is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this revision. The enforcement of these rules and of the local rules is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form, and may be directed to so inform the court.

The Court therefore amends Rule 23(g) to conform its language with that of rule 5(d)(4) of the Federal Rules of Civil Procedure. Amended Rule 23(g) is substantially identical to rule 5(d)(4). However, as amended, Rule 23(g) includes language expressly stating that, as noted by the Advisory Com-

mittee with respect to rule 5(d)(4), the Court's judicial officers retain the discretion to enforce the Rules of the Court. This amendment is effective as of July 6, 2012.

RULE 26. ELECTRONIC FILING

(a) General: The Court will accept for filing papers submitted, signed, or verified by electronic means that comply with procedures established by the Court. A paper filed electronically in compliance with the Court's electronic filing procedures is a written paper for purposes of these Rules.

(b) Electronic Filing Requirement: Electronic filing is required for all papers filed by parties represented by counsel in open cases. Mandatory electronic filing does not apply to:

(1) petitions and other papers not eligible for electronic filing in the Court (for a complete list of those papers, see the Court's eFiling Instructions on the Court's Web site at www.ustaxcourt.gov);

(2) self-represented petitioners, including petitioners assisted by low-income taxpayer clinics and Bar-sponsored pro bono programs; and

(3) any counsel in a case who, upon motion filed in paper form and for good cause shown, is granted an exception from the electronic filing requirement. Because a motion for exception does not extend any period provided by these Rules, the motion shall be accompanied by any document sought to be filed in paper form.

Note

On May 6, 2010, the Court announced that electronic filing (eFiling) is mandatory for most parties represented by counsel in cases in which the petition is filed on or after July 1, 2010. In accordance with rule 5(d)(3) of the Federal Rules of Civil Procedure, the mandatory eFiling policy allows reasonable exceptions. Rule 26, Electronic Filing, is amended to formalize the eFiling requirements. The amendment incorporates in new Rule 26(b) the procedures contained in the May 6, 2010, announcement. Consistent with those procedures, mandatory eFiling does not apply to self-represented taxpayers, including those assisted by low-income taxpayer clinics and Bar-sponsored pro bono programs. However, un-

like the procedures explained in the Court's eFiling Instructions for Practitioners, the amendment contains no provision permitting practitioners with low-income taxpayer clinics or Bar-sponsored pro bono programs who enter appearances on behalf of taxpayers to be exempted from mandatory eFiling by filing a Notice To Be Exempt from eFiling in each case in which they wish to be exempt. It is contemplated that, if good cause exists for an exception from the eFiling requirement, such practitioners will file a motion for exception under Rule 26(b)(3). Mandatory eFiling applies to cases in which the petition is filed on or after July 1, 2010, except that a practitioner who filed a Notice To Be Exempt from eFiling in a case before July 6, 2012, is not required to file a motion for exception to maintain his or her exemption in that case unless otherwise directed by the Court.

Additionally, the amendment includes in Rule 26(a) most of the final sentence of rule 5(d)(3) of the Federal Rules of Civil Procedure. That language clarifies that an electronically filed document constitutes a written paper for purposes of the Court's Rules.

This amendment is effective for cases in which the petition is filed on or after July 1, 2010, except that, as noted, a practitioner who filed a Notice to Be Exempt from electronic filing in a case before July 6, 2012, is not required to file a motion for exception to maintain his or her exemption in that case unless otherwise directed by the Court.

RULE 33. SIGNING OF PLEADINGS

(a) Signature: Each pleading shall be signed in the manner provided in Rule 23. Where there is more than one attorney of record, the signature of only one is required. Except when otherwise specifically directed by the Court, pleadings need not be verified or accompanied by affidavit or declaration.

(b) Effect of Signature: The signature of counsel or a party constitutes a certificate by the signer that the signer has read the pleading; that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary

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

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 33(a) is amended to refer to a declaration in addition to an affidavit. This amendment is effective as of July 6, 2012.

RULE 57. MOTION FOR REVIEW OF PROPOSED SALE OF SEIZED PROPERTY

(a) Commencement of Review: (1) *How Review Is Commenced:* Review of the Commissioner's determination under Code section 6863(b)(3)(B) that seized property may be sold shall be commenced by filing a motion with the Court. The movant shall place on the motion the same docket number as that of the then-pending action under Code section 6213(a) in respect of which the sale of seized property is stayed by virtue of Code section 6863(b)(3)(A)(iii). If filed by the petitioner, the motion shall be styled "Motion to Stay Proposed Sale of Seized Property—Sec. 6863(b)(3)(C)". If filed by the Commissioner, the motion shall be styled "Motion to Authorize Proposed Sale of Seized Property—Sec. 6863(b)(3)(C)".

(2) *When Review Is Commenced:* (A) *Proposed Sale Not Scheduled:* If a date for a proposed sale has not been

scheduled, then the Commissioner may file the motion under subparagraph (1) at any time.

(B) *Proposed Sale Scheduled:* (i) *General:* If a date for a proposed sale has been scheduled, then the movant shall file the motion under subparagraph (1) not less than 15 days before the date of the proposed sale and not more than 20 days after receipt of the notice of sale prescribed by Code section 6335(b).

(ii) *Motion Not Filed Within Prescribed Period:* If the motion under subparagraph (1) is filed less than 15 days before the date of the proposed sale or more than 20 days after receipt of the notice of sale prescribed by Code section 6335(b), then an additional statement shall be included in the motion as provided by paragraph (c)(3) of this Rule. A motion not filed within the period prescribed by subparagraph (2)(B)(i) shall be considered dilatory unless the movant shows that there was good reason for not filing the motion within that period. As to the effect of the motion's being dilatory, see paragraph (g)(4) of this Rule.

(b) Service of Motion: (1) *By the Petitioner:* A motion filed with the Court pursuant to this Rule shall be served by the petitioner on counsel for the Commissioner (as specified in Rule 21(b)(1)) in such manner as may reasonably be expected to reach the Commissioner's counsel not later than the day on which the motion is received by the Court.

(2) *By the Commissioner:* A motion filed with the Court pursuant to this Rule shall be served by the Commissioner on the petitioner or on the petitioner's counsel (as specified in Rule 21(b)(2)) in such manner as may reasonably be expected to reach the petitioner or the petitioner's counsel not later than the day on which the motion is received by the Court.

(c) Content of Motion: A motion filed pursuant to this Rule shall contain the following:

(1) The time and place of the proposed sale.

(2) A description of the property proposed to be sold, together with a copy of the notice of seizure prescribed by Code section 6335(a) and the notice of sale prescribed by Code section 6335(b).

(3) If the motion is filed less than 15 days before the date of the proposed sale or more than 20 days after re-

ceipt of the notice of sale prescribed by Code section 6335(b), as the case may be, a statement of the reasons why review was not commenced within the prescribed period.

(4) A statement that the petitioner does not consent to the proposed sale.

(5) A statement whether the property proposed to be sold—

(A) is or is not likely to perish;

(B) is or is not likely to become greatly reduced in price or value by keeping; and

(C) is or is not likely to be greatly expensive to conserve or maintain.

(6) The movant's basis for each statement in subparagraph (5) that the movant expressed in the affirmative, together with any appraisal, affidavit or declaration, valuation report, or other document relied on by the movant to support each statement.

(7) A statement whether the movant requests an evidentiary or other hearing on the motion, and if so, the reasons why. For the place of hearing, see paragraph (f) of this Rule.

(8) A certificate showing service of the motion in accordance with paragraph (b) of this Rule.

(d) Response to Motion: (1) *Content:* The petitioner or the Commissioner, as the case may be, shall file a written response to a motion filed pursuant to this Rule. The response shall contain the following:

(A) A specific admission or denial of each allegation in the motion arranged in paragraphs that are designated to correspond to those of the motion to which they relate.

(B) A clear and concise statement of every ground, together with the facts in support thereof, on which the responding party relies.

(C) A statement whether the responding party requests a hearing on the motion, and if so, the reasons why.

(D) A copy of:

(i) Any appraisal, affidavit or declaration, valuation report, or other document relied on by the responding party; and

(ii) any item required for consideration of the basis of the movant's motion, if that item has not been attached to the movant's motion.

(E) A certificate showing service of the response in accordance with subparagraph (2) of this paragraph.

(2) *Time for and Service of Response:* The response required by paragraph (d)(1) of this Rule shall be received by the Court not later than 10 days after the date on which the movant's motion is received by the Court. This response shall be served in such manner as may reasonably be expected to reach the movant or the movant's counsel (as specified in Rule 21(b)(1) or Rule 21(b)(2), as the case may be) not later than the day on which the response is received by the Court.

(e) Effect of Signature: The provisions of Rule 33(b), relating to the effect of the signature of counsel or a party, shall apply to a motion filed pursuant to this Rule and to the response required by paragraph (d) of this Rule.

(f) Place of Hearing: If required, a hearing on a motion filed pursuant to this Rule will ordinarily be held at the place of trial previously requested in accordance with paragraph (a) of Rule 140 unless otherwise ordered by the Court. For the manner in which the Court may dispose of such a motion, see paragraph (g)(3) of this Rule.

(g) Disposition of Motion: (1) *General:* A motion filed pursuant to this Rule may be disposed of in one or more of the following ways, in the discretion of the Court:

(A) The Court may:

(i) Authorize, or decline to stay, the proposed sale; or

(ii) stay the proposed sale temporarily until the Court has had an adequate opportunity to consider the motion.

