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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-23-0016

10 **PETITION TO AMEND THE**  
11 **ARIZONA TAX COURT RULES**  
12 **OF PRACTICE**

**COMMENT**

13 This is the State Bar of Arizona’s (“The State Bar”) comment on the above  
14 Petition, which would amend the Tax Court Rules of Practice. The State Bar  
15 supports the proposed amendments, with additional stylistic changes proposed  
16 herein.

17  
18 The Petition’s proposed amendments are primarily stylistic, except for  
19 substantive changes to Rule 26 that clarify standards for the introduction of  
20 evidence in Small Tax Claims cases. The State Bar believes all of the proposed  
21 amendments will promote Petitioner’s goals of modernizing the rule set to conform  
22 the language to current style conventions. The amendments would thus bring the  
23 Tax Court Rules of Practice current with the restylings of other sets of rules from  
24  
25

1 2013 to the present. Like those other restylings this Court has approved, the  
2 amendments would make the rules more useful and accessible to less experienced  
3 practitioners and self-represented litigants, promoting access to justice.  
4

5 The attachment to this Comment adopts all of the changes proposed in the  
6 attachment to the Petition and indicates in strikethrough and underline format  
7 additional changes proposed by the State Bar. Those additional changes are  
8 described below.  
9

10 **I. RULE 3. COURT CLERK**

11 Rule 3 would be restyled to eliminate superfluous language in the title and  
12 conform capitalization to current style conventions.  
13

14 **II. RULE 4. CASE NUMBERING**

15 Rule 4 would be restyled to use the current style convention of “must” and to  
16 refer to the statute which provides for procedures in small tax claims cases.  
17

18 **III. RULE 6. CASES TRANSFERRED TO THE TAX COURT**

19 Rule 6 would be restyled to use the active voice and clarify provisions  
20 regarding the repayment of fees incurred by the Tax Court.  
21

22 **IV. RULE 7. DOCUMENTS STAMPED BY CLERK**

23 Rule 7 would be restyled to clarify how the timing of court filings is to be  
24 calculated.  
25

**V. RULE 9. FORM OF DOCUMENTS**

1 Rule 9 would be restyled to clarify the information required to be provided  
2 by a party’s representative when the representative is not a member of the State  
3 Bar of Arizona. It also conforms the rule to use the current “must” style  
4 convention.  
5

6 **VI. RULE 10. FILING OF COVER SHEET**

7 Rule 10 would be restyled to read more clearly and easily.  
8

9 **VII. RULE 12. HEARINGS AND TRIALS OUTSIDE OF MARICOPA  
10 COUNTY**

11 The title of Rule 12 would be restyled for clarity.

12 **VIII. RULE 14. PENDING APPEALS CALENDAR**

13 Rule 14(d) would be restyled to make the language internally consistent and  
14 clarify the duties of the Tax Court in reviewing appellate decisions.

15 **IX. RULE 15.1. DISTRIBUTION OF TAX COURT DECISIONS**

16 The title of Rule 15.1 would be clarified, and the language of Rule 15.1(b)  
17 would be restyled to eliminate redundancies created by stylistic revisions to Rule 4.  
18

19 **X. RULE 19. RECLASSIFICATION IN SMALL TAX CLAIMS CASES**

20 The title and text of Rule 19 would be amended to clarify its application to  
21 Small Tax Claims cases.  
22

23 **XI. RULE 20. RECLASSIFICATION WHEN REQUIREMENTS NOT  
24 MET IN SMALL TAX CLAIMS CASES**

1 Rule 20 would be amended to clarify its application to Small Tax Claims  
2 cases and more effectively use the active voice.

3  
4 **XII. RULE 21. CLERK TO SERVE COMPLAINT IN SMALL TAX  
CLAIMS CASES**

5 The title and body of Rule 21 would be amended to clarify its application to  
6 Small Tax Claims cases and more effectively use the active voice.

7  
8 **XIII. RULE 22. NON-LAWYER REPRESENTATION IN SMALL TAX  
CLAIMS CASES**

9 The title and body of Rule 22 would be amended to clarify its application to  
10 Small Tax Claims cases and to clarify and streamline language regarding  
11 procedures for non-lawyer representation.

12  
13 **XIV. RULE 23. DISMISSAL OF SMALL TAX CLAIMS CASES**

14 The title and body of Rule 23 would be amended to clarify its application to  
15 Small Tax Claims cases and clarify the events which give rise to a dismissal with  
16 prejudice.

