

**STATE OF MINNESOTA  
TAX COURT**

Proposed Rules  
Governing Tax Court Procedures,  
Minn. Rules Parts 8610.0010 through  
8610.0150

**STATEMENT OF NEED  
AND REASONABLENESS**

**I. INTRODUCTION AND BACKGROUND**

In 1977 when the Tax Court became a full time court having concurrent jurisdiction with the Minnesota district courts over civil tax litigation in Minnesota, the Tax Court adopted its rules of procedure reserving to itself the right to amend, relax or dispense with its rules of procedure whenever circumstances require. The Tax Court made minor revisions to its rules on August 8, 1988 regarding gender and non-substantive areas including a new numbering system. The Tax Court Rules of Procedure have not been revised in their entirety or substantively since first adopted in 1977.

The Tax Court is now proposing to revise its rules of procedure to reflect current practices in the Tax Court as they have evolved, to conform closer to the rules of procedure applicable to district courts, and to eliminate rules that now duplicate many statutory provisions that have been enacted since the Tax Court rules were first adopted. In addition to substantive changes, reorganization and grammatical changes are proposed to improve clarity and to conform with current style requirements.

In this process, we are proposing to delete the existing Tax Court Rules of Procedure found at Minnesota Rules parts 8600.0200 through and including 8600.9960. The proposed rules will replace the former rules in their entirety. For purposes of this Statement of Need and Reasonableness, the currently existing Tax Court Rules which these proposed rules repeal will be referred to as the "former rules" or individually as the "former rule." We have explained under Section VI of this Statement which portion of the proposed rules are entirely new and which portions are restatements of the former rules. Briefly, the "new" provisions include (1) motion practice before the Tax Court, (2) representation issues including limitations on practice before the Tax Court by persons who are not attorneys or who are attorneys not licensed to practice in Minnesota, and (3) costs and disbursements.

The proposed rules are necessary to effectively administer Tax Court litigation. The Tax Court will undertake review of its rules on a periodic basis to ensure that the rules remain consistent with statutory requirements and to ensure that the rules continue to meet the needs of Tax Court litigants.

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille or cassette tape. To make a request, contact Sue Wozniak, Tax Court Administrator, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 296-2806.

## **II. REQUEST FOR COMMENTS AND OTHER METHODS DESIGNED TO REACH AFFECTED PERSONS**

The Tax Court published a Request for Comments on June 17, 1996 in the State Register (20 S.R. 2717). The Request for Comments provided that Minnesota taxpayers and their counsel who contest real property tax assessments or Commissioner of Revenue orders are the types of groups or individuals likely to be affected by the proposed rules. The Request for Comments also explained that anyone interested in receiving a copy of the proposed rules could obtain a copy by calling the Tax Court. As of August 1, 1996, fifteen persons requested and received a copy of the proposed rules based upon the Request for Comments.

The Tax Court also published A Notice of Intent to Solicit Outside Opinions on February 28, 1994 in the State Register (18 S.R. 35). The notice solicited opinions and information from the public in amending the rules governing procedure in the Tax Court. The notice specifically mentioned motion practice before the Tax Court, limitations on practice before the Tax Court by persons who are not attorneys or who are attorneys not licensed to practice in Minnesota, costs and disbursements, and service by mail.

The notice also stated that the Tax Court would establish a volunteer committee to assist in amending the Tax Court rules of procedure. The Tax Court established a volunteer committee to assist with amending the Tax Court rules. The volunteer committee consisted of ten tax practitioners, county attorneys, staff attorneys in the attorney general's office and members of various bar association's tax sections. Drafts of the proposed rules were sent to the volunteer committee to review and comment. The proposed rules reflect the comments the volunteer committee made.

Tax Court Judges spoke at the annual Tax Judges Conference in 1996 and 1995 about the proposed rules. Each judge encouraged any person interested in the proposed rules to provide comments or to volunteer for the volunteer committee. The judge's comments were published in the Minnesota State Bar Tax Section Newsletter. All members of the Minnesota State Bar Tax Section received the newsletter.

A summary of the Requests for Comments was also published in State Tax Notes on page 85 in its July 8, 1996 issue. In addition, subscribers were

informed in the July 15, 1996 issue of State Tax Notes that the Minnesota Tax Court has requested comments on its planned amendment to its rules regarding court rules of procedure. All subscribers of BNA's State Tax Notes received these notices.