(B) The Court may stay the proposed sale until a specified date or event, or for a specified period, or until further application is made for a sale, or any combination of the foregoing.

(C) The Court may stay the proposed sale until specified undertakings or safeguards are effectuated.

(D) The Court may provide such other temporary, extended, or permanent relief as may be appropriate under the circumstances.

(2) *Evidence:* In disposing of a motion filed pursuant to this Rule, the Court may consider such appraisals, affidavits or declarations, valuation reports, and other evidence as may be appropriate, giving due regard to the necessity of acting on the motion within a brief period of time.

(3) *Disposition on Motion Papers or Otherwise:* The Court may dispose of a motion filed pursuant to this Rule on the motion papers, or after an evidentiary hearing or oral argument, or may require legal memoranda, or any combination of the foregoing that the Court deems appropriate. For the place of hearing, see paragraph (f) of this Rule.

(4) *Dilatory Motions:* The fact that a motion filed pursuant to this Rule is dilatory within the meaning of paragraph (a)(2)(B)(ii) of this Rule shall be considered by the Court in disposing of the motion.

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 57 is amended to refer to a declaration in addition to an affidavit. This amendment is effective as of July 6, 2012.

RULE 70. GENERAL PROVISIONS

(a) General: (1) *Methods and Limitations of Discovery:* In conformity with these Rules, a party may obtain discovery by written interrogatories (Rule 71), by production of documents, electronically stored information, or things (Rules 72 and 73), by depositions upon consent of the parties (Rule 74(b)), or by depositions without consent of the parties in certain cases (Rule 74(c)). However, the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before 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). Discovery shall be completed and any motion to compel or any other motion with respect to such discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for call of the case from a trial calendar. Discovery by a deposition under Rule 74(c) may not be commenced before a notice of trial has been issued or the case has been assigned to a Judge or Special Trial Judge and any motion to compel or any other motion with respect to such discovery shall be filed within the time provided by the preceding sentence. Discovery of matters which are relevant only to the issue of a party's entitlement to reasonable litigation or administrative costs shall not be commenced, without leave of Court, before a motion for reasonable litigation or administrative costs has been noticed for a hearing, and discovery shall be completed and any motion to compel or any other motion with respect to such discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for hearing.

(3) *Cases Consolidated for Trial:* With respect to a common matter in cases consolidated for trial, discovery may be had by any party to such a case to the extent provided by these Rules, and, for that purpose, the reference to a "party" in this Title VII, in Title VIII, or in Title X, shall mean any party to any of the consolidated cases involving such common matter.

(b) Scope of Discovery: The information or response sought through discovery may concern any matter not privileged and which is relevant to the subject matter involved in the pending case. It is not ground for objection that the information or response sought will be inadmissible at the trial, if that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of the burden of proof involved. If the information or response sought is otherwise proper, it is not objectionable merely because the information or response involves an opinion or contention that relates to fact or to the application of law to fact.

But the Court may order that the information or response sought need not be furnished or made until some designated time or a particular stage has been reached in the case or until a specified step has been taken by a party.

(c) Limitations on Discovery: (1) *General:* The frequency or extent of use of the discovery methods set forth in paragraph (a) shall be limited by the Court if it determines that: (A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The Court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 103.

(2) *Electronically Stored Information:* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 70(c)(1). The Court may specify conditions for the discovery.

(3) *Documents and Tangible Things:*

(A) A party generally may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent), unless, subject to Rule 70(c)(4),

(i) they are otherwise discoverable under Rule 70(b); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without

undue hardship, obtain their substantial equivalent by other means.

(B) If the Court orders discovery of those materials, it must protect against disclosure of mental impressions, conclusions, opinions, or legal theories of a party's counsel or other representative concerning the litigation.

(4) *Experts:*

(A) Rule 70(c)(3) protects drafts of any expert witness report required under Rule 143(g), regardless of the form in which the draft is recorded.

(B) Rule 70(c)(3) protects communications between a party's counsel and any witness required to provide a report under Rule 143(g), regardless of the form of the communications, except to the extent the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's counsel provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's counsel provided and that the expert relied on in forming the opinions to be expressed.

(C) A party generally may not, by interrogatories or depositions, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial, except on a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(d) Party's Statements: Upon request to the other party and without any showing except the assertion in writing that the requester lacks and has no convenient means of obtaining a copy of a statement made by the requester, a party shall be entitled to obtain a copy of any such statement which has a bearing on the subject matter of the case and is in the possession or control of another party to the case.

(e) Use In Case: The answers to interrogatories, things produced in response to a request, or other information or responses obtained under Rules 71, 72, 73, and 74 may be used

at trial or in any proceeding in the case prior or subsequent to trial to the extent permitted by the rules of evidence. Such answers or information or responses will not be considered as evidence until offered and received as evidence. No objections to interrogatories or the answers thereto, or to a request to produce or the response thereto, will be considered unless made within the time prescribed, except that the objection that an interrogatory or answer would be inadmissible at trial is preserved even though not made prior to trial.

(f) Signing of Discovery Requests, Responses, and Objections: (1) Every request for discovery or response or objection thereto made by a party represented by counsel shall be signed by at least one counsel of record. A party who is not represented by counsel shall sign the request, response, or objection. The signature shall conform to the requirements of Rule 23(a)(3). The signature of counsel or a party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, it is: (A) Consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, then it shall be stricken, unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If a certification is made in violation of this Rule, then the Court upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable counsel's fees.

(g) Other Applicable Rules: For Rules concerned with the frequency and timing of discovery in relation to other procedures, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

Note

Effective December 1, 2010, rule 26(b)(4) of the Federal Rules of Civil Procedure was amended to provide that drafts of expert witness reports and certain pretrial communications between counsel and experts are not discoverable. Rule 70 is amended to provide the same protections from discovery as does rule 26. The amendments restructure paragraph (b) and add new paragraph (c)(4) addressing limitations on discovery regarding experts. The amendments contain most of the relevant language in rule 26(b)(4)(B), (C), and (D).

The Court further adds new paragraph (c)(3) to formalize the Court's application of the work product doctrine, set forth in rule 26(b)(3) of the Federal Rules of Civil Procedure. The provisions of rule 26(b)(3) were not included in the Court's discovery rules as adopted in 1973, but were given negative recognition in the notes at 60 T.C. 1098, which state in pertinent part:

> The other areas, i.e., the "work product" of counsel and material prepared in anticipation of litigation or for trial, are generally intended to be outside the scope of allowable discovery under these Rules, and therefore the specific provisions for disclosure of such materials in FRCP 26(b)(3) have not been adopted.

The language of new paragraph (c)(3) is drawn from rule 26(b)(3)(A) and (B) of the Federal Rules of Civil Procedure and includes the exception to the work product privilege provided upon a showing of substantial need for the materials sought to be discovered. See *Ratke v. Commissioner*, 129 T.C. 45, 50–53 (2007).

The amendments also redesignate current paragraphs (c) through (f) as paragraphs (d) through (g).

The amendments are effective as of July 6, 2012.

RULE 71. INTERROGATORIES

(a) Availability: Unless otherwise stipulated or ordered by the Court, a party may serve upon any other party no more than 25 written interrogatories, including all discrete subparts but excluding interrogatories described in paragraph (d) of this Rule, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by an officer or agent who shall furnish such information as is available to the party. A motion for leave to serve additional interrogatories may be granted by the Court to the extent consistent with Rule 70(c)(1).

(b) Answers: All answers shall be made in good faith and as completely as the answering party's information shall permit. However, the answering party is required to make reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer, unless such party states that such party has made reasonable inquiry and that information known or readily obtainable by such party is insufficient to enable such party to answer the substance of the interrogatory.

(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 the party's counsel. The party on whom the interrogatories have been served shall serve a copy of the answers, and objections if any, upon the propounding party within 30 days after service of the interrogatories. 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 the interrogatories to the motion, with proof of service on the other party, together with the answers and objections, if any. Prior to a motion for such an order, neither the interrogatories nor the response shall be filed with the Court.

(d) Experts: (1) By means of written interrogatories in conformity with this Rule, a party may require any other party: (A) To identify each person whom the other party ex-

pects to call as an expert witness at the trial of the case, giving the witness's name, address, vocation or occupation, and a statement of the witness's qualifications, and (B) 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) For provisions regarding the submission and exchange of expert witness reports, see Rule 143(g). That Rule shall not serve to extend the period of time under paragraph (c) of this Rule within which a party must answer any interrogatory directed at discovering: (A) The identity and qualifications of each person whom such party expects to call as an expert witness at the trial of the case and (B) the subject matter with respect to which the expert is expected to testify.

(e) Option To Produce Business Records: If the answer to an interrogatory may be derived or ascertained from the business records (including electronically stored information) of the party upon whom the interrogatory has been served, or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

Note

The Court has adopted amendments to Rule 70 which include a restructuring and consequent redesignation of the subparagraphs of Rule 70(b). Rule 71(a) is amended to reflect the redesignation of Rule 70(b)(2). This amendment is effective as of July 6, 2012.

