

1 Honorable Dean M. Fink
2 Presiding Judge, Arizona Tax Court
3 Superior Court of Arizona, Maricopa County
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6 (602) 506-3776

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) Supreme Court No. R-10-____
)
) MOTION TO AMEND TAX COURT
) RULES OF PRACTICE ON AN
) EMERGENCY BASIS
)

Pursuant to Rule 28(G), Rules of the Supreme Court of Arizona, the Presiding Judge of the Arizona Tax Court respectfully petitions this Court to adopt the amendments to Rules 6, 18, 19, 20, and 24 of the Arizona Tax Court Rules of Practice on an emergency basis. A Petition to Amend Rules 6, 18, 19, 20, and 24 of the Arizona Tax Court Rules of Practice is being filed concurrently with this motion for emergency enactment.

With the recent economic crisis and the significant reduction in property values, the Tax Court has experienced an approximately 76% increase in the number of small tax cases filed in 2009 as compared to 2008. More than 1,100 small tax cases were filed in the first half of December 2009. Under the current version of Rule 24 of the Arizona Tax Court Rules of Practice, the trials for these cases must be set within six months “of notice to the Tax Court of the taxpayer’s election that the case proceed as a small claim.” This means that 1,100 small tax trials must be held by June 15, 2010.

1 The Tax Court simply cannot set and conduct all these trials within the
2 current time limit. Two commissioners are assigned to preside over trials in
3 small tax cases, and the Superior Court in Maricopa County lacks additional
4 judicial officers to assign to tax court. Currently, these cases are being set for
5 trial into October 2010, well beyond the time limit in Rule 24.

6 The time limit in the current rule is not mandated by the Legislature. No
7 statute or constitutional provision sets forth the time in which the court must set
8 a small tax case for trial. This is merely a procedural rule adopted by the
9 Supreme Court. As such, the Supreme Court has the authority to amend the
10 timeframe.

11 Therefore, the Arizona Tax Court respectfully requests an amendment to
12 Rule 24 relating to setting small claims for trial. The Tax Court requests
13 extending the period of time for trial from six months to nine months, and
14 requests the time period begin at the time an answer is filed or the notice to the
15 Tax Court of the election to proceed as a small claim, whichever is later. Finally,
16 the Tax Court requests the addition of a provision that would allow the Presiding
17 Judge of the Superior Court to extend the time by administrative order for
18 extraordinary circumstances. The text of the proposed rule is attached as Exhibit
19 A, and is provided in the Petition to Amend Rules 6, 18, 19, 20, and 24 of the
20 Arizona Tax Court Rules of Practice.

21 In addition, the Arizona Tax Court requests technical corrections to Rules
22 6, 18, 19, and 20, which are provided in Exhibit B. These corrections are
23 designed to correct errors in the rules as they currently exist. These changes are
24 non-controversial, and no significant opposition is expected. Because the
25 current rules are incorrect, there is no good reason for delay in enacting these
26 corrections.

1 Exhibit A

2 **Arizona Tax Court Rules of Practice**

3 Rule 24. Setting Small Claims for Trial

4 The Court will set a small tax case for trial so that it will be tried within ~~six (6)~~
5 nine (9) months of the filing of an Answer or notice to the Tax Court of the
6 taxpayer's election that the case proceed as a small claim, whichever is later. The
7 Presiding Judge of the Superior Court in Maricopa County by Administrative
8 Order may extend the time to trial for extraordinary circumstances.

1 Exhibit B

2 **Arizona Tax Court Rules of Practice**

3 Rule 6. Cases Transferred to the Tax Court

4 (a) Tax cases filed in the Superior Court, but not in the Tax Court, which are later
5 transferred to the Tax Court shall be treated by the Clerk for purposes of Rule 34
6 as if they were cases newly filed in the Tax Court. In such cases, the Plaintiff shall
7 comply with Rule 910 within 30 days of the order directing the transfer.

8 (b) When a tax case is transferred, the Clerk of the Superior Court from which the
9 case is transferred shall forthwith transmit the file together with all exhibits and
10 certified transcripts to the Clerk of the Tax Court. If the case is transferred from a
11 county other than Maricopa, the Clerk of the county from which the case is
12 received shall remit to the Clerk of the Maricopa County Superior Court Tax
13 Court Department filing and appearance fees paid to the transferring Clerk by the
14 parties. If the case was first filed other than in Maricopa County, the parties shall
15 pay to the Clerk of the Maricopa County Superior Court Tax Court Department
16 such document storage and retrieval fees, and other surcharges as are applicable.
17 Such payment shall be made within 30 days of the order transferring the case.

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19 Rule 18. Election

20 A taxpayer plaintiff elects to use small claims procedures by placing the legend,
21 “SMALL CLAIMS PROCEDURE”, as directed in Rule 89. A taxpayer defendant
22 elects to use small claims procedures by filing a “Notice of Election to Use Small
23 Claims Procedures” with the answer. If a “Notice of Election to Use Small Claims
24 Procedures” is filed by a taxpayer defendant, and the plaintiff asserts that the case
25 does not meet the requirements for a small tax claim, as is set out in § 12-172,
26 Arizona Revised Statutes, the plaintiff may, within 10 days of the filing of the
27 answer, controvert the defendant's election. A Tax Court judge or commissioner
28 will rule on the issue without further argument.

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Rule 19. Reclassification when Defendant Taxpayer Elects

If a defendant taxpayer elects small claims procedures, and such election is not controverted, or if controverted, the controversion is overruled, the case shall be reclassified as a small tax claim, and the clerk shall assign the case a new number as directed in Rule 34.

Rule 20. Reclassification when Requirements Not Met

If the Court determines that a case designated as a small tax claim does not meet the requirements of Section 12-172, Arizona Revised Statutes, the case shall be reclassified as a record tax case. The clerk shall assign a new number as directed in Rule 34, and 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 such party paid to file or appear, and the statutory fees required for a record tax case. Parties are to pay such assessment within 10 days of notice by the clerk.