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2 (FIRM STATE BAR NO. 00032000)

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5 (STATE BAR NUMBER 011474)

6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7 IN THE MATTER OF:

R-10-0024

8 PETITION TO AMEND RULE 24 OF THE  
ARIZONA TAX COURT RULES OF  
9 PRACTICE.

MARICOPA COUNTY ATTORNEY'S  
COMMENT TO PETITION TO AMEND  
RULE 24 OF THE ARIZONA TAX COURT  
RULES OF PRACTICE

10 The Maricopa County Attorney hereby comments to the Petition to Amend Rule 24 of the  
11 Arizona Tax Court Rules of Practice.

12 Respectfully submitted this 26<sup>th</sup> day of May, 2011.

13 WILLIAM G. MONTGOMERY  
MARICOPA COUNTY ATTORNEY

14 BY: 

15 Mark C. Faull  
16 Chief Deputy  
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1 The Honorable Dean M. Fink, Presiding Judge of the Arizona Tax Court, has proposed to  
2 amend Rule 24 of the Arizona Tax Court Rules of Practice and to make certain technical changes  
3 to other Tax Court Rules to reflect a re-numbering that appears to have been inadvertently  
4 overlooked when Rule 2 was added in 2003. R-10-0024. Attached as Exhibits A and B are the  
5 proposed changes.

6 The changes to Rule 24 would make permanent the terms of Administrative Order No.  
7 2010-59, dated May 21, 2010, which temporarily suspended the application of Rule 24 for a  
8 period of one year, and provided, for that one year period, that the Tax Court will set a small  
9 claim tax case for trial so that it will be tried within nine months of the filing of an answer or  
10 notice to the Tax Court of the taxpayer's election that the case proceed as a small claim,  
11 whichever is later. The Administrative Order is attached as Exhibit C.

12 The Administrative Order has provided a valuable reprieve from the difficulties  
13 encountered in meeting the time requirements for trial under Rule 24 when the Tax Court is  
14 dealing with a high level of small claim case filings. The Maricopa County Attorney's Office  
15 supports the Petition, as a necessary and appropriate accommodation to the on-going high  
16 volume of small claim tax cases.

17 The need for additional time to complete a small claim case continues, one year after  
18 adoption of the Administrative Order, as demonstrated by the small claim tax case filing  
19 statistics for properties located in Maricopa County:

Fiscal Year (June 1 to May 31)	Small Tax Cases filed
2004/05	176
2005/06	82
2006/07	121

2007/08	213
2008/09	694
2009/10	1300
2010/11	656 (as of 3/24/11)

Although the extreme spike of case filings that occurred in FY2009 has moderated somewhat in the current year, the number of cases remains significantly elevated when compared to the years prior to FY2008. The additional time provided by the proposed rule amendment will provide the courts, the county attorney's office and the assessor's office with a better opportunity to respond to and prepare these cases on the merits; it will also assist in being able to communicate with the plaintiffs, who typically appear pro se, and who often need one-on-one direction and assistance in understanding the status of their cases and what is required of them as their cases move forward to trial or a negotiated resolution.

The County Attorney's Office also supports the technical corrections proposed in the rule petition, which will correct certain inconsistent references between some of the Tax Court Rules of Practice.

Respectfully submitted this 20<sup>th</sup> of May, 2011.

WILLIAM G. MONTGOMERY  
MARICOPA COUNTY ATTORNEY

BY: 

Mark C. Faul  
Chief Deputy

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**Arizona Tax Court Rules of Practice**

**Rule 24. Setting Small Claims for Trial**

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

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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.

18  
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.

Exhibit B

1  
2 Rule 19. Reclassification when Defendant Taxpayer Elects

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

7  
8 Rule 20. Reclassification when Requirements Not Met

9 If the Court determines that a case designated as a small tax claim does not meet  
10 the requirements of Section 12-172, Arizona Revised Statutes, the case shall be  
11 reclassified as a record tax case. The clerk shall assign a new number as directed  
12 in Rule 34, and shall assess the taxpayer and all other parties for whom the  
13 payment of filing and appearance fees are not exempt, with the difference between  
14 what such party paid to file or appear, and the statutory fees required for a record  
15 tax case. Parties are to pay such assessment within 10 days of notice by the clerk.

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

FILED

MAY 21 2010

RACHELLE M. RESNICK,  
CLERK SUPREME COURT  
BY

In the Matter of: )

TEMPORARY SUSPENSION OF )  
RULE 24, ARIZONA TAX COURT )  
RULES OF PRACTICE )

Administrative Order  
No. 2010 - 59

The Arizona Tax Court (Tax Court) is established in the Superior Court in Maricopa County and exercises original jurisdiction statewide over all cases involving any tax, impost, or assessment (A.R.S. § 12-161).

Small tax case appeals filed in the Tax Court have increased by more than 76% from 2008 to 2009. 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.

Tax Court Presiding Judge Dean Fink has filed an emergency rule change petition (R-10-0024) requesting this Court to amend Rule 24 by "extending the period of time for trial from six months to nine months, and requests the time period begin at the time an answer is filed or the notice to the Tax Court of the election to proceed as a small claim, whichever is later. Finally, the Tax Court requests the addition of a provision that would allow the Presiding Judge of the Superior Court to extend the time by administrative order for extraordinary circumstances." Judge Fink asserts that under current conditions, the Tax Court is unable to comply with Rule 24.

Because this Court is reluctant to amend this rule, which has been in effect since 1993, on an emergency basis and without public comment, the Court deems it appropriate to provide temporary relief to the Tax Court while the rule change petition is circulated for comment.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

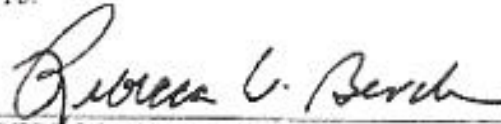
IT IS ORDERED that:

1. The application of Rule 24, Arizona Tax Court Rules of Practice, is suspended for a period of one year.
2. During this one-year period, the Tax Court will set a small claim tax case for trial so that it will be tried within nine (9) months of the filing of an answer or notice to the Tax Court of the taxpayer's election that the case proceed as a small claim, whichever is later.

Exhibit C

3. During this one-year period, the Presiding Judge of the Superior Court in Maricopa County by administrative order may extend the time to trial for extraordinary circumstances.
4. Not later than 14 days prior to expiration of the one-year period, the Presiding Judge of the Tax Court shall report to this Court whether further suspension of Rule 24 is requested, including reasons and statistics supporting the request.

Dated this 21<sup>st</sup> day of May, 2010.



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REBECCA WHITE BERCIJ  
Chief Justice