

Sara J. Agne  
Presiding Judge, Arizona Tax Court  
101 W. Jefferson Street  
Phoenix, AZ 85003  
Telephone: 602-506-8288  
Facsimile: 602-372-5817

**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of

Arizona Supreme Court No. R-23-0016

ARIZONA TAX COURT  
RULES OF PRACTICE

REPLY TO COMMENTS

**REPLY TO COMMENTS ON PETITION TO AMEND  
THE ARIZONA TAX COURT RULES OF PRACTICE**

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Honorable Sara J. Agne, presiding judge of the Arizona Tax Court (“Petitioner”), replies in support of the Petition filed before this Court to amend the Arizona Tax Court Rules of Practice (“Tax Court Rules”).

Petitioner appreciates both the considered comments of the Clerk of the Superior Court in and for Maricopa County and the State Bar of Arizona. Petitioner

agrees—almost without exception—with the changes proposed by the Commenters to the rule language used in the attachment to the Petition.

The main exception being that both Commenters proposed changes to Tax Court Rule 10, so Petitioner proposes reconciling those drafts as follows:

**Rule 10. Filing of Cover Sheet**

When filing a case in the Tax Court, the plaintiff ~~must provide~~~~shall furnish~~ the Clerk, on a designated Cover Sheet form maintained by the Superior Court in Maricopa County~~provided by the Clerk~~, such information concerning the parties, their representatives, or the plaintiff’s claim, as ~~is~~ requested on the form. ~~The forms, designated “Cover Sheets”, shall be available on request from the Tax Court, or from the Clerk of the Superior Court in Maricopa County.~~

Petitioner has incorporated that reconciliation, along with nearly all the rest of the revisions proposed by the State Bar of Arizona, in the attached. The State Bar of Arizona omitted the word Maricopa from its proposed revisions to Tax Court Rule 3, so Petitioner does not adopt the capitalization style proposed by the State Bar for that rule. Petitioner also corrected the Bar’s revision to Tax Court Rule 7, to make it clear that the Tax Court Clerk receives mailed filings, not the Court itself. And Petitioner declined to change the uses of “should” in Tax Court Rule 9(b)(4)(B) and (C) to the Bar’s suggested “must,” to avoid elevating form over substance in municipal tax appeals. *Cf. Shea v. Maricopa Cty.*, 528 P.3d 471, 475 (Ariz. 2023) (noting a policy of substance over form, favoring decisions on the merits). Petitioner declined a couple of the State Bar’s revisions to Tax Court Rule 23 on the same rationale.

Petitioner respectfully requests that this Court adopt the rule amendments as reflected in the attachment<sup>1</sup> to this Reply, effective January 1, 2024.

DATED this 1st day of June, 2023.

/s/ Sara J. Agne \_\_\_\_\_  
Sara J. Agne  
Presiding Judge, Arizona Tax Court

---

<sup>1</sup> Not all Tax Court Rules are shown in the attachment, as Rules 1 (Administration), 8 (Caption), 16 (Uniform Interrogatories and Appendix of the same), 17 (Small Claims Procedures), 18 (Election), and 24 (repealed, effective January 1, 2014), either required no changes to effect the goals of the restyling or—in the case of Rule 24—were prior repealed by this Court.

## ATTACHMENT<sup>2</sup>

### ARIZONA TAX COURT RULES OF PRACTICE

#### Rule 2. Practice and Procedure

Except as ~~herein~~ 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 of said rules, which provides for a change of judge as a matter of right, and the Local Rules of Practice for Maricopa County Superior Court shall govern all Arizona Tax Court proceedings.

#### Rule 3. ~~Tax Court Clerk~~

The ~~Clerk of the Tax Court Clerk~~ should ~~shall~~ be a Deputy Clerk of the Superior Court in Maricopa County deputy superior court clerk.

#### Rule 4. Case Numbering

The ~~Clerk of the Tax Court Clerk~~ must ~~shall~~ 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, shall ~~must~~ be numbered with the alphabetical prefix, “TX”. Cases filed ~~under the~~ as Small Claims pProcedures ~~shall~~ must be numbered with the alphabetical prefix, “ST”; and may be referred to as Small Tax Claims. Otherwise, all Tax Court~~tax~~ cases must ~~shall~~ be numbered as prescribed by the Clerk of the Superior Court in Maricopa County.

#### Rule 5. Filing

Pleadings and other documents ~~papers~~ shall ~~must~~ be filed with the Tax Court by ~~mailing to or directly filing them with the Clerk of the Tax Court Clerk of the Superior Court in Maricopa County~~ in the same manner as other documents ~~civil cases~~ are filed under Arizona Rule of Civil Procedure 5.1.

---

<sup>2</sup> Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~. (Rules *not* noted in this Attachment either have no proposed changes associated with them or were prior repealed by this Court.)