Because this is the first time the Tax Court has proposed rules after the Legislature required each agency to maintain its own mailing list for rulemaking purposes, the Tax Court does not have a rules mailing list. The Tax Court did mail, however, copies of the proposed rules to any person who requested a copy. The Tax Court also sent draft copies of the proposed rules to members of the volunteer committee.

### III. VOLUNTEER COMMITTEE

As set forth in the Tax Court's Solicitation published in the February 28, 1994 issue of the State Register, the Tax Court established a volunteer committee to assist in researching the comprehensive Tax Court Rules of Procedure amendments. The volunteer committee met on two different occasions for the purpose of discussing revisions to the proposed rule drafts. Drafts of the proposed rules were sent to the volunteer committee to review and suggest revision. Members of the Volunteer Committee include:

Mr. Robert T. Rudy  
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Hennepin County Attorney's Office  
A-2000 Government Center  
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Mr. Kenneth A. Malvey  
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#### **IV. TAX COURT'S STATUTORY AUTHORITY TO ADOPT RULES**

The Tax Court's statutory authority to adopt rule amendments is set forth in Minn. Stat. § 271.06, subd. 7, which provides:

The rules of evidence and civil procedure for the district court of Minnesota shall govern the procedures in the Tax Court, where practicable. The Tax Court may adopt rules under Chapter 14. The rules in effect on January 1, 1989, apply until superseded.

Minn. Stat. § 271.06, subd. 7 (1995) (emphasis supplied). Under this statute, the Tax Court has the necessary statutory authority to adopt the proposed rules.

#### **V. NEED FOR THE RULES**

The Tax Court follows the Minnesota Rules of Civil Procedure for the district courts and the Minnesota Rules of Evidence where practicable as required by Minn. Stat. § 271.06, subd. 7. Since the Tax Court Rules of Procedure were first adopted in 1977, the practice before the Tax Court has changed. For example, fewer cases are being tried but the cases that do go to trial are lasting longer. In addition, more and more litigants in Tax Court are filing motion papers. Motion practice has increased substantially within the last few years. Moreover, more and more litigants in Tax Court are pro se or are represented by out-of-state attorneys. New rules are needed to address these issues that continually arise before the Tax Court.

Reviewing the former Tax Court rules showed that some of the former rules no longer conform to statutory requirements because of legislative changes made since the former rules were first adopted in 1977, nor address the current practice before the Tax Court. Some of the former rules also were unclear or could be better drafted, and the former rules as a whole could be better organized.

Finally, the former rules lack a coherent organization and therefore are confusing and difficult to follow by taxpayers (especially pro se taxpayers) and even attorneys. Tax Court personnel answered many questions about the former rules. In response, the Tax Court proposes to adopt a new numbering scheme to simplify the organization of the proposed rules.

For all of the foregoing reasons, the proposed rules are necessary.

## **VI. Reasonableness of The Rules**

Minnesota Statutes Chapter 14 requires the Tax Court to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. This means that the Tax Court must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, the term "need" has come to mean that a problem exists that requires administrative attention, while "reasonableness" means that the solution proposed by the Tax Court is appropriate. The reasonableness of the proposed rules is discussed below.

### **A. Reasonableness of the Rules as a Whole**

The proposed rules eliminate former rules that duplicate statutory language that has been enacted since the former rules were first adopted in 1977. For example, Minn. Stat. § 271.06, subd. 7 was amended in 1989 (1989 Minn. Laws, ch. 324, Section 14) to provide that the rules of evidence shall govern the procedures in the Tax Court, where practicable. Prior to that time, only the former rules contained such position.

The proposed rules also eliminate former rules that duplicate the Rules of Civil Procedure that apply to Tax Court proceedings. For example, former rule 8600.0600 allowed taxpayers to amend the notice of appeal or petition. Minnesota Rules of Civil Procedure 15 allows a party to amend a pleading. In addition, former rule 8600.0700 provided the procedure for filing documents with the Tax Court and required that the papers be served upon the parties. Minnesota Rules of Civil Procedure 5 provides the same procedure. Because these provisions are already contained in the Minnesota Rules of Civil Procedure, which are applicable to Tax Court matters, we eliminated duplication of these provisions in the proposed rules. By eliminating duplicate provisions, the proposed rules will be easier for taxpayers and practitioners to understand. Practitioners will not longer question why the Tax Court Rules of Procedure contain some but not all provisions of the Rules of Civil Procedure.

