

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 09-04

(Amend SCR Tax 3, 4, 5, 6 and 9)

WHEREAS, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to Superior Court Rules of Practice and Procedure Before The Tax Division of the Superior Court 3, 4, 5, 6 and 9; and

WHEREAS, Rules of Practice and Procedure Before The Tax Division 3, 4, 5, 6 and 9 do not modify the Federal Rules of Civil or Criminal Procedure; it is

ORDERED that Rules of Practice and Procedure Before The Tax Division 3, 4, 5, 6 and 9 are hereby amended as set forth below; and it is further

ORDERED that the above enumerated amendments shall take effect September 1, 2009 and govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

AMENDMENTS TO TAX DIVISION RULE 3

RULES OF COURT

(a) *Applicable Civil Division Rules.* Except where inappropriate or inconsistent with the Rules of this Division, the following Superior Court Rules of Civil Procedure are applicable to actions brought in the Tax Division of the Court:

[Rule 5 \(e\) \(2\) \(A\) - \(C\),](#)

[\(E\) – \(H\); 5\(f\)](#)

[\(Service and filing of pleadings and other papers\)](#)

Rule 6

(Time)

Rule 6-I

(Continuous session of Court)

Rule 7-I

(Stipulations)

Rule 9-I(c) & (d)

Verifications and affidavits

Rule 11

(Signing of pleadings, motions, and other papers; sanctions)

Rule 12-I (k)

(Motions for summary judgment)

Rule 13

(Counterclaim and cross-claim)

Rule 15

(Amended and supplemental pleadings)

Rule 16-II

(Failure to appear for conference)

Rule 17

(Parties plaintiff and defendant; capacity)

Rule 23, 23-I and 23.2

(Class actions)

Rule 24	(Intervention)
Rule 25	(Substitution of parties)
Rule 26-34 and 36-37	(Depositions and discovery)
Rule 28-I	(Depositions and outside forum jurisdiction)
Rule 39-I	(Appearance at trial)
Rule 39-II	(Number of counsel)
Rule 42(a)	(Consolidation)
Rule 43	(Evidence)
Rule 43-I	(Record made in regular course of business; photographic copies)
Rule 44	(Proof of official record)
Rule 44-I	(Proof of statutes, ordinances, and regulations)
Rule 44-I	(Determination of foreign law)
Rule 45	(Subpoena)
Rule 46	(Exceptions unnecessary)
Rule 53	(Masters)
Rule 53-I	(Auditor- Master Fees)
Rule 53-II	(Deposit for expenses)
Rule 54(a) & (b)	(Judgments)
Rule 54-II	(Waiver of costs)
Rule 56	(Summary judgment)
Rule 60	(Relief from judgment or order)
Rule 61	(Harmless error)
Rule 62	(Stay of proceedings to enforce a judgment)
Rule 62-I	(Supersedeas bond)
Rule 63	(Inability of a judge to proceed)
Rule 63-I	(Bias or prejudice of a judge)
Rule 65	(Injunctions)
Rule 65.1	(Security: Proceedings against sureties)
Rule 77(a), (b) & (d)	(Superior Court and Clerk)
Rule 79	(Books and records kept by clerk and entries therein)
Rule 79-1	(Copies and custody of papers filed)
Rule 80	(Stenographer; stenographic report or transcript of evidence)
Rule 82	(Jurisdiction unaffected)
Rule 83-I	(Amendments of or additions to Superior Court Rules of Civil Procedure)
Rule 101	(Appearance and withdrawal of attorneys)
Rule 102	(Disciplinary proceedings against attorneys)
Rule 103	(Employees not to practice law)
Rule 201	(Recording of Court proceedings; release of transcripts)
Rule 202	(Fees)
Rule 203	(Free press-Fair trial)

(b) Personal representation; In civil proceedings, any individual taxpayer may appear pro se; no corporation shall appear as a petitioner except through a member in good standing of the District of Columbia Bar; and any partnership, joint venture, association, trust, estate, or receiver may appear by an authorized representative.

AMENDMENTS TO TAX DIVISION RULE 4

FORM AND STYLE OF PAPERS, FILINGS OF DOCUMENT, FEES

(a) *Form and style.* ~~Papers constituting one document shall be bound together at the top only, without backs or covers, with~~ Filings shall include a caption in the form shown in Rule 6 (b), omitting all prefixes and titles (such as "Mrs.", "Dr.", etc.). A docket number shall be placed on all documents filed in the proceedings after the petition and shall be referred to in all papers in the proceedings. The name of any estate, trust, or other beneficiary for whom petitioner may act shall precede petitioner's name, e.g., "Estate of John Doe, deceased, Richard Roe, Executor." ~~Papers shall be signed by the party filing the same or the party's counsel. The mailing" All papers filed by or on behalf of a party shall set forth the name, full residence address and telephone number of the person making the filing shall appear after the signature.~~ party, unless that party is represented by counsel. If a party is represented by counsel, all pleadings or other papers shall set forth the name, office address, telephone number, e-mail address, and Bar number of the attorney. The names, addresses, and telephone numbers so shown shall be conclusively deemed to be correct and current. It is the obligation of the attorney or unrepresented party whose address, telephone number or e-mail address has been changed to immediately notify the Clerk of the Tax Division and all other attorneys and unrepresented parties named in the case of this change.

