

Appendix A

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

January 15, 2008

PRESS RELEASE

Chief Judge John O. Colvin announced today that the United States Tax Court has adopted amendments to its Rules of Practice and Procedure regarding privacy and public access to electronic case files. The Court has also adopted various amendments to its Rules and forms. The appendix to this press release lists each of the items (Table of Contents, Rule, Form, or Appendix) that has been amended and includes the amendments and, for most Rules, an explanation of each amendment.

The amendments are generally effective as of March 1, 2008, except the amendment regarding remote access to electronic files by parties and their counsel will be effective at a future date to be announced by the Court, pending completion of registration for electronic access of over 63,000 Tax Court practitioners. For a temporary transition period beginning immediately, the Court will accept either the current forms or the new forms; Forms 4 received will be processed by the Court in accordance with the implementation of new Rule 20(b) and not made part of the public record. Opinions and docket records will continue to be available to the public through the Court's Internet Web site without registration for electronic access. Orders issued or entered and oral findings of fact or opinion (bench opinions) delivered after March 1, 2008, will also be available to the public through the Court's Internet Web site without registration for electronic access.

Chief Judge Colvin also announced that, because of the number of amendments adopted both during 2007 and previously during 2005, the Court will undertake to republish its Rules of Practice and Procedure in their entirety. In the interim, copies of the amendments are available on the Court's Internet Web site, www.ustaxcourt.gov, or may be obtained by writing to the Clerk's Office at 400 Second Street, N.W., Washington, D.C. 20217.

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Privacy and Public Access to Electronic Case Files

New paragraph (b) of Rule 20 is added and current paragraph (b) is redesignated as paragraph (c). [Paragraph (a) remains unchanged and is omitted here.]

RULE 20. COMMENCEMENT OF CASE

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(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) **Filing Fee:** * * *

Explanation

Introduction

Pursuant to the Tax Court's Rules of Practice and Procedure, a taxpayer currently is required to include in the petition the taxpayer's identification number (e.g., Social Security number or employer identification number).¹ By contrast, the privacy policy adopted by the Judicial Conference of the United States and amendments to the Federal Rules of Civil, Bankruptcy, and Appellate Procedure all provide for redacted filings that include only the last four digits of an individual's Social Security

¹Rules 34(b)(1); 211(d)(1), (f)(1)(B); 271(b)(1); 281(b)(1); 291(b)(1); 301(c)(1); 321(b)(1); and 331(b)(1); and Forms 1, 2, and 13 require the identification number (e.g., Social Security number or employer identification number) of the taxpayer to be included in the petition. Rule 241(c)(2) requires the employer identification number of the partnership to be included in the petition, Rules 260(b)(1) and 261(b)(1)(A) require the identification number of the taxpayer to be included in the motion, and Rule 321(b)(5) requires the spouse filing a petition to include the taxpayer identification number (e.g., Social Security number) of the other individual filing the joint return, if available. In addition, the Court's Rules and forms require that a taxpayer attach to the petition a copy of the notice of deficiency, liability, or determination that forms the basis for the Court's jurisdiction; such notice also will generally contain the identification number of the taxpayer.

number or taxpayer identification number. See F. R. Civ. P. 5.2; F. R. Bankr. P. 1005, 9037; and F. R. App. P. 25(a)(5).

Privacy concerns regarding personal information contained in Tax Court case files came to the Court's attention with the consideration by the Court of the E-Government Act of 2002, Pub. L. 107-347, sec. 205, 116 Stat. 2913, and its own electronic filing pilot program, and through recent requests by individual taxpayers to redact from Court documents their Social Security numbers.

The Internal Revenue Service uses the taxpayer identification number administratively to locate case files and transcripts of account, and to prevent premature assessments or continuation of collection activity during the pendency of a Tax Court case.

Federal Rules of Bankruptcy Procedure

In 2003, the Federal Rules of Bankruptcy Procedure were amended to implement the Judicial Conference privacy policy to limit the disclosure of a party's Social Security number. Under the amended rules and forms, only the last four digits of the debtor's Social Security number are required, but the debtor must submit with the petition a statement setting out his or her complete Social Security number. This enables a Bankruptcy Court to include the full Social Security number on the notice to creditors, but the statement itself is not filed in the case or maintained in the case file. See Fed. R. Bankr. P. 1005, 1007(f). The Report of the Advisory Committee on Bankruptcy Rules and the Committee Note to the amendment of Bankruptcy Form 21 indicate that the full Social Security number is included on the notice sent to creditors pursuant to rule 2002 of the Federal Rules of Bankruptcy Procedure, but not on the copy of the notice that becomes part of the court record. See <http://www.uscourts.gov/rules/Reports/BK5-2002.pdf>; <http://www.uscourts.gov/rules/Reports/BK5-2003.pdf>.