The proposed rules also address who may appear before the Tax Court. Numerous telephone calls have been made by pro se litigants and out-of-state

attorneys on whether they may practice before the Tax Court. The former rules contained no provision. Additionally, the proposed rules adopt the General Rules of District Courts regarding motion practice, albeit with some modifications, to be consistent with the rules of the Minnesota district courts.

Finally, the Tax Court is an executive branch court. Minn. Stat. § 271.01. The Tax Court's authority is derived from statute. Rules of procedure are needed just as in any other court. Being a court of the executive branch of the government rather than a court of the judicial branch, however, adds complexity and subjects these proposed rules to the Administrative Procedures Act. Certain provisions of the proposed rules give the Tax Court discretion to handle certain matters. For example, Proposed Rule 8610.0070, subpart 10 provides that no testimony is taken at motion hearings except under unusual circumstances. Although this language may not give the parties adequate notice of the circumstances under which oral testimony will be allowed, the Tax Court's decisions will be guided by statutory provisions and case law. All decisions of the Tax Court including decisions of discretionary matters are subject to review by the Minnesota Supreme Court. Thus, the Tax Court's discretion is not unfettered. There is established precedent to follow and guide both the litigants and the Tax Court.

Moreover, it is important to note that, because the Tax Court is not a regulatory agency but an executive branch court, the intent of the new requirements under Minn. Stat. 14.131 seem only somewhat applicable. These new requirements require the Tax Court, in this Statement of Need and Reasonableness, to (i) describe the classes of persons who will be affected by the proposed rules, including classes that will bear the costs of the proposed rules and the classes that will benefit from the proposed rules, (ii) explain the probable costs to the Tax Court and to any other agency of the implementation and enforcement of the proposed rules and any anticipated effect on state revenues, (iii) determine where there are less costly methods or less intrusive methods for achieving the purpose of the proposed rules, (iv) describe any alternative methods the Tax Court seriously considered for achieving the purpose of the proposed rules and the reasons why the Tax Court rejected these alternative methods in favor of the proposed rules, (v) explain the probable costs for Tax Court litigants to comply with the proposed rules, and (vi) describe any differences between the proposed rules and existing federal regulations and provide a specific analysis of the need for and reasonableness of each difference. The following is a general description of how the proposed rules address these specific requirements. A more specific response to each of these requirements, if applicable, is discussed under the pertinent rule part.

**Affected Classes of Persons, including Classes that will bear the Costs of the Proposed Rules and Classes that will benefit from the Proposed Rules. Any**

person who seeks to change the assessed value of real property, change its classification for tax purposes, seek exempt status or has an issue with the Commissioner of Revenue regarding the assessment of Minnesota state taxes are the classes of persons who will be affected by the proposed rules. Succinctly stated, any litigant or possible litigant in Tax Court will be affected by the proposed rules. Attorneys who represent the litigants will similarly be affected by the proposed rules.

Litigants in Tax Court, their counsel and the Tax Court itself will benefit from the proposed rules. The proposed rules answer questions that litigants have when considering whether to file a tax petition or appeal, or after filing, to answer procedural issues.

**Probable Costs to the Tax Court to Implement and Enforce the Proposed Rules.** The proposed rules are not intended to increase costs to the Tax Court. The proposed rules are intended to lessen costs by lessening confusion and providing one set of procedural rules that apply to all Tax Court matters.

**Probable Costs of Tax Court Litigants to Comply with the Proposed Rules.** The proposed rules are the court's rules of procedure and are not intended to increase costs for litigants. The Tax Court does not believe that it will cost litigants any more to litigate under the proposed rules than it cost under the former rules. Moreover, because the proposed rules now incorporate more of the rules applicable to district court practice, a lot of the confusion for litigants in Tax Court matters will be eliminated. Time and costs to litigants should therefore be less than under the former rules.

Moreover, the probable costs of complying with the proposed rules are incidental to the benefits provided by having uniform rules. There will be compliance costs of completing petitions and appeals, copying costs and staff time to prepare the forms for the petitions and appeals. None of these costs is any different than the compliance costs under the former rules.

**Are there Less Costly or Less Intrusive Methods for achieving the purpose of the proposed rules.** The purpose of the proposed rules is to provide one uniform set of procedural rules for litigants in Tax Court to follow. Rules of procedure are necessary for any court. Without procedural rules, inconsistent treatment to taxpayers may occur as well as delays in litigating issues. Without rules of procedure, costs would most likely be greater because of increased time and research. Because of these reasons, the Tax Court does not believe there are less costly or less intrusive methods of providing procedural rules for litigants to follow in Tax Court.