RULE 74. DEPOSITIONS FOR DISCOVERY PURPOSES

(a) General: In conformity with this Rule, a party may obtain discovery by depositions with the consent of the parties under paragraph (b) and without the consent of the parties under paragraph (c). Paragraph (d) describes additional uses for depositions of expert witnesses, and paragraphs (e) and (f) set forth general provisions governing the taking of all depositions for discovery purposes. An application for an order to take a deposition is required only with respect to depositions to perpetuate evidence. See Rules 80 through 84.

(b) Depositions Upon Consent of the Parties: (1) *When Deposition May Be Taken:* Upon consent of all the parties to a case, and within the time limits provided in Rule 70(a)(2), a deposition for discovery purposes may be taken of either a party, a nonparty witness, or an expert witness. Such consent shall be set forth in a stipulation filed in duplicate with the Court, which shall contain the information required in Rule 81(d) and which otherwise shall be subject to the procedure provided in Rule 81(d).

(2) *Notice to Nonparty Witness or Expert Witness:* A notice of deposition shall be served on a nonparty witness or an expert witness. The notice shall state that the deposition is to be taken under Rule 74(b) and shall set forth the name of the party or parties seeking the deposition; the name and address of the person to be deposed; the time and place proposed for the deposition; the name of the officer before whom the deposition is to be taken; a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition; and a statement of the issues in controversy to which the expected testimony of the witness, or the document, electronically stored information, or thing relates, and the reasons for deposing the witness. With respect to the deposition of an organization described in Rule 81(c), the notice shall also set forth the information required under that Rule, and the organization shall make the designation authorized by that Rule.

(3) *Objection by Nonparty Witness or Expert Witness:* Within 15 days after service of the notice of deposition, a nonparty witness or expert witness shall serve on the parties seeking the deposition any objections to the deposition.

The burden shall be upon a party seeking the deposition to move for an order with respect to such objection or other failure of the nonparty witness or expert witness, and such party shall annex to any such motion the notice of deposition with proof of service thereof, together with a copy of the response and objections, if any.

(c) Depositions Without Consent of the Parties: (1) *General:* (A) *When Depositions May Be Taken:* After a notice of trial has been issued or after a case has been assigned to a Judge or Special Trial Judge of the Court, and within the time for completion of discovery under Rule 70(a)(2), any party may take a deposition for discovery purposes of a party, a nonparty witness, or an expert witness in the circumstances described in this paragraph.

(B) *Availability:* The taking of a deposition of a party, a nonparty witness, or an expert witness under this paragraph is an extraordinary method of discovery and may be used only where a party, a nonparty witness, or an expert witness can give testimony or possesses documents, electronically stored information, or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, electronically stored information, or things practicably cannot be obtained through informal consultation or communication (Rule 70(a)(1)), interrogatories (Rule 71), a request for production of documents, electronically stored information, or things (Rule 72), or by a deposition taken with consent of the parties (Rule 74(b)). If such requirements are satisfied, then a deposition of a witness may be taken under this paragraph, for example, where a party is a member of a partnership and an issue in the case involves an adjustment with respect to such partnership, or a party is a shareholder of an S corporation (as described in Code section 1361(a)), and an issue in the case involves an adjustment with respect to such S corporation. See Title XXIV, relating to partnership actions, brought under provisions first enacted by the Tax Equity and Fiscal Responsibility Act of 1982.

(2) *Nonparty Witnesses:* A party may take the deposition of a nonparty witness without leave of court and without the consent of all the parties as follows:

(A) *Notice:* A party desiring to take a deposition under this subparagraph shall give notice in writing to

every other party to the case and to the nonparty witness to be deposed. The notice shall state that the deposition is to be taken under Rule 74(c)(2) and shall set forth the name of the party seeking the deposition; the name and address of the person to be deposed; the time and place proposed for the deposition; the officer before whom the deposition is to be taken; a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition; and a statement of the issues in controversy to which the expected testimony of the witness, or the document, electronically stored information, or thing relates, and the reasons for deposing the witness. With respect to the deposition of an organization described in Rule 81(c), the notice shall also set forth the information required under that Rule, and the organization shall make the designation authorized by that Rule.

(B) *Objections:* Within 15 days after service of the notice of deposition, a party or a nonparty witness shall serve on the party seeking the deposition any objections to the deposition. The burden shall be upon the party seeking the deposition to move for an order with respect to any such objections or any failure of the nonparty witness, and such party shall annex to any such motion the notice of deposition with proof of service thereof, together with a copy of any responses and objections. Prior to a motion for such an order, neither the notice nor the responses shall be filed with the Court.

(3) *Party Witnesses:* A party may take the deposition of another party without the consent of all the parties as follows:

(A) *Motion:* A party desiring to depose another party shall file a written motion which shall state that the deposition is to be taken under Rule 74(c)(3) and shall set forth the name of the person to be deposed, the time and place of the deposition, and the officer before whom the deposition is to be taken. With respect to the deposition of an organization described in Rule 81(c), the motion shall also set forth the information required under that Rule, and the organization shall make the designation authorized by that Rule.

(B) *Objection:* Upon the filing of a motion to take the deposition of a party, the Court shall issue an order directing each non-moving party to file a written objection or response thereto.

(C) *Action by the Court Sua Sponte:* In the exercise of its discretion the Court may on its own motion order the taking of a deposition of a party witness and may in its order allocate the cost therefor as it deems appropriate.

(4) *Expert Witnesses:* A party may take the deposition of an expert witness without the consent of all the parties as follows:

(A) *Scope of Deposition:* The deposition of an expert witness under this subparagraph shall be limited to: (i) The knowledge, skill, experience, training, or education that qualifies the witness to testify as an expert in respect of the issue or issues in dispute, (ii) the opinion of the witness in respect of which the witness's expert testimony is relevant to the issue or issues in dispute, (iii) the facts or data that underlie that opinion, and (iv) the witness's analysis, showing how the witness proceeded from the facts or data to draw the conclusion that represents the opinion of the witness.

(B) *Procedure:* (i) *General:* A party desiring to depose an expert witness under this subparagraph (4) shall file a written motion and shall set forth therein the matters specified below:

(*a*) The name and address of the witness to be examined;

(*b*) a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition of the witness to be examined;

(*c*) a statement of issues in controversy to which the expected testimony of the expert witness, or the document, electronically stored information, or thing relates, and the reasons for deposing the witness;

(*d*) the time and place proposed for the deposition;

(*e*) the officer before whom the deposition is to be taken;

(*f*) any provision desired with respect to the payment of the costs, expenses, fees, and charges relating to the deposition (see paragraph (c)(4)(D)); and

(*g*) if the movant proposes to video record the deposition, then a statement to that effect and the name and address of the video recorder operator and the operator's employer. (The video recorder operator and the officer before whom the deposition is to be taken may be the same person.)

The movant shall also show that prior notice of the motion has been given to the expert witness whose deposition is sought and to each other party, or counsel for each other party, and shall state the position of each of these persons with respect to the motion, in accordance with Rule 50(a).

(ii) *Disposition of Motion:* Any objection or other response to the motion for order to depose an expert witness under this subparagraph shall be filed with the Court within 15 days after service of the motion. If the Court approves the taking of a deposition, then it will issue an order as described in paragraph (e)(4) of this Rule. If the deposition is to be video recorded, then the Court's order will so state.

(C) *Action by the Court Sua Sponte:* In the exercise of its discretion the Court may on its own motion order the taking of a deposition of an expert witness and may in its order allocate the cost therefor as it deems appropriate.

(D) *Expenses:* (i) *In General:* By stipulation among the parties and the expert witness to be deposed, or on order of the Court, provision may be made for any costs, expenses, fees, or charges relating to the deposition. If there is not such a stipulation or order, then the costs, expenses, fees, and charges relating to the deposition shall be borne by the parties as set forth in paragraph (c)(4)(D)(ii).

(ii) *Allocation of Costs, Etc.:* The party taking the deposition shall pay the following costs, expenses, fees, and charges:

(*a*) A reasonable fee for the expert witness, with regard to the usual and customary charge of the wit-

ness, for the time spent in preparing for and attending the deposition;

(*b*) reasonable charges of the expert witness for models, samples, or other like matters that may be required in the deposition of the witness;

(*c*) such amounts as are allowable under Rule 148(a) for transportation and subsistence for the expert witness;

(*d*) any charges of the officer presiding at or recording the deposition (other than for copies of the deposition transcript);

(*e*) any expenses involved in providing a place for the deposition; and

(*f*) the cost for the original of the deposition transcript as well as for any copies thereof that the party taking the deposition might order.

The other parties and the expert witness shall pay the cost for any copies of the deposition transcript that they might order.

(iii) *Failure To Attend:* If the party authorized to take the deposition of the expert witness fails to attend or to proceed therewith, then the Court may order that party to pay the witness such fees, charges, and expenses that the witness would otherwise be entitled to under paragraph (c)(4)(D)(ii) and to pay any other party such expenses, including attorney's fees, that the Court deems reasonable under the circumstances.

(d) Use of Deposition of an Expert Witness for Other Than Discovery Purposes: (1) *Use as Expert Witness Report:* Upon written motion by the proponent of the expert witness and in appropriate cases, the Court may order that the deposition transcript serve as the expert witness report required by Rule 143(g)(1). Unless the Court shall determine otherwise for good cause shown, the taking of a deposition of an expert witness will not serve to extend the date under Rule 143(g)(1) by which a party is required to furnish to each other party and to submit to the Court a copy of all expert witness reports prepared pursuant to that Rule.