17  
18 **XV. RULE 25. HEARINGS AND TRIALS IN SMALL TAX CLAIMS  
CASES**

19 The title and body of Rule 25 would be amended to clarify its application to  
20 Small Tax Claims cases.

1 **XVI. RULE 26. INTRODUCTION OF EVIDENCE IN SMALL TAX**  
2 **CLAIMS CASES**

3 The title and body of Rule 26 would be amended to clarify its application to  
4 Small Tax Claims cases and to clarify that the same evidentiary standard should be  
5 applied in Small Tax Claims case hearings as Small Tax Claims case trials,  
6 consistent with Rule 25.

7  
8 **XVII. CONCLUSION**

9 With these changes, the State Bar believes the amendments to the Tax Court  
10 Rules of Practice will keep the rule set consistent and up to date with current  
11 conventions and promote access to justice. The State Bar urges the Supreme Court  
12 to adopt the rules as amended by Petitioner and as further amended by the State Bar  
13 as set forth in the attachment.  
14

15  
16 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2023.

17  
18 */s/ Lisa M. Panahi*  
19 \_\_\_\_\_  
20 Lisa M. Panahi  
21 General Counsel

22 Electronic copy filed with the  
23 Clerk of the Supreme Court of Arizona  
24 this 1<sup>st</sup> day of May, 2023.

25 by: P Seguin

## ATTACHMENT

### ARIZONA TAX COURT RULES OF PRACTICE

#### Rule 2. Practice and Procedure

Except as otherwise provided in these rules, the Local Rules of Practice for the Superior Court in Maricopa County (“Local Rules”), and the Arizona Rules of Civil Procedure, with the exception of Arizona Rule of Civil Procedure 42.1, which provides for a change of judge as a matter of right, govern all Arizona Tax Court proceedings.

#### Rule 3. Tax Court Clerk

The Tax Court Clerk should be a ~~C~~county deputy superior court clerk.

#### Rule 4. Case Numbering

The Tax Court Clerk must assign a number to every case filed with the Tax Court. Cases filed in the Tax Court, except cases filed as under the Small Claims Procedures under A.R.S. § 12-172, are must be numbered with the alphabetical prefix, “TX”. Cases filed under the as Small Claims p Procedures must be are numbered with the alphabetical prefix, “ST”, and may be referred to as Small Tax Claims. Otherwise, all Tax Court cases must be numbered as prescribed by the Clerk of the Superior Court in Maricopa County.

#### Rule 5. Filing

Pleadings and other documents must be filed with the Tax Court by filing them with the Tax Court Clerk in the same manner as other documents are filed under Arizona Rule of Civil Procedure 5.1.

#### Rule 6. Cases Transferred to the Tax Court

**(a) Transferred Cases.** Tax cases filed in the superior court, but not in the Tax Court, that are later transferred to the Tax Court, must be treated by the Clerk for purposes of Rule 4 as if they were cases newly filed in the Tax Court. The plaintiff in those cases must comply with Rule 10 by filing a Cover Sheet no later than 30 days after ~~the filing of~~ the order for the transfer transferring the case is filed.

**(b) Transferred Files and Fees.** When a tax case is transferred, the transferring county’s superior court clerk must transmit the file together with all exhibits and

certified transcripts to the Tax Court Clerk. If the case is transferred from a county other than Maricopa, the transferring county's superior court clerk must remit to the Tax Court Clerk any filing and appearance fees the parties paid to the transferring clerk. If the case was first filed in a county other than Maricopa County, the parties must pay to the Tax Court Clerk all applicable document storage and retrieval fees, and other applicable surcharges. Payment must be made no later than 30 days after the filing of the order transferring the case.

### **Rule 7. Documents Stamped by Clerk**

The Clerk must affix on each document filed with the Tax Court a stamp that reflects both the filing date and the date and time the document is received. If a document is filed by mail, the filing date must be the date on the postmark on the envelope received by the Tax Court Clerk. If a filing document for filing arrives by mail with no discernible postmark, the filing date must be identified as is the date the Tax Court receives the document, of receipt. If a filing date is critical, and the filing is to be made by mail, it is unless the filing party's responsibility to provide the Tax Court with proof of the date of mailing.

### **Rule 9. Form of Documents**

**(a) Representatives.** If a representative of a party presents a document, and the representative is not a member of the State Bar of Arizona, the document must bear the information required in by Maricopa County Local Rule of Practice 2.15(a); must be provided as directed, except for the State Bar of Arizona attorney identification number. If a document is presented by Aa representative certified or registered by any governmental body for a reason relating to taxation, the document also must bear must provide the representative's certification or registration information. Examples of certification or registration, for purposes of this rule, are "CPA," or, "IRS Enrolled Agent."