**Did the Tax Court seriously consider any Alternative Methods for Achieving the Purpose of the Proposed Rules? Why did the Tax Court Reject these Alternative Methods in favor of the Proposed Rules.**

In drafting these rules of court, we analyzed the procedural rules for other courts. For example, we looked at the Minnesota district court rules (Minn. Gen. R. Prac.), local rules in the United States District Court for the District of Minnesota, New Jersey State Tax Court Rules of Procedure and Washington State Tax Court Rules of Procedure. Thus, we researched and discussed procedural rules of both general jurisdiction courts as well as other state tax courts.

In researching these other courts' rules, we considered how other courts addressed and handled issues the Tax Court faces. We adapted these other courts' procedural rules to the practice as it has evolved before the Minnesota Tax Court. We rejected certain provisions adopted by general jurisdiction courts because the Tax Court is a specialized court and has specific statutory authority. We also rejected certain provisions adopted by other state tax courts because we are an executive branch court and not a judicial branch court. We chose language consistent with our statutory grant of jurisdiction under Minn. Stat. § 271.01.

In summary, we did not seriously consider any alternative methods for providing rules of procedure. We recognized that rules of procedure were necessary to effectively administer tax litigation in Minnesota. We did seriously consider how other courts manage their caseload and issues and rejected relevant provisions that were inconsistent with current practice at the Tax Court, statutory provisions regarding the Tax Court or the subject matter jurisdiction of the Tax Court.

**Difference between the Proposed Rules and Existing Federal Regulations.**  
There are no Federal Regulations that apply to the Minnesota Tax Court. Accordingly, there are no differences.

Additional requirements under Minn. Stat. § 14.131 require the Tax Court to address any fiscal and policy concerns raised under Minn. Stat. § 16A.1285 and to describe what additional notice the Tax Court gave Tax Court litigants about the proposed rules. We have explained in Section VII of this Statement why the Commissioner of Finance is not required to respond to these proposed rules. We also have explained in Section II of this Statement the optional additional notice the Tax Court has provided in drafting and proposing these rules.

**B. Reasonableness of Individual Rules**

The following discussion addresses the reasonableness of specific provisions of the proposed rules.



## RULE 8610.0010 REPRESENTATION

Proposed Rule 8610.0010 sets out who may practice before the Tax Court and addresses new forms of business entities such as a limited liability company. Taxpayers frequently inquire about this so it is both necessary and reasonable to include a specific rule to address this issue.

In small claims matters, there is no restriction on who may appear before the Tax Court. This proposed rule is reasonable because it makes Tax Court accessible to all taxpayers. It is also reasonable because small claim matters involve small amounts of tax.

For regular division matters, an individual may represent him or herself and may represent a partnership in which he or she is a general partner. An individual who is the sole shareholder of a corporation or the sole member of a limited liability company may represent the corporation or limited liability company before the Tax Court. This is reasonable because it allows individuals to represent themselves or closely held entities without having to retain an attorney.

Individuals who do not have an ownership interest in the tax matter or who are not legally trained may not practice before the Tax Court in regular division cases. For example, accountants may not represent taxpayers before the Tax Court in regular division matters. The former rule allowed accountants to appear only to present argument on matters of fact or accountancy, or in cases where the facts are submitted by stipulation. The proposed rule eliminates any reference to special treatment for accountants. The proposed rule is reasonable because accountants are allowed under the Minnesota Rules of Civil Procedure to testify as witnesses without any special treatment. Accountants' testimony can be in the form of an opinion as an expert. Accountants are thus able to testify as to facts or opinions regarding accounting issues presented. This role for accountants, which is essentially what has always been the accountant's role in Tax Court, is preferable to making an exception to the unauthorized practice of law by rule rather than by statute, which is what the former rule attempted to do. This is reasonable to protect the quality of legal representation for taxpayers and is consistent with ethical canons that prohibit non-attorneys from practicing law.

This proposed rule conforms to what has been the actual practice in Tax Court. Therefore, this proposed rule is both reasonable and necessary.

