

a party to the case, may, at any time before the trial commences, enter an order directing that the small tax case designation shall be removed and that the proceedings shall not be conducted under the Small Tax Case Rules. If no such order is entered, then the petitioner will be considered to have exercised the petitioner's option and the Court shall be deemed to have concurred therein, in accordance with Code Section 7463, at the commencement of the trial.

Rule 173. Discontinuance of Proceedings

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section 7463, and that the case be tried under the Rules of Practice other than the Small Tax Case Rules, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed \$10,000 and (2) the Court finds that justice requires the discontinuance of the proceedings under Code Section 7463, taking into consideration the convenience and expenses for both parties that would result from the order.

Rule 174. Representation

A petitioner in a small tax case may appear without representation or may be represented by any person admitted to practice before the Court. As to representation, see Rule 24.

Rule 175. Pleadings

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

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

(3) *Verification Not Required:* The petition need not be verified, unless the Court directs otherwise.

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

(c) **Reply:** A reply to the answer shall not be filed unless the Court, on its own motion or upon motion of the Commissioner, shall otherwise direct. Any reply shall conform to the re-

quirements 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 will be deemed denied.

Rule 176. Preliminary Hearings

If, in a small tax case, it becomes necessary to hold a hearing on a motion or other preliminary matter, the parties may submit their views in writing and may, but shall not ordinarily be required to, appear personally at such hearing. However, if the Court deems it advisable for the petitioner or the petitioner's counsel to appear personally, the Court will so notify the petitioner or the petitioner's counsel and will make every effort to schedule such a hearing at a place convenient to them.

Rule 177. Trial

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

(b) **Conduct of Trial and Evidence:** Trials of small tax cases will be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible.

(c) **Briefs:** Neither briefs nor oral arguments will be required in small tax cases, but the Court on its own motion or upon request of either party may permit the filing of briefs or memorandum briefs.

Rule 178. Transcripts of Proceedings

The hearing in, or trial of, a small tax case shall be stenographically reported or otherwise reported but a transcript thereof need not be made unless the Court otherwise directs.

Rule 179. Number of Copies of Papers

Only an original and two conformed copies of any paper need be filed in a small tax case. An additional copy shall be filed for each additional docketed case which has been, or is requested to be, consolidated.

TITLE XVIII.—SPECIAL TRIAL JUDGES

Rule 180. Assignment

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

Rule 181. Powers and Duties

Subject to the specifications and limitations in orders designating Special Trial Judges and

in accordance with the applicable provisions of these Rules, Special Trial Judges have and shall exercise the power to regulate all proceedings in any matter before them, including the conduct of trials, pretrial conferences, and hearings on motions, and to do all acts and take all measures necessary or proper for the efficient performance of their duties. They may require the production before them of evidence upon all matters embraced within their assignment, including the production of all books, papers, vouchers, documents, and writings applicable thereto, and they have the authority to put witnesses on oath and to examine them. Special Trial Judges may rule upon the admissibility of evidence, in accordance with provisions of Code Sections 7453 and 7463, and may exercise such further and incidental authority, including ordering the issuance of subpoenas, as may be necessary for the conduct of trials or other proceedings.

Rule 182. Cases Involving \$10,000 or Less

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

(a) **Small Tax Cases:** Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a small tax case shall, as soon after such trial as shall be practicable, prepare a summary of the facts and reasons for the proposed disposition of the case, which then shall be submitted promptly to the Chief Judge, or, if the Chief Judge shall so direct, to a Judge or Division of the Court.

(b) **Other Cases Involving \$10,000 or Less:** Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a case (other than a small tax case) where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds \$10,000 shall, as soon after such trial as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge.

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

Rule 183. Cases Involving More than \$10,000

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

(a) **Trial and Briefs:** A Special Trial Judge shall conduct the trial of any such case assigned for such purpose. After such trial, the parties

shall submit their briefs in accordance with the provisions of Rule 151. Unless otherwise directed, no further briefs shall be filed.

(b) **Special Trial Judge's Report:** After all the briefs have been filed by all the parties or the time for doing so has expired, the Special Trial Judge shall submit a report, including findings of fact and opinion, to the Chief Judge, and the Chief Judge will assign the case to a Judge or Division of the Court.

(c) **Action on the Report:** The Judge to whom or the Division to which the case is assigned may adopt the Special Trial Judge's report or may modify it or may reject it in whole or in part, or may direct the filing of additional briefs or may receive further evidence or may direct oral argument, or may recommit the report with instructions. Due regard shall be given to the circumstance that the Special Trial Judge had the opportunity to evaluate the credibility of witnesses, and the findings of fact recommended by the Special Trial Judge shall be presumed to be correct.

TITLE XIX.—APPEALS

Rule 190. How Appeal Taken

(a) **General:** Review of a decision of the Court by a United States Court of Appeals is obtained by filing a notice of appeal and the required filing fee with the Clerk of the Tax Court within 90 days after the decision is entered. If a timely notice of appeal is filed by one party, then any other party may take an appeal by filing a notice of appeal within 120 days after the Court's decision is entered. Code Section 7483. For other requirements governing such an appeal, see Rules 13 and 14 of the Federal Rules of Appellate Procedure. A suggested form of the notice of appeal is contained in Appendix I. See Code Section 7482(a).

(b) **Dispositive Orders:** (1) *Entry and Appeal:* A dispositive order, including (A) an order granting or denying a motion to restrain assessment or collection, made pursuant to Code Section 6213(a), and (B) an order granting or denying a motion for review of a proposed sale of seized property, made pursuant to Code Section 6863(b)(3)(C), shall be entered upon the record of the Court and served forthwith by the Clerk. Such an order shall be treated as a decision of the Court for purposes of appeal.

(2) *Stay of Proceedings:* Unless so ordered, proceedings in the Tax Court shall not be stayed by virtue of any order entered under Code Section 6213(a) that is or may be the subject of an appeal pursuant to Code Section 7482(a)(3) or any order entered under Code Section 6863(b)(3)(C) that is or may be the subject of an appeal.

(c) **Venue:** For the circuit of the Court of Appeals to which the appeal is to be taken, see Code Section 7482(b).

(d) **Interlocutory Orders:** For provisions governing appeals from interlocutory orders, see Rule 193.

REFERENCES IN TEXT

The Federal Rules of Appellate Procedure, referred to in par. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.