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

**(a) Transferred Cases.** Tax cases filed in the ~~s~~Superior ~~c~~Court, but not in the Tax Court, ~~that~~which are later transferred to the Tax Court ~~must~~shall be treated by the Clerk for purposes of Rule 4 as if they were cases newly filed in the Tax Court. ~~In such cases,~~ ~~†~~The ~~p~~laintiff in those cases ~~must~~shall comply with Rule 10 ~~by filing a Cover Sheet no later than~~within 30 days ~~after~~ of the order ~~directing the transferring~~ the case is filed.

**(b) Transferred Files and Fees.** When a tax case is transferred, the ~~Clerk of the Superior Court from which the case is transferred shall forthwith~~ transferring county's superior court clerk ~~must~~transmit the file together with all exhibits and certified transcripts to the ~~Clerk of the Tax Court~~ Clerk. If the case is transferred from a county other than Maricopa, the ~~transferring county's superior court~~ Clerk ~~must~~ of the county from which the case is received shall remit to the Clerk of the Maricopa County Superior Court Tax Court Clerk Department ~~any~~ filing and appearance fees ~~the parties paid to the transferring~~ Clerk ~~by the parties~~. If the case was first filed ~~in a county other than~~ in Maricopa County, the parties ~~must~~ shall pay to the Clerk of the Maricopa County Superior Court Tax Court Clerk Department ~~such~~ all applicable document storage and retrieval fees, and other surcharges ~~as are applicable~~. ~~Such~~ ~~p~~ayment ~~must~~ shall be made ~~no later than~~within 30 days after the filing of the order transferring the case.

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

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

## **Rule 9. Forms of Documents ~~Papers~~**

**(a) Representatives.** If a ~~representative of a party presents a document is being~~ presented by a representative of a party, and the representative is not a member of the State Bar of Arizona, the ~~document must bear the information required~~ ~~in~~by Local Rule 2.15(a), Local Rules of Practice, Maricopa County Superior Court,

~~shall be provided as directed, except for the State Bar of Arizona attorney identification number. If a document is prepared by a representative In addition, if the representative is certified or registered by any governmental body for a reason relating to taxation, the document also must bear the representative's such certification or registration information shall be provided. Examples of such 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) B**~~below the caption, and there shall be inserted in the space to the left of the center of the page, per the title of the action or proceeding;~~

**(2) o**~~pposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;~~

**(3) i**~~mmediately below the case number, a brief description of the nature of the document; and~~

**(4) I**~~n the space to the right of the center and below the caption, there shall be inserted (1) the number of the action or proceeding, (2) a brief description of the nature of the document, and (3) the Title in the Arizona Revised Statutes that which provides for the tax that which is the subject of the plaintiff's claim, unless the applicable Title is Title 42.~~

**(A) T**~~itle 42.~~ If the applicable Title is Title 42, one of the following designations ~~must appear shall be utilized:~~

**(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 replace the title identification.

**(C) Small Tax Claims Cases.** If the action is being pursued as a ~~s~~Small ~~t~~Tax ~~e~~Claims Case, the words "SMALL CLAIMS PROCEDURE"; should 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 provide shall furnish~~ the Clerk, on a designated Cover Sheet form maintained by the Superior Court in Maricopa County provided by the Clerk, such information concerning the parties,

their representatives, or the plaintiff's claim, as is requested on the form. The forms, designated "Cover Sheets", shall be available on request from the Tax Court, or from the Clerk of the Superior Court in Maricopa County.

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

**Rule 11. Copies to Judge or Commissioner**

At the time of the filing of the original with the Clerk, a copy of each motion, objection, exception and memorandum shall be presented to the judicial officer to whom the case has been assigned or to the Judge of the Tax Court.

**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~~the state~~.

**(b) Forum.** In determining where the Tax Court will sit, the cCourt 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 ~~that a trial or hearing to requiring the taking of evidence be held at a location other than in Maricopa County, the party must file an application therefore should be filed not later~~ to requiring the taking of evidence be held at a location other than in Maricopa County, the party must file an application therefore should be filed not later than 60 days before~~prior to~~ the trial or hearing. The application should set forth the reason ~~that the applicant believes a trial or hearing locations~~ that the applicant believes a trial or hearing locations is other than Maricopa County would be a more convenient ~~forum~~.

**(d) Response and Reply.** Responsive and reply memoranda may be filed as provided in Arizona Rule of Civil Procedure 7.1(a)(3). Such application may be controverted as motions to set are controverted.

**Rule 13. Juries**

~~If n the event~~ a jury is required for a trial in the Tax Court, all local rules ~~in the Local Rules of Practice for the county in which the Court is sitting shall~~ apply to the extent those ~~such~~ rules concern jurors or juries.

**Rule 14. Pending Appeals Calendar**

**(a) Generally.** The Tax Court must ~~shall~~ maintain a pending appeals calendar for cases ~~which it is anticipated to~~ will be fully resolved by an appellate decision

pending in another case.