In addition, this proposed rule is neither arbitrary nor unreasonable. Courts have stated that "[requiring attorneys to represent entities] arises out of the necessity, in the proper administration of justice, of having legal proceedings carried on according to the rules of law and the practice of courts and by those charged with the responsibility of legal knowledge and professional duty." Strong

Delivery Ministry Ass'n v. Board of Appeals of Cook County, 543 F.2d 32, 33 (7th Cir. 1976). Because the Tax Court is the same as Minnesota district courts, it is reasonable to have the same rule as in district court. Minn. Gen. R. Prac. 5.

#### RULE 8610.0020 PRACTICE BEFORE THE TAX COURT BY OUT OF STATE LAWYERS

Proposed Rule 8610.0020 sets forth specific requirements for out-of-state attorneys who seek to appear before the Tax Court on behalf of Minnesota taxpayers. This proposed rule is reasonable because it allows a taxpayer to be represented by an attorney who is more familiar with the case, but may not be licensed to practice in Minnesota. This proposed rule is also reasonable because it seeks to ensure that out-of-state attorneys are familiar with Minnesota laws and court procedures and thereby adequately represent Minnesota taxpayers.

This proposed rule is inconsistent with district courts that permit an out-of-state attorney to appear in Minnesota only when a attorney admitted to practice in Minnesota also signs the pleadings and physically appears before the district court. The district court rule requires the actual appearance of a Minnesota attorney for the first appearance in the action or permits a Minnesota attorney to file an application for leave to participate as counsel without the participation of Minnesota counsel that is often referred to as a motion for admission pro haec vice. Minn. Gen. R. Prac. 5.

The Tax Court, being a specialized court, will not require a Minnesota attorney to be involved or to file a pro haec vice motion as in district court. Non-Minnesota attorneys may practice before the Tax Court as long as the out-of-state attorney provides a certificate of good standing and agrees to be bound by the Minnesota rules that apply to Minnesota attorneys. This is reasonable because it recognizes the specialty of the attorney rather than the attorney's location.

We drafted the proposed rule on out-of-state attorneys based upon responses we received from county attorneys and staff attorneys in the attorney general's office who were members of the Volunteer Committee. We specifically asked these members for their recommendations on whether out-of-state attorneys should be allowed to practice before the Tax Court. We solicited comments from these county attorneys and staff attorneys in the attorney general's office because they are likely to be the most affected by the proposed rule. They assured us that allowing out-of-state attorneys to practice before the Tax Court will promote and protect everyone's best interest if the out-of-state attorneys agree to be familiar with Minnesota law and agree to be bound by rules for Minnesota attorney conduct. Because this is essentially the same standard for Minnesota attorneys, this proposed rule is reasonable.

Moreover, this proposed rule is consistent with Minn. Stat. § 481.02, subd. 6 which prohibits out-of-state attorneys from practicing in Minnesota courts except as allowed by the judge. Tax Court judges, like district court judges, are primarily concerned about the needs of the Minnesota case, the competence of the out-of-state attorney and the demonstrated familiarity with Minnesota court rules and procedures. This is the effect of the proposed rules.

The proposed rule also provides a procedure by which the Tax Court or opposing counsel may oppose the out-of-state attorney's practice before the Tax Court. This is reasonable because it establishes a procedure for addressing this issue.

#### **RULE 8610.0030 EXTENSION OF TIME TO APPEAL FROM AN ORDER OF THE COMMISSIONER OF REVENUE**

Proposed Rule 8610.0030 provides the Tax Court's current practice of granting an automatic 30-day extension if the person requests an extension within 60 days of the Commissioner of Revenue's Order. If the person does not request an extension within the original 60-day period, the Tax Court may extend the appeal period but not more than 90 days for good cause shown. The person must show cause, as required by the statute, if he or she does not request an extension during the original 60-day period. This is reasonable because it is the Tax Court's current practice and because it implements Minn. Stat. § 271.06, subd. 2.

The proposed rule removes language in former rule 8600.2000 that addressed appeals filed within 90 days after the date of the Commissioner of Revenue's Order. This provision was eliminated because it was unclear whether the Tax Court had the authority to grant extensions in those situations.

#### **RULE 8610.0040 FORM OF APPEAL FROM ORDER OF THE COMMISSIONER**

Proposed Rule 8610.0040 provides, in one location, all the procedures to follow when appealing from an order of the Commissioner of Revenue. Accordingly, a taxpayer no longer needs to look in numerous places to understand the procedures required to appeal a Commissioner of Revenue's Order. Substantively, the proposed rule is the same as former rule 8600.1600. Because the proposed rule places everything a taxpayer needs to know under one location, it is reasonable.