(b) *Filing.* During business hours, documents shall be filed with the Deputy Clerk of the Tax Division. See also Civil Rule 77(a)

(c) *Fees.* The fee for filing a petition shall be \$120 payable upon filing of the petition. In addition to the filing fee in civil tax cases, the Deputy Clerk shall assess costs or fees according to the civil fee schedule as prescribed in Civil Rule 202.

AMENDMENT TO TAX DIVISION RULE 5

SERVICE

(a) *Method.* The petitioner shall serve a copy of a pleading (except the initial petition), motion, notice, or other document upon the respondent by mailing ~~or otherwise delivering such copy to the Attorney General of the District of Columbia or an Assistant Attorney General designated to receive service or to the~~ electronic means, or delivery of such copy to counsel appearing for the District of Columbia, counsel for any other party, and any other person as ordered by the Court.

The respondent shall serve a copy of a pleading, motion, notice or other document upon the petitioner or any other party by mailing, electronic means, or ~~otherwise delivering~~ delivery of such copy to the petitioner, any other party, or the attorney of record for petitioner or other party as provided in subsections (b) and (c) of this Rule.

Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service by electronic means is not effective if the party making service learns that the attempted service did not reach the person to be served.

(b) *Attorney of record.* Service upon any attorney of record shall be deemed service upon the party, but, where there is more than one attorney for a party, service shall be made only upon the party's attorney whose appearance was first entered of record, unless the first attorney of record, by writing served and filed, designates another attorney to receive service, in which event service shall be so made.

(c) *No attorney of record.* If a petitioner has no attorney of record, service shall be made upon the petitioner.

(d) *Proof of service.* Proof of service of papers required or permitted to be served (other than those for which a method of proof is prescribed elsewhere in these Rules or by statute) shall be filed before any action is to be taken thereon. The proof shall show the date and manner of service on the parties and may be by written acknowledgement thereof, by affidavit of the person making service or delivery, by certificate of a member of the Bar of this Court, or by other proof satisfactory to the Court. Failure to make such proof will not affect the validity thereof. The Court may at any time allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

(e) *Filing.* All papers after the petition required to be served upon a party, other than motions, oppositions, proposed orders and points and authorities shall be filed with the Court either before service or within 5 days after service; however, the clerk shall not accept for filing deposition transcripts, interrogatories, requests for documents, requests for admission, and responses thereto except as set forth in the last sentence of this paragraph. The party serving such a discovery paper or noticing a deposition must, however, file with the Court a Certificate Regarding Discovery which shall indicate the title of the discovery paper served and the date on which it was served. The requesting party must retain the original discovery paper and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts which have been made at the party's request. Such discovery papers and deposition transcripts must be retained until the case is concluded in this Court, the time for noting an appeal or petitioning for writ of certiorari has expired, and any such appeal or petition has been decided. Discovery papers and deposition transcripts may be filed, without leave of Court, if they are appended to a motion or opposition to which they are relevant and may otherwise be filed if so ordered by the Court *sua sponte* or pursuant to a motion.

AMENDMENTS TO TAX DIVISION RULE 6

PETITION: CONTENTS, SERVICE, AND DOCKETING

(a) *The petition.* (1) A civil proceeding is initiated by filing a petition with the Tax Division. A party not filing under Civil Rule 5 (e) shall file a signed original and two conformed copies of a petition ~~in accordance with section (b) of this Rule.~~

(2) A petition not substantially in accordance with section (b) may be accepted by the Court, provided the filing fee is paid and such petition contains at least sufficient information to show the jurisdiction of the Court and the alleged errors of which the petitioner complains. Upon notification by the Court to do so, the petitioner shall file within such time as the Court shall direct an amended petition conforming substantially to section (b). ~~No fax, telegram, cablegram, radiogram, telephone call or similar communication shall be recognized as a petition.~~

(b) *Contents*- The petition shall be substantially as follows:

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

_____)	
)	
Petitioner,)	
)	
v.)	TAX DOCKET NO.
)	
DISTRICT OF COLUMBIA,)	
)	
Respondent.)	

The petition shall include the following numbered paragraphs:

(1) The petitioner's name and the address of the petitioner's principal office or residence.