**(b) Caption.** The caption in Rule 8 must appear centered on or below line 6 of the first page of any document presented, and the first page must also contain:

- (1)** below the caption, and to the left of the center of the page, the title of the action or proceeding;
- (2)** opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;
- (3)** immediately below the case number, a brief description of the nature of the document; and

(4) the Title in the Arizona Revised Statutes that provides for the tax that is the subject of the plaintiff’s claim, unless the applicable Title is Title 42.

(A) *Title 42*. If the applicable Title is Title 42, one of the following designations must appear:

(i) Property Tax;

(ii) Transaction Privilege Tax; or

(iii) Unspecified Title 42.

(B) *Municipal Tax*. If the action is an appeal concerning a municipal tax, the word “MUNICIPAL” ~~should~~must replace the title identification.

(C) *Small Tax Claims Cases*. If the action is being pursued as a ~~s~~Small Tax eClaims Case, the words “SMALL CLAIMS PROCEDURE,” ~~should~~ must be inserted below the identification of the appropriate title.

#### **Rule 10. Filing of Cover Sheet**

When filing a case in the Tax Court, the plaintiff must ~~furnish~~ provide the Clerk; ~~on a designated Cover Sheet form provided by the Clerk, with~~ information concerning the parties, their representatives, or the plaintiff’s claim, as requested on a designated Cover Sheet form provided by the Clerk ~~the form~~.

**Rule 11.** Repealed by Supreme Court order filed \_\_\_\_\_, 2023, effective January 1, 2024.

#### **Rule 12. Hearings and Trials Outside of other than in Maricopa County**

(a) **Location.** Trials and hearings which require the taking of evidence may be held in any county in Arizona.

(b) **Forum.** In determining where the Tax Court will sit, the court will consider the most convenient forum for litigants and witnesses, and balance these interests against the efficient management of the Tax Court’s calendar.

(c) **Application.** If a party wishes a trial or hearing to be held at a location other than in Maricopa County, the party must file an application no later than 60 days before the trial or hearing. The application should set forth the reason the applicant believes a trial or hearing location other than Maricopa County would be more convenient.

(d) **Response and Reply.** Responsive and reply memoranda may be filed as provided in Arizona Rule of Civil Procedure 7.1(a)(3).

### Rule 13. Juries

If a jury is required for a trial in the Tax Court, all local rules for the county in which the Court is sitting apply to the extent those rules concern jurors or juries.

### Rule 14. Pending Appeals Calendar

**(a) Generally.** The Tax Court must maintain a pending appeals calendar for cases anticipated to be fully resolved by an appellate decision pending in another case.

**(b) Placement on the Pending Appeals Calendar.** A case may be placed on the pending appeals calendar by joint motion of all parties to the litigation. The joint motion must contain an averment by all parties that they believe all issues that remain in dispute in the case may be resolved by the pending appellate decision. Upon the joint motion's filing, the Tax Court may convene a conference with all parties to review the issues to be decided in the Tax Court case. If it is determined that issues may still need to be tried after the appellate case is decided, the Tax Court may, with the consent of all parties, proceed to decide those issues not anticipated to be resolved by the pending appellate decision. Once the Tax Court determines that all issues remaining in the Tax Court case may be resolved by the pending appellate decision, the Tax Court case may be placed on the pending appeals calendar.

**(c) Dismissal Calendar.** Cases on the pending appeals calendar must remain in an inactive status for an indefinite period pending the appellate decision. Once the appropriate appellate court files its mandate resolving the pending appellate decision, the Tax Court must remove the Tax Court case from the pending appeals calendar and place it on the dismissal calendar for 60 days so that the appropriate party may prepare a formal written judgment for approval by the Tax Court. If no proposed judgment is presented, the case will be dismissed without further notice.

**(d) Issues Not Resolved by Mandate.** Once the mandate is filed, if a party ~~or parties~~ believes it does not resolve all the issues in the Tax Court case, ~~that~~those partyies may file an application to the Tax Court for further proceedings believed necessary. ~~When~~Upon such an application' is ~~filed~~ing, the Tax Court must review the appellate decision and the Tax Court case, ~~to~~and then determine whether the appellate decision has resolved all the issues in the Tax Court case. The Tax Court then must ~~then~~ issue further appropriate orders.

**(e) Notice to the Tax Court.** The Tax Court may request that a party or ~~all~~ parties notify the Tax Court in writing within 10 days of the filing of a mandate in an appellate decision that resolves all issues that remain in dispute in the Tax Court case pending on the pending appeals calendar.

## Rule 15. Publication

The Tax Court may designate its decisions for publication in the manner prescribed by Rule 111, Rules of the Supreme Court of Arizona.