#### **RULE 8610.0050 FORM OF PETITION FOR PETITION RELATING TO PROPERTY TAXES**

Proposed Rule 8610.0050 simplifies former rule 8600.1800 by eliminating redundant language and simplifying the wording of its title to refer the taxpayer

who is contesting a property assessment to the proper form. Because petitions can involve assessed valuation issues, as well as exempt property and unequal assessment, the title has been amended to include all forms of disputes involving real property taxes, not just contesting the valuation. Moreover, the proposed rule provides for a new caption to be included in all appeals from property valuation cases. Accordingly, the proposed rule clearly sets forth the forms and the caption required for all property tax cases. This is reasonable because it contains all provisions in the same place. In addition, it does not change the former rule substantively yet makes it more understandable.

#### RULE 8610.0060 CONTINUANCES

The proposed rule on continuances is the same as former rule 8600.1200. This is reasonable because the public understands the current practice on continuances.

#### RULE 8610.0070 MOTION PRACTICE

Due to the increase of motions filed in Tax Court, the Tax Court needed to establish formal procedures for motions. Proposed Rule 8610.0070 adopts Minn. Gen. R. Prac. 115 (entitled Motion Practice) of the General Rules of Practice for District Courts to maintain uniformity with the rules and procedures of Minnesota district courts. (Minn. Gen. R. Prac. 115 is referred to as "Rule 115" in this Statement of Need and Reasonableness.) Since most attorneys are already familiar with Rule 115, adopting it will make litigating before the Tax Court the same as any other district court and therefore makes the proposed rule reasonable.

Moreover, adopting this rule removes any ambiguity that currently exists on what rule applies to determine when motions must be filed in Tax Court matters. For example, Rule 115 requires that dispositive motions be filed 28 days prior to the hearing while Rule 6.04 (entitled For Motions; Affidavits) of the Minnesota Rules of Civil Procedure requires that written motions be served no later than 5 days before the hearing and Rule 56.03 of Minnesota Rules of Civil Procedure requires that motions for summary judgment be filed no later than ten days before the hearing. Removing this ambiguity also makes the proposed rule reasonable and necessary.

In adopting this proposed rule, the Tax Court attempted to balance the needs of the Tax Court to obtain information on motions sufficiently in advance of the hearing to permit judicial preparation and the needs of counsel and litigants to have prompt hearings after the submission of motions. This is the same rationale that the Minnesota district courts considered. The time limits set forth are consistent with the time limits for Minnesota district courts as well as the federal

district courts in Minnesota. It is desirable to remove any differences between state and federal court practice where no overriding purpose exists for the differences.

The definitions of "dispositive" and "non-dispositive" motions will be easy to follow in practice. The definitions are the same as followed in Minnesota district courts and those used in Minnesota federal court practice. See Local Rule 7.1 (D.Minn), reprinted in Minn. Rules of Ct. 924-925 (West pamph. ed. 1996).

The proposed rules apply to all pre-trial motions except motions for continuance or motions for consolidation. The proposed rules do not apply to post-trial motions. This again is consistent with district court rules.

The proposed rule establishes uniform time limits for motion practice throughout Minnesota, and also makes many aspects of motion practice, including time limits, consistent between state court and federal court practice. Compare Minn. Gen. R. Prac. 115.03 and 115.04 and Local Rule 7.1(a) and (b) (D.Minn.), reprinted in Minn. Rules of Ct. 924-25 (West pamph. ed.1996).

Proposed Rule 8610.0070, subp.6 and subp. 5 requires that motions be served and filed at least 14 days (28 days for dispositive motions) compared to the five days required by Minn. R. Civ. P. 6.04 and 10 days for summary judgment motions by Minn. R. Civ. P. 56.03. This is to facilitate preparation by the Tax Court and to encourage prompt decision. Proposed Rule 8610.0070, subp. 9 requires the Tax Court to relax the time limits for motions if immediate harm would result from immediate action or if the interests of justice so require. This is reasonable because it is consistent with the rules for Minnesota district courts. Moreover, by requiring notice to be given earlier, the proposed rule encourages, or at least facilitates, scheduling multiple motions at the same hearing date.