(2) *Other Use:* Any other use of a deposition of an expert witness shall be governed by the provisions of Rule 81(i).

(e) General Provisions: Depositions taken under this Rule are subject to the following provisions. (1) *Transcript:* A transcript shall be made of every deposition upon oral examination taken under this Rule, but the transcript and exhibits introduced in connection with the deposition generally shall not be filed with the Court. See Rule 81(h)(3).

(2) *Depositions Upon Written Questions:* Depositions under this Rule may be taken upon written questions rather than upon oral examination. If the deposition is to be taken on written questions, a copy of the written questions shall be annexed to the notice of deposition or motion to take deposition. The use of such written questions is not favored, and the deposition should not be taken in this manner in the absence of a special reason. See Rule 84(a). There shall be an opportunity for cross-questions and redirect questions to the same extent and within the same time periods as provided in Rule 84(b) (starting with service of a notice of or motion to take deposition rather than service of an application). With respect to taking the deposition, the procedure of Rule 84(c) shall apply.

(3) *Hearing:* A hearing on a motion for an order regarding a deposition under this Rule will be held only if directed by the Court. A motion for an order regarding a deposition may be granted by the Court to the extent consistent with Rule 70(c)(1).

(4) *Orders:* If the Court approves the taking of a deposition under this Rule, then it will issue an order which includes in its terms the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken.

(5) *Continuances:* Unless the Court shall determine otherwise for good cause shown, the taking of a deposition under this Rule will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set.

(f) Other Applicable Rules: Unless otherwise provided in this Rule, the depositions described in this Rule generally shall be governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 81(c) (designation of person to testify), 81(e) (person before whom deposition taken), 81(f) (taking of deposition), 81(g) (expenses), 81(h) (execution, form, and return of deposition),

81(i) (use of deposition), and Rule 85 (objections, errors, and irregularities). For Rules concerned with the timing and frequency of depositions, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X. For provisions governing the issuance of subpoenas, see Rule 147(d).

Note

The Court has adopted amendments to Rule 70 which include a restructuring and consequent redesignation of the subparagraphs of Rule 70(b). Rule 74(e)(3) is amended to reflect the redesignation of Rule 70(b)(2). This amendment is effective as of July 6, 2012.

RULE 121. SUMMARY JUDGMENT

(a) General: Either party may move, with or without supporting affidavits or declarations, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 30 days after the pleadings are closed but within such time as not to delay the trial, and in any event no later than 60 days before the first day of the Court's session at which the case is calendared for trial, unless otherwise permitted by the Court.

(b) Motion and Proceedings Thereon: The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. An opposing written response, with or without supporting affidavits or declarations, 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 or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law. A partial summary adjudication may be made which does not dispose of all the issues in the case.

(c) Case Not Fully Adjudicated on Motion: If, on motion under this Rule, decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what mate-

rial facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be concluded accordingly.

(d) Form of Affidavits or Declarations; Further Testimony; Defense Required: Supporting and opposing affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant or declarant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit or a declaration shall be attached thereto or filed therewith. The Court may permit affidavits or declarations to be supplemented or opposed by answers to interrogatories, depositions, further affidavits or declarations, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or declarations or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine dispute for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

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

whom affidavits or declarations cannot be secured, then such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits or declarations are genuinely disputed.

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

Note

In 2010, rule 56(a) of the Federal Rules of Civil Procedure was revised, as relevant here, by substituting the term "genuine dispute" for the term "genuine issue". The Advisory Committee's notes to the 2010 Amendments state that "dispute" better reflects the focus of a summary judgment determination. However, the notes also state that subdivision (a) of rule 56 carries forward the summary judgment standard expressed in former subdivision (c), changing only the one word; the language of subdivision (a) continues to require that there be no genuine dispute as to any material fact and that the movant be entitled to judgment as a matter of law; and the amendments will not affect continuing development of the decisional law construing and applying these phrases. Also in 2010, rule 56(c)(4) of the Federal Rules of Civil Procedure was amended to provide that a motion for summary judgment no longer is required to be supported by a formal affidavit, recognizing that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit.

The Court amends Rule 121(b) and (d) to conform its terminology to that used in rule 56(a) of the Federal Rules of Civil Procedure, i.e., genuine "issue" is revised to read genuine "dispute". Consistent with the Advisory Committee's notes to the 2010 Amendments, this amendment is not in-

tended to alter substantively the operation of Rule 121 or to affect the continuing development of decisional law construing and applying Rule 121. In addition, the language amends paragraphs (a), (b), (d), (e), and (f) to permit the use of an unsworn written declaration. The amendments are effective as of July 6, 2012. See new Form 18, Unsworn Declaration Under Penalty of Perjury, that provides a fill-in-the-blank form to use for the declaration.

RULE 143. EVIDENCE

(a) General: Trials before the Court will be conducted in accordance with the rules of evidence applicable in trials without a jury in the United States District Court for the District of Columbia. See Code sec. 7453. To the extent applicable to such trials, those rules include the rules of evidence in the Federal Rules of Civil Procedure and any rules of evidence generally applicable in the Federal courts (including the United States District Court for the District of Columbia). Evidence which is relevant only to the issue of a party's entitlement to reasonable litigation or administrative costs shall not be introduced during the trial of the case (other than a case commenced under Title XXVI of these Rules, relating to actions for administrative costs). As to claims for reasonable litigation or administrative costs and their disposition, see Rules 231 and 232. As to evidence in an action for administrative costs, see Rule 274 (and that Rule's incorporation of the provisions of Rule 174(b)).

(b) Testimony: The testimony of a witness generally must be taken in open court except as otherwise provided by the Court or these Rules. For good cause in compelling circumstances and with appropriate safeguards, the Court may permit testimony in open court by contemporaneous transmission from a different location.

(c) Ex Parte Statements: Ex parte affidavits or declarations, statements in briefs, and unadmitted allegations in pleadings do not constitute evidence. As to allegations in pleadings not denied, see Rules 36(c) and 37(c) and (d).

(d) Depositions: Testimony taken by deposition shall not be treated as evidence in a case until offered and received in evidence. Error in the transcript of a deposition may be corrected by agreement of the parties, or by the Court on proof it deems satisfactory to show an error exists

and the correction to be made, subject to the requirements of Rules 81(h)(1) and 85(e). As to the use of a deposition, see Rule 81(i).

(e) Documentary Evidence: (1) *Copies:* A copy is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original or in the circumstances it would be unfair to admit the copy in lieu of the original. Where the original is admitted in evidence, a clearly legible copy may be substituted later for the original or such part thereof as may be material or relevant, upon leave granted in the discretion of the Court.

(2) *Return of Exhibits:* Exhibits may be disposed of as the Court deems advisable. A party desiring the return at such party's expense of any exhibit belonging to such party, 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.

(f) 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 the interpreter's reasonable compensation, which compensation shall be paid by one or more of the parties or otherwise as the Court may direct.

(g) Expert Witness Reports: (1) Unless otherwise permitted by the Court upon timely request, any party who calls an expert witness shall cause that witness to prepare a written report for submission to the Court and to the opposing party if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report, prepared and signed by the witness, shall contain:

(A) a complete statement of all opinions the witness expresses and the basis and reasons for them;

(B) the facts or data considered by the witness in forming them;

(C) any exhibits used to summarize or support them;

(D) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(E) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(F) a statement of the compensation to be paid for the study and testimony in the case.

(2) The report will be marked as an exhibit, identified by the witness, and received in evidence as the direct testimony of the expert witness, unless the Court determines that the witness is not qualified as an expert. Additional direct testimony with respect to the report may be allowed to clarify or emphasize matters in the report, to cover matters arising after the preparation of the report, or otherwise at the discretion of the Court. After the case is calendared for trial or assigned to a Judge or Special Trial Judge, each party who calls any expert witness shall serve on each other party, and shall submit to the Court, not later than 30 days before the call of the trial calendar on which the case shall appear, a copy of all expert witness reports prepared pursuant to this subparagraph. An expert witness's testimony will be excluded altogether for failure to comply with the provisions of this paragraph, unless the failure is shown to be due to good cause and unless the failure does not unduly prejudice the opposing party, such as by significantly impairing the opposing party's ability to cross-examine the expert witness or by denying the opposing party the reasonable opportunity to obtain evidence in rebuttal to the expert witness's testimony.

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

(4) For circumstances under which the transcript of the deposition of an expert witness may serve as the written report required by subparagraph (1), see Rule 74(d).

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows

a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 143(c) is amended to refer to a declaration in addition to an affidavit.

The Court also amends Rule 143(g) to include the contents of an expert witness report set forth in rule 26(a)(2)(B) of the Federal Rules of Civil Procedure and to use the terminology contained in rule 26(a)(2)(B)(ii).

These amendments are effective as of July 6, 2012.

RULE 155. COMPUTATION BY PARTIES FOR ENTRY OF DECISION

(a) Agreed Computations: Where the Court has filed or stated its opinion or issued a dispositive order determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount to be included in the decision. Unless otherwise directed by the Court, if the parties are in agreement as to the amount to be included in the decision pursuant to the findings and conclusions of the Court, then they, or either of them, shall file with the Court within 90 days of service of the opinion or order an original and one copy of a computation showing the amount and that there is no disagreement that the figures shown are in accordance with the findings and conclusions of the Court. In the case of an overpayment, the computation shall also include the amount and date of each payment made by the petitioner. The Court will then enter its decision.