### Rule 15.1. Distribution of Tax Court Decisions

(a) **Posting.** The Tax Court must post on its website those of its unpublished decisions that it determines involve substantive or significant issues of legal interpretation or procedure.

(b) **Posting on Request.** The Tax Court may, on the request of either party or the judge or commissioner, and ~~in~~ its sole discretion, post on its website an unpublished tax decision from any superior court of this state, including decisions ~~arising under the Tax Court's~~ Small Tax Claims cases ~~claims procedure, A.R.S. § 12-172.~~ The decision to post or not to post any decision under this subsection is not an endorsement or rejection by the Tax Court of the decision.

(c) **Not Precedent.** Unpublished decisions on the Tax Court's website must be posted in a manner that prominently indicates that they are not binding authority and are not legal precedent.

(d) **Time Posted.** Unpublished decisions must remain posted on the Tax Court's website for three years from the filing date, unless the Tax Court determines that a different length of time is appropriate.

### Rule 19. Reclassification ~~in if a Defendant Taxpayer Elects~~ Small Tax Claims Cases

If a defendant taxpayer elects ~~to proceed under the s~~ Small e ~~Claims p~~ rocedures provided for in A.R.S. § 12-172, and the election is not controverted, or if controverted, the controversion is overruled, the case must be reclassified as a ~~s~~ Small t ~~Tax e~~ Claim, and the clerk must assign the case a new number as provided in Rule 4.

### Rule 20. Reclassification When Requirements Not Met in Small Tax Claims Cases

If the Tax Court determines that a case designated as a ~~s~~ Small t ~~Tax e~~ Claim case does not meet the requirements of A.R.S. § 12-172, the case must be reclassified as a record tax case. The clerk must assign a new number as provided in Rule 4, and must assess the taxpayer and all other parties for whom the payment of filing and appearance fees are not exempt, with the difference between what the party paid to

file or appear, and the statutory fees required for a record tax case. Parties must pay the assessment no later than 10 days after ~~transmittal of the assessment notice by~~ the clerk transmits the assessment notice.

**Rule 21. Clerk to Serve Complaint in Small Tax Claims Cases-~~Complaint~~**

When a ~~s~~Small ~~T~~ax ~~e~~Claims case is filed, the Tax Court Clerk must serve a copy of the complaint on the applicable state or local taxing authority by mail. Service is effective ~~upon the complaint's receipt by~~when the taxing authority receives the complaint.

**Rule 22. Non-Lawyer Representation in Small Tax Claims Cases**

In ~~a~~~~s~~Small ~~t~~Tax ~~e~~Claims cases, the Tax Court may allow a party ~~may~~to be represented by a person who is not an active member of the State Bar of Arizona, ~~if the Tax Court allows~~. The Tax Court must establish a procedure for this purpose by which non-lawyer representation can be effected in small tax claims. ~~Information about t~~The procedure must be in writing, and must be available from the Tax Court on request.

**Rule 23. Dismissal of Small Tax Claims Cases By Taxpayer**

A taxpayer may dismiss a ~~s~~Small ~~t~~Tax ~~e~~Claims case by filing a Notice of Dismissal with the Tax Court Clerk before ~~the~~an opposing party serves either an answer or a motion for summary judgment. A ~~s~~Small ~~t~~Tax Celaims case also may be dismissed by order of the Tax Court based on a stipulation of dismissal signed by all parties who have appeared. The order ~~must~~stay be signed either by a judge, an authorized court commissioner, the clerk, or a deputy clerk. A dismissal ~~by the taxpayer pursuant to a notice or order described in this rule~~ is with prejudice, meaning a taxpayer is barred from bringing a later case on the same claim for the same tax period.

**Rule 25. ~~Small Claims~~-Hearings and Trials in Small Tax Claims Cases**

All testimony in a ~~s~~Small Tax eClaims case hearing or trial must be given under oath. The proceedings do not need to be recorded.

**Rule 26. Introduction of Evidence in Small Tax Claims Cases**

A sSmall Tax eClaims case hearing or trial must be conducted as informally as the requirements of due process and fairness allow. Any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless the Court determines the evidence lacks reliability or will cause unfair prejudice or confusion, or waste time.

### **COMMENT TO 2024 AMENDMENTS**

These amendments “restyle” the Arizona Tax Court Rules of Practice in a manner similar to the 2017 restyling of the Arizona Rules of Civil Procedure. By using clearer language and, if possible, plain English, these rules should be easier to understand. The restyled rules avoid long sentences, ambiguous terminology (such as the word “shall”), and legal jargon. These rules also use consistent formatting conventions and terminology.