Proposed Rule 8610.0070, subp. 7 establishes a 35-page limit for all briefs. Because of the nature of trial court briefs, this includes all portions of the brief excluding certain matters required for summary judgment motions. The 35-page limit is a combined limit for all briefs submitted by a party. If a reply brief is submitted, its pages count towards the 35-page maximum. This proposed rule is reasonable because it operates the same way as the district court rules (Minn. Gen. R. Prac. 115.05) governing motion practice as well as the local rules for motion practice in the United States District Court for the District of Minnesota. See Local Rule 7.1(c) (D.Minn.), reprinted in Minn. Rules of Ct. at 924-25 (West pamph. ed. 1996).

Proposed Rule 8610.0070, subp. 10 recites the general rule that live testimony is not taken at motion hearings. Evidence is provided by affidavits,

discovery, and documents that have been authenticated by affidavits or discovery. Minnesota courts have historically not favored, or even allowed, live witnesses to testify at motion hearings for years, except in unusual circumstances. Any party seeking to use live testimony must obtain prior consent of the Tax Court and must notify the opposing parties of the names and addresses of the proposed live witnesses. This is reasonable because it will eliminate surprises, expedite the proceedings at the motion hearing and permit the parties to address the evidence in their papers prior to the motion. This proposed rule is also reasonable because it is the same standard that applies in Minnesota district courts. Any decision by the Tax Court that an unusual circumstance exists to allow live testimony will be appealable to the Minnesota Supreme Court, the same as any other decision of the Tax Court.

Proposed Rule 8610.0070, subp. 11 provides for telephone hearings and places the burden on the moving party either to place the call or to comply with the Tax Court's instructions on setting up the call. In many instances, the parties will prefer to arrange the call, and the Tax Court's instructions will only confirm that. This proposed rule is reasonable because it is the same as in district court and because it establishes mechanical rules necessary for telephone hearings. This proposed rule is also a less costly way of having a motion hearing heard.

The Tax Court Rule 115 because it provides for a comprehensive procedural scheme for issues dealing with motion practice. Like Minnesota district courts, we needed to adopt a more specific rule rather than rely upon the more general rules found in the Minnesota Rules of Civil Procedure. The Tax Court finds it reasonable to adopt that same specific rule that the district courts have adopted on motion practice.

This proposed rule on motion practice makes certain cosmetic changes to Rule 115 by including the words "Tax Court" and referring taxpayers to chapters 271 and 278 of Minnesota Statutes for potential exceptions. This alerts litigants to follow statute provisions in addition to the procedures and requirements of the proposed rule.

#### **RULE 8610.0100 STIPULATION OF FACTS**

Proposed Rule 8610.0100 retains the substance of former rule 8600.0800, but makes minor clarifying form changes. The parties are encouraged to stipulate to as many facts as possible. This is reasonable because it is the current practice before the Tax Court, it minimizes the amount of time to hear a matter and reduces costs for taxpayers.

#### **RULE 8610.0110 SUBMISSION WITHOUT HEARING**

Proposed Rule 8610.0110 retains the same language of former rule 8600.1300, but makes minor clarifying form changes. Again, this is reasonable because it is the current practice of the Tax Court.

#### **RULE 8610.0120 HEARINGS**

Proposed Rule 8610.0120 revises former rule 8600.1400 to remove the requirement that the chief judge of the Tax Court designate a judge to hear a case. The Tax Court Administrator, not the chief judge, assigns one of the three Tax Court judges to hear a specific case. This is reasonable because it updates the former rules to the current practice at the Tax Court. The remainder of the proposed rule is the same as the former rule with minor clarifying form changes.

#### **RULE 8610.0130 DOCUMENTARY EVIDENCE**

The proposed rule on documentary evidence retains the substance of former rule 8600.0900, but expressly requires all evidence submitted to the Tax Court to comply with the Rules of Evidence. By making express reference to the Rules of Evidence, this further reconciles the Tax Court's procedures with those of the Minnesota district courts. This proposed rule also clarifies what evidentiary rules and standards to follow when submitting documentary evidence to the Tax Court. Finally, the last paragraph contains new language that requires an opposing party, who furnishes any exhibits to the Tax Court, to also submit a copy to the pro se party. This is reasonable because it acknowledges the increased number of pro se litigants and requires that they too be provided a copy.

#### **RULE 8610.0140 AMICUS CURIAE BRIEFS**

The proposed rule on briefs revises former rule 8600.1000. The proposed rule removes the requirement that a brief be submitted to the Tax Court five days prior to a hearing. Removal of this requirement is necessary due to the high percentage of tax disputes that settle before a hearing. The Tax Court's position of encouraging settlements is further promoted by removing the burden on parties to prepare and file briefs that may be financially prohibitive and time consuming. The parties can focus on settling the matter rather than filing a brief prior to trial. Both parties benefit from reduced legal fees in not having to file briefs, especially in matters that are settled the day before the proposed hearing or trial.