Amendment

The Court amends its Rules and petition forms to require the taxpayer to submit with a petition a Statement of Taxpayer Identification Number (Form 4). The statement is similar to the Statement of Social Security number used in the Bankruptcy Courts and to the civil cover sheets used in other Federal courts and would be a familiar concept to practitioners. The Court will provide the Statement of Taxpayer Identification Number to the Service with the copy of the petition served on the Service, but

the statement will not be filed and will not be a part of the Court's file in the case.

Rule 27 is added as follows

**RULE 27. PRIVACY PROTECTION
FOR FILINGS MADE WITH THE COURT**

(a) **Redacted Filings:** Except as otherwise required by these Rules or directed by the Court, in an electronic or paper filing with the Court, a party or nonparty making the filing should refrain from including or should take appropriate steps to redact the following information:

(1) Taxpayer identification numbers (e.g., Social Security numbers or employer identification numbers);

(2) Dates of birth. If a date of birth is provided, only the year should appear;

(3) Names of minor children. If a minor child is identified, only the minor child's initials should appear; and

(4) Financial account numbers. If a financial account number is provided, only the last four digits of the number should appear.

(b) **Limitations on Remote Access to Electronic Files:**

Except as otherwise directed by the Court, access to an electronic file is authorized as follows:

(1) the parties and their counsel may have remote electronic access to any part of the case file maintained by the Court in electronic form; and

(2) any other person may have electronic access at the courthouse to the public record maintained by the Court in electronic form, but may have remote electronic access only to:

(A) the docket record maintained by the Court; and

(B) any opinion or order of the Court, but not any other part of the case file.

(c) **Filings Made Under Seal:** The Court may order that a filing containing any of the information described in paragraph (a) of this Rule be made under seal without redaction. The Court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) **Protective Orders:** For good cause, the Court may by order in a case:

(1) require redaction of additional information; or

(2) issue a protective order as provided by Rule

103(a).

(e) **Option for Additional Unredacted Filing Under Seal:** A person making a redacted filing may also file an unredacted copy under seal. The Court must retain the unredacted copy as part of the record.

(f) **Option for Filing a Reference List:** A document that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed with a motion to seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) **Waiver of Protection of Identifiers:** A person waives the protection of this Rule as to the person's own information by filing it without redaction and not under seal. The Clerk of the Court is not required to review documents filed with the Court for compliance with this Rule. The responsibility to redact a filing rests with the party or nonparty making the filing.

(h) **Inadvertent Waiver:** A party may correct an inadvertent disclosure of identifying information in a prior filing by submitting a properly redacted substitute filing within 60 days of the original filing without leave of Court, and thereafter only by leave of Court.

Explanation

Introduction

The E-Government Act of 2002, Pub. L. 107-347, sec. 205, 116 Stat. 2913, requires Federal courts to establish and maintain Internet Web sites containing, among other things, rules of the court; docket information for each case; the substance of all written opinions issued by the court, in a text-searchable format; and access to documents filed with the court in electronic form or filed in paper form and converted by the court to electronic form. The E-Government Act of 2002, as amended by the Act of Aug. 2, 2004, Pub. L. 108-281, sec. 1, 118 Stat. 889, directs the Supreme Court to prescribe rules to protect privacy and security concerns relating to electronic filing of documents and the public availability of documents filed electronically. The E-Government Act of 2002, as amended, provides: "Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts."

Section 205(a) of the E-Government Act of 2002 expressly names the Supreme Court, the Courts of Appeals, the District Courts, the Court of Federal Claims, and the Bankruptcy Courts.

Although the Tax Court is not expressly named, the Court has decided voluntarily to comply with the provisions of the Act.

Privacy Protection

The Court adopts new Rule 27, regarding privacy protections for filings made with the Tax Court. Rule 27 is modeled after new rule 5.2 of the Federal Rules of Civil Procedure and new rule 9037 of the Federal Rules of Bankruptcy Procedure.² Paragraph (a) of Rule 27 provides that a party or nonparty filing a document in electronic or paper form should either refrain from including certain personal identifiers or take appropriate steps to redact such personal identifiers from the document. A Notice Regarding Privacy and Public Access to Case Files (sample attached) will be posted on the Court's Web site and otherwise made available by the Court.

Rule 5.2(a)(1) of the Federal Rules of Civil Procedure and rules 1005 and 9037 of the Federal Rules of Bankruptcy Procedure require inclusion of the last four digits of the Social Security or taxpayer identification number. There does not appear to be any reason to require the last four digits of the taxpayer identification number in Tax Court filings, as the full taxpayer identification number would be available to the Service on the Statement submitted under Rule 20(b) and the docket number and name should permit both the Court and the Service to identify the taxpayer after the petition is filed. The Judicial Conference privacy policy applies to protect only individual privacy. The Court believes, however, that the same privacy and security interests of corporations, trusts, estates, and other entities as those of individuals should be protected in this Court. Consequently, the Court amends its Rules and petition forms to eliminate the requirement of providing any part of the taxpayer identification number, and to extend the protection to any party or nonparty.