(b) Procedure in Absence of Agreement: If the parties are not in agreement as to the amount to be included in the decision in accordance with the findings and conclusions of the Court, then each party shall file with the Court a computation of the amount believed by such party to be in accordance with the Court's findings and conclusions. In the case of an overpayment, the computation shall also include the amount and date of each payment made by the petitioner. A party shall file such party's computation within 90 days of service of the opinion or order, unless otherwise directed by the Court. The Clerk will serve upon the opposite party a notice of such filing and if, on or before a date speci-

fied in the Clerk's notice, the opposite party fails to file an objection or an alternative computation, then the Court may enter decision in accordance with the computation already submitted. If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, then the parties may, at the Court's discretion, be afforded an opportunity to be heard in argument thereon and the Court will determine the correct amount and will enter its decision accordingly.

(c) Limit on Argument: Any argument under this Rule will be confined strictly to consideration of the correct computation of the amount to be included in the decision resulting from the findings and conclusions made by the Court, and no argument will be heard upon or consideration given to the issues or matters disposed of by the Court's findings and conclusions or to any new issues. This Rule is not to be regarded as affording an opportunity for retrial or reconsideration.

Note

As originally drafted and pursuant to its literal language, Rule 155 applied only to deficiency and liability proceedings. Consistent with the Court's expanding jurisdiction, the Rule was amended in 2008, effective October 3, 2008, deleting the words "deficiency, liability, or overpayment" and making other conforming changes, to clarify that the Rule is not limited to deficiency and liability cases but permits the filing of computations in all cases. Rule 155 is amended to clarify that the Rule also applies to dispositive orders. The amendment expressly permits the filing of Rule 155 computations after the Court's issuance of a dispositive order.

Additionally, in conformity with Rule 23, which is amended, in part, to reduce the number of copies of documents filed with the Court, Rule 155(a) is amended to reduce the number of copies of agreed computations filed. Rule 155(a) currently requires the filing of the original and two copies of the agreed computation except where otherwise required by the Court. The amendment requires the original and one copy except where otherwise required by the Court.

The amendments are effective as of July 6, 2012.

RULE 173. 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.

(2) *Filing Fee:* The fee for filing a petition shall be $60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information the inability to make such payment.

(b) Answer: The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in, and in accordance with the provisions of, Rule 36.

(c) Reply: A reply to the answer shall not be filed unless the Court otherwise directs. Any reply shall conform to the requirements of Rule 37(b). In the absence of a requirement of a reply, the provisions of the second sentence of Rule 37(c) shall not apply and the affirmative allegations of the answer shall be deemed denied.

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 173(a)(2) is amended to refer to a declaration in addition to an affidavit. This amendment is effective as of July 6, 2012.

RULE 231. CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS

(a) Time and Manner of Claim: (1) *Agreed Cases:* Where the parties have reached a settlement which disposes of all issues in the case including litigation and administrative costs, an award of reasonable litigation and administrative costs, if any, shall be included in the stipulated decision submitted by the parties for entry by the Court.

(2) *Unagreed Cases:* Where a party has substantially prevailed or is treated as the prevailing party in the case of a qualified offer made as described in Code section 7430(g), and wishes to claim reasonable litigation or administrative costs, and there is no agreement as to that party's entitlement to such costs, a claim shall be made by motion filed—

(A) within 30 days after the service of a written opinion determining the issues in the case;

(B) within 30 days after the service of the pages of the transcript that contain findings of fact or opinion stated orally pursuant to Rule 152 (or a written summary thereof); or

(C) after the parties have settled all issues in the case other than litigation and administrative costs. See paragraphs (b)(3) and (c) of this Rule regarding the filing of a stipulation of settlement with the motion in such cases.

(b) Content of Motion: A motion for an award of reasonable litigation or administrative costs shall be in writing and shall contain the following:

(1) A statement that the moving party is a party to a Court proceeding that was commenced after February 28, 1983;

(2) if the claim includes a claim for administrative costs, a statement that the administrative proceeding was commenced after November 10, 1988;

(3) a statement sufficient to demonstrate that the moving party has substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented, or is treated as the prevailing party in the case of a qualified offer made as described in Code section 7430(g), either in the Court proceeding or, if the claim includes a claim for administrative costs, in the administrative proceeding, including a stipulation in the form prescribed by paragraph (c) of this Rule as to any settled issues;

(4) a statement that the moving party meets the net worth requirements, if applicable, of section 2412(d)(2)(B) of title 28, United States Code (as in effect on October 22, 1986), which statement shall be supported by an affidavit

or a declaration executed by the moving party and not by counsel for the moving party;

(5) a statement that the moving party has exhausted the administrative remedies available to such party within the Internal Revenue Service;

(6) a statement that the moving party has not unreasonably protracted the Court proceeding and, if the claim includes a claim for administrative costs, the administrative proceeding;

(7) a statement of the specific litigation and administrative costs for which the moving party claims an award, supported by an affidavit or a declaration in the form prescribed in paragraph (d) of this Rule;

(8) if the moving party requests a hearing on the motion, a statement of the reasons why the motion cannot be disposed of by the Court without a hearing (see Rule 232(a)(2) regarding the circumstances in which the Court will direct a hearing); and

(9) an appropriate prayer for relief.

(c) Stipulation as to Settled Issues: If some or all of the issues in a case (other than litigation and administrative costs) have been settled by the parties, then a motion for an award of reasonable litigation or administrative costs shall be accompanied by a stipulation, signed by the parties or by their counsel, setting forth the terms of the settlement as to each such issue (including the amount of tax involved). A stipulation of settlement shall be binding upon the parties unless otherwise permitted by the Court or agreed upon by those parties.

(d) Affidavit or Declaration in Support of Costs Claimed: A motion for an award of reasonable litigation or administrative costs shall be accompanied by a detailed affidavit or declaration by the moving party or counsel for the moving party which sets forth distinctly the nature and amount of each item of costs for which an award is claimed.

(e) Qualified Offer: If a qualified offer was made by the moving party as described in Code section 7430(g), then a motion for award of reasonable litigation or administrative costs shall be accompanied by a copy of such offer.

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 231 is amended to refer to a declaration in addition to an affidavit. This amendment is effective as of July 6, 2012.

RULE 232. DISPOSITION OF CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS

(a) General: A motion for reasonable litigation or administrative costs may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take action after the Commissioner's written response to the motion is filed. (See paragraph (b).)

(2) After the Commissioner's response is filed, the Court may direct that the moving party file a reply to the Commissioner's response. Additionally, the Court may direct a hearing, which will be held at a location that serves the convenience of the parties and the Court. A motion for reasonable litigation or administrative costs ordinarily will be disposed of without a hearing unless it is clear from the motion, the Commissioner's written response, and the moving party's reply that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(b) Response by the Commissioner: The Commissioner shall file a written response within 60 days after service of the motion. The Commissioner's response shall contain the following:

(1) A clear and concise statement of each reason why the Commissioner alleges that the position of the Commissioner in the Court proceeding and, if the claim includes a claim for administrative costs, in the administrative proceeding, was substantially justified, and a statement of the facts on which the Commissioner relies to support each of such reasons;

(2) a statement whether the Commissioner agrees that the moving party has substantially prevailed with respect to either the amount in controversy or the most significant

issue or set of issues presented, or is treated as the prevailing party in the case of a qualified offer made as described in Code section 7430(g), either in the Court proceeding or, if the claim includes a claim for administrative costs, in the administrative proceeding;

(3) a statement whether the Commissioner agrees that the moving party meets the net worth requirements, if applicable, as provided by law;

(4) a statement whether the Commissioner agrees that the moving party has exhausted the administrative remedies available to such party within the Internal Revenue Service;

(5) a statement whether the Commissioner agrees that the moving party has not unreasonably protracted the Court proceeding and, if the claim includes a claim for administrative costs, the administrative proceeding;

(6) a statement whether the Commissioner agrees that the amounts of costs claimed are reasonable; and

(7) the basis for the Commissioner's disagreeing with any such allegations by the moving party.

If the Commissioner agrees with the moving party's request for a hearing, or if the Commissioner requests a hearing, then such response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing.

(c) Conference Required: After the date for filing the Commissioner's written response and prior to the date for filing a reply, if one is required by the Court, counsel for the Commissioner and the moving party or counsel for the moving party shall confer and attempt to reach an agreement as to each of the allegations by the parties. The Court expects that, at such conference, the moving party or counsel for the moving party shall make available to counsel for the Commissioner substantially the same information relating to any claim for attorney's fees which, in the absence of an agreement, the moving party would be required to file with the Court pursuant to paragraph (d) of this Rule.

(d) Additional Affidavit or Declaration: Where the Commissioner's response indicates that the Commissioner and the moving party are unable to agree as to the amount of attorney's fees that is reasonable, counsel for the moving party shall, within 30 days after service of the Commis-

sioner's response, file an additional affidavit or declaration 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 counsel's actual billing practice during the time period involved. Counsel may establish the prevailing community rate by affidavits or declarations 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) A statement whether there is a special factor, such as the limited availability of qualified attorneys for the case, the difficulty of the issues presented in the case, or

the local availability of tax expertise, to justify a rate in excess of the rate otherwise permitted for the services of attorneys under Code section 7430(c)(1).