**(ab) Placement on the Pending Appeals Calendar.** A case ~~may be is-~~placed on the pending appeals calendar by joint motion of all ~~of the~~ parties to the litigation. ~~The Such~~ joint motion ~~must shall~~ contain an averment by all parties that they believe all issues that remain in dispute in the case ~~in Tax Court will~~ may be resolved by the pending appellate decision in the case on appeal. Upon the joint motion's filing receipt of the joint motion, the Tax Court will 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 ~~will~~ may still need to be tried after the appellate case is decided, the Tax Court may, with the consent of all ~~the~~ parties, proceed to ~~such motions and hearings as will~~ decide those issues ~~which will not~~ anticipated to be resolved by the pending appellate decision in the case on appeal. Once the Tax Court determines that all issues remaining in the Tax Court case ~~will~~ may be resolved by the pending appellate decision ~~decided when the decision on appeal is made~~, the Tax Court case may be placed on the pending appeals calendar.

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

**(ed) Issues Not Resolved by Mandate.** Once the mandate is filed ~~issued~~, if a party ~~or parties~~ believes it does not resolve all ~~of the~~ issues in the Tax Court case, that ~~such~~ party may file an ~~make~~ application to the Tax Court for ~~such~~ further proceedings ~~in the trial court as is believed necessary~~. ~~Upon~~ When such an application is filed, the Tax Court must will review the appellate decision; and the Tax Court case, ~~to~~ and then determine whether ~~or not~~ the appellate decision has resolved all ~~of the~~ issues in the Tax Court ~~trial court case have been resolved by the appellate decision~~. The Tax Court then must will then issue ~~such~~ further appropriate orders ~~as are appropriate~~.

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

## **Rule 15. Publication**

The Tax Court may, ~~upon its own motion or upon the motion of either party,~~ 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 shall~~ post on its website those of its unpublished decisions ~~that which, in its sole discretion,~~ it determines ~~to~~ involve substantive or significant issues of legal interpretation or procedure.

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

**(c) Not Precedent.** Unpublished decisions on the Tax Court's website ~~must shall~~ 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 shall~~ remain posted on the Tax Court's website for three years from the ~~date of issuance~~ filing date, unless the Tax Court ~~in its sole discretion~~ determines that a different length of time is appropriate.

## **Rule 19. Reclassification in Small Tax Claims Cases ~~when Defendant Taxpayer Elects~~**

If a defendant taxpayer elects to proceed under the Small Claims Procedures provided for in A.R.S. § 12-172, ~~small claims procedures,~~ and ~~the such~~ election is not controverted, or if controverted, the controversion is overruled, the case ~~must shall~~ be reclassified as a sSmall tTax eClaim, and the clerk ~~must shall~~ assign the case a new number as provided ~~directed~~ in Rule 4.

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

If the Tax Court determines that a case designated as a sSmall tTax eClaim does not meet the requirements of A.R.S. § Section-12-172, Arizona Revised Statutes, the case ~~must shall~~ be reclassified as a record tax case. The clerk ~~must shall~~ assign

a new number as ~~provided~~directed in Rule 4, and ~~must shall~~ 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 such~~ party paid to file or appear, and the statutory fees required for a record tax case. Parties ~~must are to~~ pay ~~the such~~ assessment ~~within no later than~~ 10 days ~~after of~~ 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~~Tax ~~e~~Claims case is filed, the ~~Tax Court Clerk~~ must of the Tax Court ~~shall~~ serve a copy of the complaint on the applicable state or local taxing authority by mail. Service is effective when ~~upon receipt of the complaint by the~~ ~~t~~Taxing ~~a~~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 Court allows such representation.~~ The Tax Court ~~must shall~~ establish a procedure for this purpose ~~consistent with the Statute and Rules of Court, by which non-lawyer representation can be effected in small tax claims. Information about~~ These ~~such~~ procedure must shall be in writing, and must shall be available from the Tax Court on request.

### **Rule 23. Dismissal of Small Tax Claims Cases ~~Before Judgment~~**

A taxpayer may dismiss a ~~s~~Small ~~Tax~~ ~~e~~Claims case ~~before the entry of judgment~~ by filing a Notice of Dismissal with the ~~Clerk of the Tax Court~~ Clerk ~~before an opposing party serves either an answer or a motion for summary judgment. A~~ Small Tax Claims 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 may be signed by a judge, an authorized court commissioner, the clerk, or a deputy clerk. A dismissal by the taxpayer 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~~ ~~e~~Claims case hearing or trial must shall be given under oath. The proceedings do not need to not be recorded.

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

~~A sSmall Tax eClaims case hearing or trial shall must be informal. 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.evidence may be received which will assist the Court to arrive at a just and equitable determination of the case. Subject to the foregoing, the Arizona Rules of Evidence shall govern the taking of evidence, except that the Tax Judge or Commissioner may receive opinion evidence, hearsay, and documentary evidence on such foundation as the Court determines to be reliable, consistent with the summary nature of the proceeding.~~

### **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.