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HEADLINE: #26 2006 TNT 220-26 ABA TAX SECTION COMMENTS ON TAX COURT'S PROPOSED RULES IN SMALL TAX CASES. (Release Date: NOVEMBER 13, 2006) (Doc 2006-23130)

ABSTRACT: Susan Serota, on behalf of members of the American Bar Association Section of Taxation, has responded to the Tax Court's request for comments on proposed revisions to its Rules of Practice and Procedure that would require the filing of answers by the IRS commissioner in all small tax cases.

SUMMARY:

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Susan Serota, on behalf of members of the American Bar Association Section of Taxation, has responded to the Tax Court's request for comments on proposed revisions to its Rules of Practice and Procedure that would require the filing of answers by the IRS in all small tax cases.

Members support the Tax Court's efforts to assist small tax case petitioners and have submitted comments seeking to reduce taxpayer confusion when receiving an answer or filing a reply.

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GEOGRAPHIC: United States

REFERENCES: Subject Area:
Practice and procedure
Cross Reference:
For the Tax Court notice of its proposed amendment to Rule 173, see
Doc 2006-19181 or 2006 TNT 178-19.

TEXT:

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November 13, 2006

Mr. Robert R. Di Triolio
Clerk of the Court U.S. Tax
Court 400 2nd St.,

N.W., Room 111
Washington, D.C. 20217

RE: Comments Concerning the Proposed Amendment to Rule 173

Dear Mr. Di Triolio:

The following submission is made on behalf of the Section of Taxation/1/ of the American Bar Association in response to the United States Tax Court's ("Court") request for public comment on its proposed revisions to the United States Tax Court Rules of Practice and Procedure, Rule 173. The views expressed in this letter have not been approved by the Board of Governors or the House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

Discussion

The Section endorses the Court's efforts to assist small tax case ("S-case") petitioners -- many of whom are unrepresented low income taxpayers -- by requiring the Commissioner to file an answer in each S-case which identifies the name, address and telephone number of the Counsel attorney responsible for the case. This revision to the rule will improve pre-trial communication between petitioners and respondent and will encourage early consideration of each S-case by the responsible Counsel attorney. The revised rule will also promote earlier identification of procedural and jurisdictional issues, as well as identifying S-cases more appropriate for disposition in a regular case proceeding.

In connection with its proposed revisions to Rule 173, the Court may wish to consider that some unrepresented taxpayers may be confused by receipt of an answer and may file a reply without being ordered to do so by the Court. Such a reply may not be captioned as such. Indeed, it may simply be a letter mailed directly to Counsel and/or the Court that responds to certain statements contained in the answer. In such a case, the Section recommends that the Court implement a procedure suggested by Rule 23(g): Specifically, if such a reply is sent to the court, the Clerk's office should return the reply, unfiled, to the S-case petitioner and explain that a reply may not be filed unless ordered by the Court. The Clerk's office should also explain that, in such a case, all affirmative allegations contained in the answer are automatically deemed to be denied. In addition, as a preventative measure, the Court may wish to consider sending a letter to the petitioner in each S-case, at the time the answer is originally filed, stating that no reply should be filed unless ordered by the Court. If a certificate of service is not included with Counsel's answer, this letter can accompany the service made by the Clerk of the Court. If a certificate of service is included with the answer, the letter can be sent by the Clerk upon filing of the answer.

Another concern of the Section is that some S-case petitioners who are ordered by the Court to file a reply may not appreciate that, by virtue of current Rule 173(c), which cross-references to Rule 37(b), any affirmative allegations contained in the answer will be deemed to be admitted unless expressly denied. For this reason, the Section recommends that Rule 173(c) be modified to provide that, in any case in which a reply is filed, any affirmative allegation contained in any answer that is not specifically addressed in the reply is deemed to be denied for all purposes. Accordingly, the Court may wish to consider revising Rule 173(c) to read as follows:

(c) Reply: A reply to the answer shall not be filed, unless the Court otherwise directs. Any reply filed pursuant to the Court's order shall conform to the requirements of Rule 37(b). Where a reply is filed, the provisions of Rule 37(c) shall not apply. Every affirmative allegation set out in the answer and not expressly admitted or denied in the reply shall be deemed to be denied.

Overall, the Section believes that the Court's efforts to address the needs of small case taxpayers are admirable and timely and that the proposed revisions to Rule 173 will facilitate more timely resolution of small tax cases.

Any questions regarding these comments may be directed to Elizabeth Copeland, c/o Oppenheimer, Blend, Harrison & Tate, Inc., 711 Navarro, Sixth Floor, San Antonio, Texas 78205, 210-299-2347.

Sincerely yours,

Susan P. Serota

Chair, Section of Taxation

FOOTNOTE

/1/ Principal responsibility for these comments was exercised by Mark Allison, Joshua D. Odintz, Elizabeth A. Copeland, Peter A. Lowy and Mary A. McNulty, members of the Court Procedure and Practice Committee of the Section of Taxation of the American Bar Association and Danshera Cords, Kathryn V. Sedo, Susan E. Morgenstern, and Brian P. Trauman, members of the Pro Bono Committee of the Section of Taxation; and reviewed by Karen L. Hawkins on behalf of the Section of Taxation's Committee on Government Submissions; and Charles A. Pulaski, Jr., Council Director for the Court Procedure and Practice Committee.

END OF FOOTNOTE

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