(11) Any other information counsel believes will assist the Court in evaluating counsel's 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 or a declaration filed by first counsel of record or that counsel's designee (see Rule 21(b)(2)) shall satisfy the requirements of this paragraph, and an affidavit or a declaration by each counsel of record shall not be required.

(e) Burden of Proof: The moving party shall have the burden of proving that the moving party has substantially prevailed or is treated as the prevailing party in the case of a qualified offer made as described in Code section 7430(g); that the moving party has exhausted the administrative remedies available to the moving party within the Internal Revenue Service; that the moving party has not unreasonably protracted the Court proceeding or, if the claim includes a claim for administrative costs, the administrative proceeding; that the moving party meets the net worth requirements, if applicable, as provided by law; that the amount of costs claimed is reasonable; and that the moving party has substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented either in the Court proceeding or, if the claim includes a claim for administrative costs, in the administrative proceeding; except that the moving party shall not be treated as the prevailing party if the Commissioner establishes that the position of the Commissioner was substantially justified. See Code sec. 7430(c)(4)(B).

(f) Disposition: The Court's disposition of a motion for reasonable litigation or administrative costs shall be included in the decision entered in the case. Where the Court in its opinion states that the decision will be entered under Rule 155, or where the parties have settled all of the issues other than litigation and administrative costs, the Court will issue an order granting or denying the motion and determining the

amount of reasonable litigation and administrative costs, if any, to be awarded. The parties, or either of them, shall thereafter submit a proposed decision including an award of any such costs, or a denial thereof, for entry by the Court.

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 232 is amended to refer to a declaration in addition to an affidavit. This amendment is effective as of July 6, 2012.

RULE 241. COMMENCEMENT OF PARTNERSHIP ACTION

(a) Commencement of Action: A partnership action shall be commenced by filing a petition with the Court. See Rule 20, relating to the commencement of case; the taxpayer identification number to be provided under paragraph (b) of that Rule shall be the employer identification number of the partnership. See also Rule 22, relating to the place and manner of filing the petition; Rule 32, relating to form of pleadings; Rule 34(e), relating to number of copies to be filed; and Rule 240(d), relating to caption of papers.

(b) Content of Petition: Each petition shall be entitled either "Petition for Readjustment of Partnership Items under Code Section 6226" or "Petition for Adjustment of Partnership Items under Code Section 6228". Each such petition shall contain the allegations described in paragraph (c) of this Rule, and the allegations described in paragraph (d) or (e) of this Rule.

(c) All Petitions: All petitions in partnership actions shall contain the following:

(1) The name and State of legal residence of the petitioner.

(2) The name and principal place of business of the partnership at the time the petition is filed.

(3) The city and State of the office of the Internal Revenue Service with which the partnership's return for the period in controversy was filed.

A claim for reasonable litigation or administrative costs shall not be included in the petition in a partnership action. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

(d) Petition for Readjustment of Partnership Items: In addition to including the information specified in paragraph (c) of this Rule, a petition for readjustment of partnership items shall also contain:

(1) *All Petitions:* All petitions for readjustment of partnership items shall contain:

(A) The date of the notice of final partnership administrative adjustment and the city and State of the office of the Internal Revenue Service which issued the notice.

(B) The year or years or other periods for which the notice of final partnership administrative adjustment was issued.

(C) Clear and concise statements of each and every error which the petitioner alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issues not raised in the assignments of error, or in the assignments of error in any amendment to the petition, shall be deemed to be conceded. Each assignment of error shall be set forth in a separately lettered subparagraph.

(D) Clear and concise lettered statements of the facts on which the petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(E) A prayer setting forth relief sought by the petitioner.

(F) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(G) A copy of the notice of final partnership administrative adjustment, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to

the issues raised by the assignments of error. If the notice of final partnership administrative adjustment or any accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the assignments of error likewise shall be appended to the petition.

(2) *Petitions by Tax Matters Partner:* In addition to including the information specified in paragraph (d)(1) of this Rule, a petition filed by a tax matters partner shall also contain a separate numbered paragraph stating that the pleader is the tax matters partner.

(3) *Petitions by Other Partners:* In addition to including the information specified in paragraph (d)(1) of this Rule, a petition filed by a partner other than the tax matters partner shall also contain:

(A) A separate numbered paragraph stating that the pleader is a notice partner or a representative of a 5-percent group. See Code sec. 6226(b)(1).

(B) A separate numbered paragraph setting forth facts establishing that the pleader satisfies the requirements of Code section 6226(d).

(C) A separate numbered paragraph stating the name and current address of the tax matters partner.

(D) A separate numbered paragraph stating that the tax matters partner has not filed a petition for readjustment of partnership items within the period specified in Code section 6226(a).

(e) Petition for Adjustment of Partnership Items: In addition to including the information specified in paragraph (c) of this Rule, a petition for adjustment of partnership items shall also contain:

(1) A statement that the petitioner is the tax matters partner.

(2) The date that the administrative adjustment request was filed and other proper allegations showing jurisdiction in the Court in accordance with the requirements of Code section 6228(a)(1) and (2).

(3) The year or years or other periods to which the administrative adjustment request relates.

(4) The city and State of the office of the Internal Revenue Service with which the administrative adjustment request was filed.

(5) A clear and concise statement describing each partnership item on the partnership return that is sought to be changed, and the basis for each such requested change. Each such statement shall be set forth in a separately lettered subparagraph.

(6) Clear and concise lettered statements of the facts on which the petitioner relies in support of such requested changes in treatment of partnership items.

(7) A prayer setting forth relief sought by the petitioner.

(8) The signature, mailing address, and telephone number of the petitioner or the petitioner's counsel, as well as counsel's Tax Court bar number.

(9) A copy of the administrative adjustment request shall be appended to the petition.

(f) Notice of Filing: (1) *Petitions by Tax Matters Partner:* After receiving the Notification of Receipt of Petition from the Court and within 30 days after filing the petition, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as required by Code section 6223(g). Said notice shall include the docket number assigned to the case by the Court (see Rule 35) and the date the petition was served by the Clerk on the Commissioner.

(2) *Petitions by Other Partners:* Within 5 days after receiving the Notification of Receipt of Petition from the Court, the petitioner shall serve a copy of the petition on the tax matters partner, and at the same time notify the tax matters partner of the docket number assigned to the case by the Court (see Rule 35) and the date the petition was served by the Clerk on the Commissioner. Within 30 days after receiving a copy of the petition and the aforementioned notification from the petitioner, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as required by Code section 6223(g). Said notice shall include the docket number assigned to the case by the Court and the date the petition was served by the Clerk on the Commissioner.

(g) Copy of Petition To Be Provided All Partners: Upon request by any partner in the partnership as referred to in Code section 6231(a)(2)(A), the tax matters partner shall, within 10 days of receipt of such request, make available to such partner a copy of any petition filed by the tax matters partner or by any other partner.

(h) Joinder of Parties: (1) *Permissive Joinder:* A separate petition shall be filed with respect to each notice of final partnership administrative adjustment or each administrative adjustment request issued to separate partnerships. However, a single petition for readjustment of partnership items or petition for adjustment of partnership items may be filed seeking readjustments or adjustments of partnership items with respect to more than one notice of final partnership administrative adjustment or administrative adjustment request if the notices or requests pertain to the same partnership. For the procedures to be followed by partners who wish to intervene or participate in a partnership action, see Rule 245.

(2) *Severance or Other Orders:* With respect to a case based upon multiple notices of final partnership administrative adjustment or administrative adjustment requests, the Court may order a severance and a separate case to be maintained with respect to one or more of such notices or requests whenever it appears to the Court that proceeding separately is in furtherance of convenience, or to avoid prejudice, or when separate trials will be conducive to expedition or economy.

Note

Section 6223(g) requires the tax matters partner (TMP) of a partnership, to the extent and in the manner provided by the regulations, to keep each partner informed of all judicial proceedings for the adjustment at the partnership level of partnership items. Section 301.6223(g)–1(b)(1)(vii) and (3), Proced. & Admin. Regs., requires the TMP to furnish notice to the partners of the filing by the TMP or any other partner of any petition for judicial review under section 6226 or 6228(a) within 30 days of filing or receiving notice of the filing of a petition for judicial review.

Rule 241(f)(1) currently provides that, within 5 days after receiving the Notification of Receipt of Petition, the TMP

must notify the partners that the TMP filed a petition with this Court. With respect to petitions filed by a partner other than the TMP, Rule 241(f)(2) requires the partner to serve a copy of the petition on the TMP within 5 days after receiving the Notification of Receipt of Petition from the Court, and the TMP then to notify the other partners of the filing of the petition within 5 days after receiving the copy of the petition. All notices sent by the TMP must include the docket number of the case and the date the petition was served by the Clerk on the Commissioner. Rule 245 allows a TMP to file a notice of election to intervene or a partner to file a notice of election to participate in a partnership action, without leave of the Court, within 90 days after the service of the petition by the Clerk on the Commissioner.

