COMMENTS CONCERNING PROPOSED AMENDMENTS TO TAX COURT RULES

The following comments are the individual views of the members of the Section of Taxation who prepared them and do not represent the position of the American Bar Association or the Section of Taxation.

These comments were prepared by individual members of the Committee on Court Procedure and Practice and the Committee on Administrative Practice of the Section of Taxation. Principal responsibility was exercised by Nancy T. Bowen, Chair of the Tax Court Practice Subcommittee of the Committee on Court Procedure and Practice. Substantive contributions were made by Robert T. Duffy, Kevin L. Kenworthy, and Mary A. McNulty of the Committee on Court Procedure and Practice, and by Melissa E. Welch, Edward T. Perry, and Gregory J. Gawlik of the Committee on Administrative Practice. The Comments were reviewed by Michael Mulroney of the Section’s Committee on Government Submissions and by Loretta Collins Argrett, Council Director for both Committees.

Although many of the members of the Section of Taxation who participated in preparing these Comments have clients who would be affected by the federal tax principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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EXECUTIVE SUMMARY

The proposed amendments to the Tax Court’s Rules represent a number of improvements and simplifications. Most of the changes were necessitated by recent expansions of the Court’s small tax case jurisdiction to actions for determination of relief from joint and several liability on a joint return, and to lien and levy actions. The overall approach of the proposed amendments was to simplify the Court’s small tax case rules and to make them more general in their application, so as to minimize the need to have separate small tax case rules for deficiency actions, for actions for redetermination of employment status, for actions for determination of relief from joint and several liability on a joint return, and for lien and levy actions. We generally applaud this approach, and have only scattered comments on the proposed rules. These comments generally arose out of our concerns that the small tax case procedures be both clear and thorough, particularly for pro se petitioners who may not otherwise be familiar with the Tax Court Rules.

COMMENTS

1. Rule 170. General

We believe that pro se petitioners are particularly likely to rely upon the small tax case rules. Accordingly, we suggest minor clarifications to make two cross-references in the definition of “small tax case” (to the definition of the amount in dispute, and to the petitioner’s election of small tax case status) more clear to non-lawyers. We recommend that the second sentence of the rule read as follows:

The term “small tax case” means a case in which the amount in dispute is $50,000 or less (as defined by sections 7463 and 7436(c) of the Internal Revenue Code) and the Court has concurred in the petitioner’s election under Rule 171.

We also note that pro se petitioners may be confused about how to determine the amount in dispute for spousal relief and for lien and levy actions. For example, the small tax case deficiency statute (section 7463(a)) provides for jurisdiction where the amount of the “deficiency” placed in dispute is $50,000 or less, and section 7463(e) specifically provides that the “deficiency” includes additions to the tax, additional amounts, and penalties. Additionally, the small tax case deficiency statute (section 7463(a)) specifically applies the $50,000 jurisdictional limit to each separate taxable period. In contrast, the small tax case lien and levy statute does not clearly specify either the amounts that are included in determining the amount in dispute, or the taxable period(s) that should be considered. That is, section 7463(f) provides for small tax case jurisdiction in lien and levy actions where the “unpaid tax” is $50,000 or less, but does not specify whether additions to the tax, additional amounts, or penalties are included in the “unpaid tax.” While the Code elsewhere provides, in section 6665(a)(2), that the term “tax” includes additions to the tax, additional amounts, and penalties, that may not be clear to pro se petitioners.
Section 7463(f) also does not specifically state whether the $50,000 limit applies to each separate taxable period, or for all taxable periods combined. We believe that applying the limitation to each separate taxable period is the most reasonable construction. We recognize that Congress may eventually act to fill the gaps and uncertainties in the Internal Revenue Code. In the meantime, in the interest of making the small tax case rules more clear, we recommend that the following sentence be added at the end of Rule 170:

For this purpose, the amount in dispute in actions for review of a lien or levy determination under section 6330 or a spousal relief determination under section 6015 includes additions to the tax, additional amounts, and penalties, and shall be separately determined for each taxable period.

2. Rule 173. Pleadings

Rule 38 of the Tax Court Rules currently provides that a case is deemed to be “at issue” upon the filing of an answer (or a reply, if one is necessary). This concept of joinder of issue is important because it is the triggering event for the period allowed for discovery (Rule 70), requests for admission (Rule 90), submission of a case without trial (Rule 122), submission to voluntary binding arbitration (Rule 124), and placing a case on the trial calendar (Rule 131). Rule 38 generally does not define when a small tax case is “at issue,” however, because an answer typically is not filed in a small tax case. We recommend that a provision be added to the small tax case rules to clarify that if no answer is filed, the action will be deemed to be at issue upon the expiration of the period for filing an answer. Specifically, we recommend that the final sentence of Rule 173(c) read as follows:

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, and the action shall be deemed at issue upon the expiration of the period specified in Rule 36(a).

3. Rule 176. Preliminary Hearings

Rule 176 currently provides that if a hearing is required in a small tax case, the parties may submit their views in writing and are generally not required to appear personally at the hearing, unless otherwise ordered by the Court. The Court has proposed to delete this rule. We believe that the rule provides valuable guidance to, and protection for, petitioners and particularly for pro se petitioners, and recommend that the rule be retained in its current form.

4. Rule 293. Other Pleadings (Redetermination of Employment Status)

The Court proposes to delete current subsection (c) of Rule 293, which provides a cross-reference to a special small tax case rule in actions for redetermination of employment status. That rule generally provides that answers and replies are not required to be filed in small tax cases for redetermination of employment status. We understand and agree with the Court’s goal of limiting the need for special rules for each type of action (for deficiencies, for redetermination
of employment status, for determination of relief from joint and several liability on a joint return, and for liens and levies) that may be brought as a small tax case. At the same time, we are concerned that petitioners (and particularly pro se petitioners) may be confused by the fact that the rules on actions for redetermination of employment status contain a cross-reference to the special rules for petitions in small tax cases, but do not contain a reference to the special rules for answers and replies in small tax cases. To address our concerns, while also respecting the Court’s goal of making the small tax case rules more general in effect, we recommend that subsection (c) read as follows:

(c) Small Tax Case. For provisions relating to the filing of other pleadings in a small tax case, see Rule 173.

5. Rule 324. Other Pleadings (Determination of Relief from Joint and Several Liability on a Joint Return)

We recommend that a new subsection (c) be added that is identical to subsection (c) set forth in our comments to Rule 293.

6. Rule 333. Other Pleadings (Lien and Levy Actions)

We recommend that a new subsection (c) be added that is identical to subsection (c) set forth in our comments to Rule 293.

7. Form 2

The statutory grants of small tax case jurisdiction, as well as the Tax Court Rules on small tax cases, generally refer to disputes involving “$50,000 or less.” We recommend that the language in Form 2 conform to this usage. Specifically, we recommend that the second sentence in the paragraph of text that appears above the petitioner’s signature be amended to read as follows:

The amount in dispute or any overpayment claimed is $50,000 or less, as determined under Rule 170.