Paragraphs (c) through (g) of Rule 27 are similar to paragraphs (d) through (h) of rule 5.2 of the Federal Rules of Civil Procedure. Paragraph (c) reflects the interplay between redaction and filing under seal. It does not limit or expand the statutory provisions that govern sealing. See Code sec. 7461(b)(1); Willie Nelson Music Co. v. Commissioner, 85 T.C. 914 (1985). Paragraph (d) informs the parties that the Judge or Special Trial Judge to whom the case is assigned can by order in a particular case for good cause require more extensive redaction

²The new rules are effective December 1, 2007.

than otherwise required by the Rule or issue protective orders. Paragraphs (e) and (f) are derived from section 205(c)(3)(iv) and (v) of the E-Government Act, and provide the party or nonparty filing a document the option of filing an unredacted version of the document under seal or with a reference list.

Paragraph (g) of Rule 27 allows a person to waive the protections of the Rule as to that person's own personal information by filing it unsealed and in unredacted form. A person may wish to waive the protection if it is determined that the costs of redaction outweigh the benefits to privacy. The Rule emphasizes that the responsibility to redact filings rests with the party or nonparty making the filing, and that the Clerk of the Court is not required to review documents filed with the Court for compliance with the Rule. The Court, however, expects the parties to exercise good faith in their efforts to redact.

Paragraph (h) permits remedial filings within a specified time period if identifying information is inadvertently disclosed in a prior filing. The Court believes that the availability of such a procedure would particularly benefit pro se taxpayers who appear before the Court.

Public Access to Electronic Case Files

The Tax Court maintains a Web site that satisfies the requirements of the E-Government Act of 2002 relating to the provision of the location and contact information for the courthouse, the Court's Rules of Practice and Procedure, docket information for each case, and access to all written opinions of the Court. The Court recently has implemented electronic imaging of case filings for internal use, whereby documents filed in the Court are converted to electronic form. In addition, the Court has proposed Interim Procedures for an electronic filing pilot program, which will be commenced in the near future. Because of privacy and security concerns and the nature of the parties and issues in cases before the Court, the Court has considered whether and to what extent it will provide public online access to its electronic records.

In June 1999, before the enactment of the E-Government Act of 2002, the Judicial Conference of the United States, through a subcommittee of its Committee on Court Administration and Case Management, began a study of privacy and security concerns regarding public electronic access to case file information. The subcommittee held numerous meetings and received information from experts and academics, court users, judges, court clerks, and Government agencies. As a result, it developed several policy

options and alternatives for the creation of a judiciary-wide electronic access privacy policy; these options were presented to the full Committee on Court Administration and Case Management. A document containing the alternatives was published, and comments were received from a wide range of interested persons, including private citizens, privacy rights groups, journalists, private investigators, attorneys, and representatives of financial services groups. At some point, comments apparently were solicited from the Department of Justice regarding tax cases, but none were received.

Further public hearings were held, after which the subcommittee developed a final set of privacy policy recommendations which were endorsed by the full Committee on Court Administration and Case Management and adopted by the Judicial Conference. The policy provides for public electronic access to case file documents with certain personal identifiers redacted. The policy adopted by the Judicial Conference states that there should be consistent, nationwide policies in Federal courts to ensure that similar privacy protections and access presumptions apply regardless of which Federal court is the custodian of a particular case file. The policy further states that it generally applies to both paper and electronic files, and the availability of case files at courthouses will not be affected or limited.

With respect to civil case files, the Judicial Conference decided to exclude Social Security appeals and, subsequently, immigration cases from electronic access because of the inherently personal nature of the cases. The Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files explains:

After much debate, the consensus of the Committee was that Social Security cases warrant such treatment because they are of an inherently different nature from other civil cases. They are the continuation of an administrative proceeding, the files of which are confidential until the jurisdiction of the district court is invoked, by an individual to enforce his or her rights under a government program. Further, all Social Security disability claims, which are the majority of Social Security cases filed in district court, contain extremely detailed medical records and other personal information which an applicant must submit in an effort to establish disability. Such medical and personal information is critical to the

court and is of little or no legitimate use to anyone not a party to the case. Thus, making such information available on the Internet would be of little public benefit and would present a substantial intrusion into the privacy of the claimant.

[<http://www.privacy.uscourts.gov/Policy.htm>.]