Rule 241(f) is amended to make the time periods provided for the notice furnished by the TMP to the partners consistent with the time period provided by the regulation. Enlarging the time period in Rule 241(f)(1) for notification by the TMP from 5 days after receiving the Notification of Receipt of Petition to 30 days after the filing of the petition could effectively decrease the minimum time remaining under Rule 245(b) for a partner to file a notice of election to participate without leave of the Court from 85 days to 60 days. However, the minimum time allowed for intervention by the tax matters partner and participation by any other partner was approximately 60 days under Title XXIV of the Rules as originally promulgated. 82 T.C. 1084. As for Rule 241(f)(2), it contains two 5-day periods: the one in which the partner must notify the TMP of the filing of a petition and the one in which the TMP must notify all the other partners of the filing of the petition. There is no statutory or regulatory provision regarding the notice by a partner to the TMP that a petition was filed, and increasing the 5-day period applicable to such notice could further decrease the time remaining in the 90-day participation period under Rule 245. Consequently, the Court amends only the time periods for notification by the TMP. The amendments increase from 5 to 30 days the time periods in Rule 241(f)(1) and (2) within which the TMP is required to notify the partners of the filing of any petition. It is anticipated that motions for leave to file notices of election to participate out of time and motions for leave to file amendments to the petition which are made pur-

suant to Rule 245 will be liberally granted by the Court in appropriate circumstances.

The amendments also make a conforming change to Rule 241(a). In 2008, the Court amended Rule 34 by adding new paragraph (d) and relettering former paragraph (d) as current paragraph (e). Rule 241(a) is amended to reflect the current designation of Rule 34(e).

These amendments are effective as of July 6, 2012.

RULE 271. COMMENCEMENT OF ACTION FOR ADMINISTRATIVE COSTS

(a) Commencement of Action: An action for an award for reasonable administrative costs under Code section 7430(f)(2) shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule 22, relating to the place and manner of filing the petition; and Rule 32, relating to the form of pleadings.

(b) Content of Petition: A petition filed pursuant to this Rule shall be entitled "Petition for Administrative Costs (Sec. 7430(f)(2))". Such a petition shall be substantially in accordance with Form 3 shown in Appendix I, or shall, in the alternative, contain the following:

(1) In the case of a petitioner who is an individual, the petitioner's name and State of legal residence; in the case of a petitioner other than an individual, the petitioner's name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address. The mailing address, State of legal residence, principal place of business, or principal office or agency, shall be stated as of the date that the petition is filed.

(2) The date of the decision denying an award for administrative costs in respect of which the petition is filed, and the city and State of the office of the Internal Revenue Service which issued the decision.

(3) The amount of administrative costs claimed by the petitioner in the administrative proceeding; the amount of administrative costs denied by the Commissioner; and, if different from the amount denied, the amount of administrative costs now claimed by the petitioner.

(4) Clear and concise lettered statements of the facts on which the petitioner relies to establish that, in the administrative proceeding, the petitioner substantially prevailed

with respect to either the amount in controversy or the most significant issue or set of issues presented in the administrative proceeding.

(5) A statement that the petitioner meets the net worth requirements of section 2412(d)(2)(B) of title 28, United States Code (as in effect on October 22, 1986).

(6) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(7) A copy of the decision denying (in whole or in part) an award for reasonable administrative costs in respect of which the petition is filed.

(c) Filing Fee: The fee for filing a petition for administrative costs shall be $60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information that the petitioner is unable to make such payment.

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 271 is amended to refer to a declaration in addition to an affidavit. This amendment is effective as of July 6, 2012.

RULE 274. APPLICABLE SMALL TAX CASE RULES

Proceedings in an action for administrative costs shall be governed by the provisions of the following Small Tax Case Rules (see Rule 170) with respect to the matters to which they apply: Rule 172 (representation) and Rule 174 (trial).

Note

Because of the amendment to Rule 23(b), the Court has deleted Rule 175. Accordingly, Rule 274 is amended by deleting

the reference to Rule 175. This amendment is effective as of July 6, 2012.

RULE 281. COMMENCEMENT OF ACTION FOR REVIEW OF FAILURE TO ABATE INTEREST

(a) Commencement of Action: An action for review of the Commissioner's failure to abate interest under Code section 6404 shall be commenced by filing a petition with the Court. See Rule 20, relating to the commencement of a case; Rule 22, relating to the place and manner of filing the petition; and Rule 32, regarding the form of pleadings.

(b) Content of Petition: A petition filed pursuant to this Rule shall be entitled "Petition for Review of Failure To Abate Interest Under Code Section 6404" and shall contain the following:

(1) In the case of a petitioner who is an individual, the petitioner's name and State of legal residence; in the case of a petitioner other than an individual, the petitioner's name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address. The mailing address, State of legal residence, and principal place of business, or principal office or agency, shall be stated as of the date that the petition is filed.

(2) The date of the notice of final determination not to abate interest and the city and State of the office of the Internal Revenue Service which issued the notice.

(3) The year or years or other periods to which the failure to abate interest relates.

(4) Clear and concise lettered statements of the facts on which the petitioner relies to establish that the Commissioner's final determination not to abate interest was an abuse of discretion.

(5) A statement that the petitioner meets the requirements of Code section 7430(c)(4)(A)(ii).

(6) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(7) As an attachment, a copy of the notice of final determination denying (in whole or in part) the requested abatement.

(c) Filing Fee: The fee for filing a petition for review of failure to abate interest shall be $60, payable at the time of

filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information that the petitioner is unable to make such payment.

Note

Rule 56(c)(4) of the Federal Rules of Civil Procedure was amended in 2010 to recognize that 28 U.S.C. sec. 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit. To conform with rule 56(c)(4), Rule 281 is amended to refer to a declaration in addition to an affidavit. This amendment is effective as of July 6, 2012.

RULE 301. COMMENCEMENT OF LARGE PARTNERSHIP ACTION

(a) Commencement of Action: A large partnership action shall be commenced by filing a petition with the Court. See Rule 20, relating to the commencement of a case; Rule 22, relating to the place and manner of filing the petition; Rule 32, relating to form of pleadings; Rule 34(e), relating to the number of copies to be filed; and Rule 300(d), relating to the caption of papers.

(b) Content of Petition: Each petition shall be entitled either "Petition for Readjustment of Partnership Items of a Large Partnership under Code Section 6247" or "Petition for Adjustment of Partnership Items of a Large Partnership Under Code Section 6252". Each such petition shall contain the allegations described in paragraph (c) of this Rule, and the allegations described in either paragraph (d) or paragraph (e) of this Rule.

(c) All Petitions: All petitions in large partnership actions shall contain the following:

(1) The name and principal place of business of the large partnership at the time the petition is filed.

(2) The city and State of the office of the Internal Revenue Service with which the large partnership's return for the period in controversy was filed.

(3) A separate numbered paragraph setting forth the name and current address of the designated partner.

A claim for reasonable litigation or administrative costs shall not be included in the petition in a large partnership action. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

(d) Petition for Readjustment of Partnership Items of a Large Partnership: In addition to including the information specified in paragraph (c) of this Rule, a petition for readjustment of partnership items of a large partnership shall also contain:

(1) The date of the notice of partnership adjustment and the city and State of the office of the Internal Revenue Service that issued the notice.

(2) The year or years or other periods for which the notice of partnership adjustment was issued.

(3) Clear and concise statements of each and every error which the petitioner alleges to have been committed by the Commissioner in the notice of partnership adjustment. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issues not raised in the assignments of error, or in the assignments of error in any amendment to the petition, shall be deemed to be conceded. Each assignment of error shall be set forth in a separate lettered subparagraph.

(4) Clear and concise lettered statements of the facts on which the petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(5) A prayer setting forth relief sought by the petitioner.

(6) The signature, mailing address, and telephone number of the petitioner's designated partner or the petitioner's counsel, as well as counsel's Tax Court bar number.

(7) A copy of the notice of partnership adjustment, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of partnership adjustment or any accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are

material to the assignments of error likewise shall be appended to the petition.

(e) Petition for Adjustment of Partnership Items of a Large Partnership: In addition to including the information specified in paragraph (c) of this Rule, a petition for adjustment of partnership items of a large partnership shall also contain:

(1) The date that the administrative adjustment request was filed and other proper allegations showing jurisdiction in the Court in accordance with the requirements of Code section 6252(b) and (c).

(2) The year or years or other periods to which the administrative adjustment request relates.

(3) The city and State of the office of the Internal Revenue Service with which the administrative adjustment request was filed.

(4) A clear and concise statement describing each partnership item on the large partnership return that is sought to be changed, and the basis for each such requested change. Each such statement shall be set forth in a separately lettered subparagraph.

(5) Clear and concise lettered statements of the facts on which the petitioner relies in support of such requested changes in treatment of partnership items.

(6) A prayer setting forth relief sought by the petitioner.

(7) The signature, mailing address, and telephone number of the petitioner's designated partner or the petitioner's counsel, as well as counsel's Tax Court bar number.

(8) A copy of the administrative adjustment request shall be appended to the petition.

(f) Joinder of Parties: (1) *Permissive Joinder:* A separate petition shall be filed with respect to each notice of partnership adjustment issued to separate large partnerships. However, a single petition for readjustment of partnership items of a large partnership or petition for adjustment of partnership items of a large partnership may be filed seeking readjustments or adjustments of partnership items with respect to more than one notice of partnership adjustment or administrative adjustment request if the notices or requests pertain to the same large partnership.