Moreover, few, if any, pre-trial briefs have been filed. Thus, the requirement was removed to be consistent with current Tax Court practice.

Practitioners are still permitted to file pre-trial briefs under the proposed rules. Nothing in the proposed rules prohibits pre-trial briefs from being filed. In fact, the Tax Court finds pre-trial briefs very helpful.

Also, neither the proposed rules or the former rule addresses post-trial briefs. Consistent with current Tax Court practice, the Tax Court judge determines whether post-trial briefs are necessary. The Tax Court judge informs the litigants at the hearing of any post-trial briefing schedule.

This rule is reasonable because it is the current practice before the Tax Court and thereby reconciles the court's rule with current practice.

#### **RULE 8610.0150 REQUESTS FOR COSTS AND DISBURSEMENTS**

Proposed Rule 8610.0150 adds clarifying procedures set forth in chapters 271 and 278 of Minnesota Statutes relating to costs and disbursements that may be requested after a Tax Court matter is decided. The proposed rule does not propose a new standard for determining whether costs will be granted but clarifies the difference between a motion for costs and disbursements attributable to a dispute concerning an Order of the Commissioner of Revenue versus a property tax dispute.

This proposed rule does establish a time frame for a litigant to move for costs that is not in the former rules. This deadline is necessary to give some finality to court matters at a time when the case including the facts and arguments are still fresh on everyone's mind and the evidence and record are easily accessible. Most importantly, establishing a deadline permits property tax records to be closed. Property tax assessment is on an annual basis and public policy mandates that the property tax records not remain open unnecessarily. This proposed rule does not deny anyone's access to costs. It does not change the standard for granting costs. It simply establishes a time by which the request must be made to minimize stale claims from being made.

This proposed rule is both necessary and reasonable because it establishes some finality to court decisions and because it distinguishes the procedures a litigant to follow to recover any costs and disbursements. The proposed rule is necessary because taxpayers frequently ask questions about these issues.

**Repealer.** The proposed rules will replace the former rules in their entirety. Specific provisions that have not been incorporated into the proposed rules include (1) rule suspension (former rule 8600.0200), (2) procedure and evidence (former rule 8600.0300), (3) practice before the Tax Court (former rule 8600.0400), (4) notice of appeal or petition (former rule 8600.0600), (5) filing of papers and copies (former rule 8600.1900), (6) proof of service (former rule 8600.0700), (7)



pretrial conferences (former rule 8600.1100) and (8) parties in intervention (former rule 8600.1500). These former rules either duplicate statutory language or duplicate Minnesota Rules of Civil Procedure so were considered unnecessary or confusing.

#### **VII. SMALL BUSINESS CONSIDERATION**

The law has been changed to eliminate the requirement under Section 14.115 of Minnesota Statutes that the statement of need and reasonableness articulate facts that demonstrate the Tax Court's consideration and ways to deal with any burdensome effects the proposed rules may have on the interests of small businesses. Accordingly, we do not address this issue. The Tax Court notes, however, that the proposed rules do not impose any additional burdens on small businesses. In fact, proposed rule 8610.0010 (regarding representation) allows closely held entities to represent themselves without having to retain an attorney.

#### **VIII. Commissioner of Finance Review of Charges**

Minnesota Statutes, Section 16A.1285, does not apply because the proposed rules do not set or adjust fees or charges. All fees or charges referenced in the proposed rules are fixed by statute.

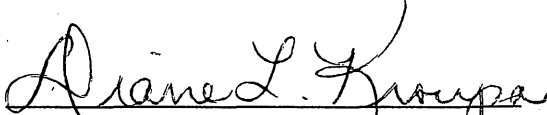
#### **IX. AGRICULTURAL LAND IMPACT**

The proposed rules do not have a direct and substantial adverse impact on agricultural land. Accordingly, Minnesota Statutes, Section 14.111, does not apply.

#### **X. Conclusion**

Based on the foregoing, the proposed Minn. Rules pts. 8610.0010 through 8610.0150 are both needed and reasonable.

Dated this 2nd day of August, 1996

  
Diane L. Kroupa, Tax Court Judge