Although there is no indication that they were specifically discussed, tax cases were not excepted by the Judicial Conference. Bankruptcy cases also were not excepted by the Judicial Conference. However, Congress has recognized the importance of protecting from improper disclosure tax information received by a Bankruptcy Court. On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, was enacted. Section 315 of the act, 119 Stat. 88, amends the Bankruptcy Code to require debtors in bankruptcy cases to provide tax returns and other tax information to the Bankruptcy Court, trustee, and creditors. It further provides that the Director of the Administrative Office of the United States Courts shall, within 180 days after enactment, establish procedures for safeguarding the confidentiality of any tax information required to be provided and, within 540 days after enactment, prepare and submit a report to Congress on the effectiveness of those procedures.

On September 20, 2005, the Director issued interim guidance regarding tax information. That guidance provides that no tax information filed with a Bankruptcy Court will be available to the public electronically. The interim guidance defines tax information to include tax returns, transcripts of returns, amendments to returns, and any other document containing tax information provided by the debtor.
<http://www.uscourts.gov/bankruptcycourts/DirTaxGuidanceJCUSApproved905.pdf>. The report to Congress was submitted on October 11, 2006, and states that, to date, the Director does not have sufficient data to enable him either to provide meaningful feedback regarding the effectiveness of the procedures or to assess whether additional legislation is necessary to protect further the confidentiality of debtors' tax information.

As explained above, Rule 27 is modeled after rule 5.2 of the Federal Rules of Civil Procedure and rule 9037 of the Federal Rules of Bankruptcy Procedure. Rule 5.2(c) provides for limited public access to electronic records in Social Security appeals and immigration cases. The Committee note explains:

Those actions are entitled to special treatment due to the prevalence of sensitive information and the volume

of filings. Remote electronic access by nonparties is limited to the docket and the written dispositions of the court unless the court orders otherwise. [<http://www.uscourts.gov/rules/Appendix F.pdf>, at Rules App. F-6.]

The Court has considered the privacy and security issues raised by providing public online access to electronic records in the particular context of a Court whose docket consists solely of Federal tax cases and approximately 75 percent of whose petitioners are pro se individuals, and whether it is unrealistic to expect those pro se individuals to file case documents in a manner that adequately protects their privacy and security interests. Court documents can include a great deal of personal information in addition to Social Security numbers and tax information, such as financial account numbers, property descriptions and addresses, names and birth dates of minor children, employment information, medical and health information, and original signatures. The information most often will relate to petitioners but can also relate to witnesses and other third parties. The Court's records generally are open to the inspection of the public pursuant to Code section 7461(a), and Code section 6103 disclosure restrictions do not apply with respect to returns or return information in a Federal judicial proceeding. See Code sec. 6103(h)(4). However, the Court has the authority under Code section 7461(b) to make any provision that is necessary to prevent the disclosure of trade secrets or other confidential information, including placing a document or information under seal. In addition, the Court believes that there is a distinction to be drawn between public access to information in the Court's records pursuant to Code section 7461(a) and publication of the information on the Internet.

The Court has decided to treat the information in its records in a manner consistent with tax information in bankruptcy cases, and with Social Security appeals and immigration cases. Consequently, paragraph (b) of Rule 27 permits the parties and their counsel to have remote electronic access to any part of the case file that the Court maintains in electronic form, but limits public online access to the Court's electronic records to the docket records maintained by the Court, and to opinions (including bench opinions) and orders of the Court. The Court will, however, provide full public access to its electronic records at the Clerk's Office during the Court's regular business hours.

**NOTICE REGARDING PRIVACY AND PUBLIC
ACCESS TO CASE FILES**

Pursuant to section 7461(a), I.R.C. 1986, all reports of the Tax Court and all evidence received by the Tax Court, including a transcript of the record of the hearings, generally are public records open to inspection by the public. In order to provide access to case files while also protecting personal privacy and other legitimate interests, parties are encouraged to refrain from including or to take appropriate steps to redact the following information from all pleadings and papers filed with the Court, in electronic or paper form, including exhibits thereto, except as otherwise required by the Court's Rules or as directed by the Court:

- (1) Taxpayer identification numbers (e.g., Social Security numbers or employer identification numbers);
- (2) Dates of birth. If a date of birth is provided, only the year should appear;
- (3) Names of minor children. If a minor child is identified, only the minor child's initials should appear; and
- (4) Financial account numbers. If a financial account number is provided, only the last four digits of the number should appear.

Pursuant to section 7461(b), I.R.C. 1986, and Rules 27 and 103, Tax Court Rules of Practice and Procedure, a party wishing to file a document containing personal identifiers listed above may file a motion to seal and submit with the motion the unredacted document. If the document is sealed, the Court may still require the party to file a redacted document for the public record.

A person waives protection as to the person's own information by filing it without redaction and not under seal. The Clerk of the Court is not required to review documents filed with the Court for compliance with this Notice. The responsibility to redact filings rests with the party or nonparty making the filing. The Court expects the parties to exercise good faith in their efforts to redact.