(2) *Severance or Other Orders:* With respect to a case based upon multiple notices of partnership adjustment or administrative adjustment requests, the Court may order a severance and a separate case may be maintained with respect to one or more of such notices or requests whenever it appears to the Court that proceeding separately is in furtherance of convenience, or to avoid prejudice, or when separate trials will be conducive to expedition or economy.

Note

In 2008, the Court amended Rule 34 by adding new paragraph (d) and relettering former paragraph (d) as current paragraph (e). Rule 301 is amended to reflect the current designation of Rule 34(e). This amendment is effective as of July 6, 2012.

RULE 345. PRIVACY PROTECTIONS FOR FILINGS IN WHISTLEBLOWER ACTIONS

(a) Anonymous Petitioner: A petitioner in a whistleblower action may move the Court for permission to proceed anonymously, if appropriate. Unless otherwise permitted by the Court, a petitioner seeking to proceed anonymously pursuant to this Rule shall file with the petition a motion, with or without supporting affidavits or declarations, setting forth a sufficient, fact-specific basis for anonymity. The petition and all other filings shall be temporarily sealed pending a ruling by the Court on the motion to proceed anonymously.

(b) Redacted Filings: Except as otherwise directed by the Court, in an electronic or paper filing with the Court in a whistleblower action, a party or nonparty making the filing shall refrain from including, or shall take appropriate steps to redact, the name, address, and other identifying information of the taxpayer to whom the claim relates. The party or nonparty filing a document that contains redacted information shall file under seal a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list may be amended as a matter of right. Subsequent references in the case to a listed identifier will be construed to refer to the corresponding item of information. The Court in

its discretion may later unseal the reference list, in whole or in part, if appropriate.

(c) Other Applicable Rules: For Rules concerned with privacy protections and protective orders, generally, see Rules 27 and 103(a).

Note

Letters From Associate Chief Counsel and National Taxpayer Advocate

On March 1, 2011, Deborah Butler, Associate Chief Counsel of the Internal Revenue Service (IRS), and Nina Olson, National Taxpayer Advocate, sent separate letters to the Court raising concerns and suggesting the promulgation of rules regarding privacy protections for nonparty taxpayer information in whistleblower cases. Ms. Butler stated that the IRS does not include taxpayer information in a determination notice issued pursuant to section 7623 and does not intend to do so in the future; nevertheless, whistleblowers routinely disclose nonparty taxpayer information in petitioning the Court. The IRS recommended that the Court consider developing rules applicable to petitions filed in whistleblower cases, as well as to subsequent filings, that require filing parties to redact identifying information of nonparty taxpayers in whistleblower cases such as names, taxpayer identification numbers, and addresses, and to consider whether and in what way nonparty taxpayers should or could be included in a redaction process or be afforded some other opportunity to protect identifying or sensitive information.

Ms. Olson indicated that a taxpayer who is considering whether to request judicial review of an administrative finding has an opportunity to weigh the advantages of judicial review against any disadvantages associated with the public disclosure of information that ordinarily becomes part of the case file and public record in a Tax Court case. The taxpayer in a whistleblower case, however, is not a party and has no control over what information is presented by the whistleblower or included in the case file or opinion. She observed that in *Cooper v. Commissioner*, 135 T.C. 70 (2010), for example, the Court published the name, the amount of the alleged underpayment, and other identifying information of the taxpayer to whom the whistleblower claim related, who was

neither a party to the case nor subject to any deficiency determined by the IRS. She recommended in her 2010 Annual Report to Congress that it amend section 7623 or other applicable provisions to require redaction of nonparty taxpayers' return information in administrative and judicial proceedings relating to whistleblower claims, with an opportunity for a nonparty taxpayer to request additional redactions before disclosure, and to provide a nonparty taxpayer a subsequent right of action for civil damages for unauthorized disclosure by the whistleblower. She recommended the administrative and judicial process be commenced with a "notice of intention to disclose" to the nonparty taxpayer, legislatively designated as a party, concerning redaction, but not regarding the merits of the whistleblower claim.

Ms. Butler and Ms. Olson both suggested that section 7461(b)(1) currently provides the Court with authority to amend its Rules to provide for appropriate redaction of nonparty taxpayers' taxpayer information, similar to that allowed by Rules 27 and 103.

Policy Considerations

The Tax Court, like other courts, has broad discretionary authority to control and seal, if necessary, records and files in its possession. See *Willie Nelson Music Co. v. Commissioner*, 85 T.C. 914, 920 (1985). Section 7461(b)(1) authorizes the Court to "make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information". This provision provides ample authority for the Court to protect confidential information about nonparty taxpayers in whistleblower cases, including return information, confidential business information, trade secrets, etc.

Under *Whistleblower 14106–10W v. Commissioner*, 137 T.C. 183 (2011), a whistleblower's identity, although kept confidential by the IRS Whistleblower Office, is entitled to protection in the Tax Court upon a sufficient showing of harm that outweighs counterbalancing societal interests in knowing the whistleblower's identity. The balancing test is driven largely by notions of the common law right of public access to court proceedings.

Arguably, protecting a nonparty taxpayer's identity is justified in furtherance of protecting the nonparty taxpayer's tax return information, trade secrets, and other confidential in-

formation, which the Court is clearly authorized to protect under section 7461(b)(1). *Anonymous v. Commissioner*, 127 T.C. 89 (2006). Because the taxpayer is not a party to the case, and might not even know about the case, it may be impracticable for the Court adequately to police the redaction of all confidential information about the nonparty taxpayer that might warrant protection. By concealing the name of the nonparty taxpayer, at least in the early stages of litigation, the consequences of inadvertent disclosure of such information are greatly mitigated, since the information could not be readily linked to the nonparty taxpayer. At some point in the litigation, if for instance the Court decided that the whistleblower was entitled to a large award, the Court might conclude that the public's interest in knowing the nonparty taxpayer's identity was sufficiently great that the nonparty taxpayer's name should no longer be protected.

New Rule 345

The Court adopts new Rule 345. The Rule formalizes the existing procedure whereby whistleblowers may seek anonymity in their cases. See *Whistleblower 14106–10W v. Commissioner*, *supra*. Additionally, the Rule provides that the parties shall refrain from including or shall redact the nonparty taxpayer's name, address, and other identifying information. Redacted information will be sealed in a reference list, which the Court can unseal, in whole or in part, after a determination as to whether the nonparty taxpayer's identity should remain protected. In making that determination, it is contemplated that the trial Judge will have discretion to direct that prior notice be provided to the nonparty taxpayer. Cf. *Nordstrom v. Commissioner*, 50 T.C. 30, 32–33 (1968) (establishing a procedure for notification to the heirs at law before dismissing for lack of prosecution the case of a deceased petitioner). However, the Rule does not require notice to the nonparty taxpayer of the commencement of the case or provide a formal means of intervention. The need for and the type of notice will be decided on a case-by-case basis, taking into account the competing privacy interests of the whistleblower and the nonparty taxpayer. Further, absent either legislation specifically authorizing an individual to inter-

vene[1] or a Federal rule permitting such intervention,[2] and given the potential difficulties presented by treating the nonparty taxpayer as a party if the whistleblower were proceeding anonymously, the issue of intervention may not be appropriate to resolve by rule. Compare sec. 7623(b)(4) (whistleblower appeals) with secs. 6110(f)(3)(B) and (4)(B) (disclosure actions, Rule 225), 6015(e)(4) (relief from joint liability, Rule 325(b)), 6226(b)(6) (partnership actions, Rule 245), and 7476(d) (declaratory judgment actions, Rule 216). Finally, the new Rule cross-references Rule 27, which requires a party or nonparty filing a document to redact all taxpayer identification numbers, dates of birth, names of minor children, and financial account numbers.

New Rule 345 is effective as of July 6, 2012.

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[1] In 2007, the Senate-passed versions of both the Fair Minimum Wage Act of 2007, H.R. 2, 110th Cong., 1st Sess., sec. 233(c), and the U.S. Troop Readiness, Veterans' Health, and Iraq Accountability Act, 2007, H.R. 1591, 110th Cong., 1st Sess., sec. 543(c), contained proposed amendments to modify section 7623. Those amendments would have authorized the Court in new section 7623(b)(4)(B) to seal portions of the record in whistleblower cases. The amendments were substantially identical to section 6110(f)(6), which addresses publicity of Tax Court proceedings in disclosure cases, but did not include language comparable to section 6110(f)(1), requiring a notice of intent to disclose, and section 6110(f)(3)(B) and (4)(B), requiring a notice of the filing of a petition to restrain disclosure or obtain additional disclosure and a corresponding right to intervene by the person noticed.

[2] Cf. Fed. R. Civ. P. 24.

FORM 18

UNSWORN DECLARATION UNDER PENALTY OF PERJURY

(See 28 U.S.C. sec. 1746.)

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UNITED STATES TAX COURT

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

UNSWORN DECLARATION UNDER PENALTY OF PERJURY

I, ..., declare from my personal knowledge that the
[name]
following facts are true:

[State the facts in as many numbered paragraphs as are needed. Attach additional pages if necessary.]

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I declare under penalty of perjury that the foregoing is true and correct. Executed on .....
[date]

.....
[Signature]

OR

[If the declaration is executed outside of the United States:]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on .....
[date]

.....
[Signature]

Note

Form 18 is a new fillable form that can be used as a substitute for an affidavit pursuant to 28 U.S.C. sec. 1746. The form is effective as of July 6, 2012.