(2) The amount of tax in controversy, the nature of the tax, and the year(s) or the period(s) covered thereby.

(3) In each case, the petitioner shall allege the facts relied upon to demonstrate that the jurisdictional requirements for the filing of petitions in the Tax Division have been met: In the case of a petitioner seeking review of an assessment of real property alleged to be exempt from taxation, the date of mailing of the denial of exemption; in all other cases, the date of payment of the amount owed (tax plus penalties and interest, if applicable), the date of filing of a claim for refund, or the date of the mailing of the notice of disallowance of such claim, the date of the notice of deficiency assessment, or the date of the filing of an appeal with the Board of Real Property Assessments and Appeals.

(4) In separately lettered subparagraphs, clear and concise assignments of each and every error which the petitioner alleges to have been committed by the assessing authority.

(5) In separately lettered subparagraphs, a clear and concise statement of facts upon which the petitioner relies as sustaining each assignment of error, except those assignments of error in respect of which the burden of proof is upon the respondent.

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

(7) The signature of petitioner or petitioner's counsel.

The following additional information shall be appended to the petition and to each of the conformed copies:

(A) If the appeal is for redetermination of a deficiency, (i) a copy of the statement of taxes due or the notice of assessment, and notice of deficiency, if any, and (ii) if a statement of reasons has accompanied the notice of assessment or notice of deficiency, so much thereof as is material to the issues set out in the assignments of error; or

(B) If the appeal is from the denial of a claim for refund, a copy of the notice of the denial thereof, ~~if any; or (C) If the appeal is from an assessment, equalization or valuation of real property, a copy of the appeal, if any, made to the Board of Real Property Assessments and Appeals and a copy, if any, of the action of such Board with respect to the appeal.~~

The petitioner may append to the petition such other statements or documents as are material.

(c) *Service of the petition.* The ~~Deputy~~ Clerk shall serve a copy of the petition upon the ~~Corporation Counsel or an Assistant Corporation Counsel and the Department of Finance and Revenue~~ Attorney General for the District of Columbia and the Department of Finance and Revenue.

(d) *Docketing of petition.* Upon receipt of the petition by the ~~Deputy~~ Clerk, the case shall be entered upon the docket and assigned a number and the parties shall be notified thereof.

(e) *Amendment.* An amended petition may be filed with the Tax Division without leave of Court at any time before an answer is filed. Such amended petition shall conform to the requirements of Rule 4 and shall be served in accordance with Rule 5(a).

AMENDMENT TO TAX DIVISION RULE 9

MOTIONS

(a) *Time of filing.* Motions may be filed with the Tax Division at any time up through the conclusion of the trial, unless otherwise directed by the Court. Any motion to alter or amend a judgment shall be filed no later than 30 days after entry of the judgment.

(b) *Form and contents.* All motions or responses of either party, except those made orally during hearing or trial, shall be made in writing in the form and style prescribed by Tax Division Rule 4. Such motions or responses shall fully set forth the relief requested and, if applicable, a brief statement of facts and a statement of points and authorities in support thereof. ~~All citations to cases decided by the United States Court of Appeals for the District of Columbia Circuit shall include the volume number and page of both U.S. App. D.C. and the Federal Reporter.~~ A proposed order shall be filed with each motion or response. The proposed order shall contain a list of all persons with their current addresses to whom copies of the Court's order shall be sent. If a motion is consented to by all parties, that fact shall be indicated in the title of the motion.

(c) *Response.* Any response by the nonmoving party shall be filed and served upon the movant within 15 days after service of the motion, unless otherwise ordered by the Court.

(d) *Disposition.* (1) Hearing: When allowed. A party may specifically request an oral hearing by endorsing at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested", but the Court in its discretion may decide the motion without a hearing. If the judge assigned to the case determines to hold a hearing on the motion,

that judge shall give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing and the amount of time afforded to each party. If a pending motion is resolved by the parties, the movant must immediately notify the Judge's Chambers by telephone.

(2) The Court may dispose of any motion with or without a hearing or may postpone disposition until the trial on the merits.

(3) If a party fails to appear at a hearing on a motion, the court may hear the matter ex parte.

(e) *Miscellaneous*. (1) The filing of a motion shall not constitute cause for postponement of a trial from the date set.

(2) If an order of the Court to file amended pleadings is not complied with within 15 days of the date of the service of the order or within such other time as the Court may order, the Court may strike a pleading to which such an order of Court has been directed or may enter such other order as it deems just.

By the Court:

Date: July 16, 2009

/s/
Lee F. Satterfield
Chief Judge

Copies to:

All Judges

All Magistrate Judges

Sonya Pollock, Tax Office

Library

David Luria, Attorney Advisor