

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25, D. C.

August 27, 1960

The Honorable Albert B. Maris
Chairman, Committee on Rules of Practice and Procedure
Supreme Court Building
Washington 25, D. C.

Dear Judge Maris:

Enclosed herewith is a proposed Rule respecting procedure for judicial review of decisions of the Tax Court of the United States. The proposed Rule has been prepared and is submitted by the Advisory Committee on Appellate Rules.

This Rule is authorized by special statutory authority, which is found in Section 2074 of Title 28, U. S. C., also referred to in Section 7482(c)(2) of 26 U. S. C.

The preparation of the proposed Rule was carried out by correspondence, except for an informal meeting of volunteers who served as a drafting subcommittee. Considerable material and several proposed drafts of a Rule were in existence at the time of the creation of your Advisory Committee and were available to it.

The proposed Rule deals with the portion of the appellate proceedings which take place in the Tax Court, preliminary to the institution of the proceedings in the Courts of Appeals. We delayed the latter phases for consideration when we undertake a general consideration of rules in the Courts of Appeals.

You will note that the proposed Rule is in considerable detail. The Advisory Committee decided that instead of writing a short, perhaps one-sentence, Rule which would require considerable construction, cross-referencing and perhaps result in considerable confusion, it is better to put in this one Rule all that an attorney or a litigant is required to know about seeking judicial review of a decision of the Tax Court.

The proposed Rule is self-explanatory. However, we call attention to a few features:

The procedure is cast in the form of a notice of appeal rather than as a petition for review. The former is the form used in the Civil Rules; the latter is the form used in the statutes relating to decisions of administrative agencies (example, see 15 U. S. C., paragraph 45(c); and 3 Davis, Administrative Law, Section 23.03). The notice-of-appeal procedure has been carefully followed throughout the Rule.

The time for noting an appeal has been set at 60 days (and for a second appeal by another party at 90 days). This is a shorter time than that provided by the present statute. 26 U. S. C., Section 7483. But it is our understanding that this Rule if adopted by the Supreme Court and reported to the Congress

would either supersede existing statutory provisions (except as to "substantive rights of any litigant") or revisions of existing statutes would follow in due course. The matter of such revisions would of course fall within the authority of the Committee on Revisions of the Laws. Your Advisory Committee is of opinion that a very short period of time for the filing of a notice of appeal is highly desirable. After all, this particular act, filing of the notice, is an exceedingly simple one, requiring no time in preparation or filing; and an appeal once noted is easily abandoned.

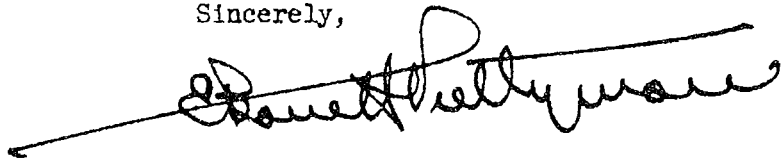
You will note that we propose to provide for the transmission of the original record. This is the simplest and least expensive method. Problems as to the printing of records or parts thereof are deferred to our general consideration of the rules of the Courts of Appeals.

You will note that the proposed Rule does not require in the notice of appeal any statement as to the nature of the controversy, or of issues or of questions presented or of facts to establish

jurisdiction or venue. It requires merely a simple notice of appeal, similar to that prescribed by the Civil Rules.

Your Advisory Committee respectfully submits the proposed Rule and requests its approval by your Committee.

Sincerely,

A handwritten signature in cursive script, which appears to read "E. Barrett Prettyman". The signature is written in black ink and is positioned below the word "Sincerely,". A long horizontal line is drawn across the signature, extending from the left margin towards the right.

E. Barrett Prettyman

Enclosure

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25. D. C.

August 24, 1960

TO ALL MEMBERS OF THE ADVISORY COMMITTEE ON APPELLATE RULES:

Mr. Imlay and I, with the active assistance of Mr. Stewart, Clerk of this court, spent the day today preparing a revision of our proposed Rule, paying heed to your criticism and incorporating your suggestions, so far as we were able to ascertain your majority view. Enclosed is a copy of the Rule as thus revised.

Inasmuch as we must submit the Rule to the Committee on Rules of Practice and Procedure at its meeting here on August 31, and inasmuch as Judge Maris has asked that we submit copies to the members of that Committee in advance of the meeting, may I request that you transmit at your earliest convenience to Mr. Carl Imlay by phone or wire your approval, or disapproval, either in whole or in part, of the Rule. Mr. Imlay's mail address is Administrative Office of the United States Courts, Room 10, Supreme Court Building, Washington, D. C. His telegraph address is the same as his mail address. His phone is EX 3-1640, extension 382.

I call your attention to the following features of the revision:

1. Time is computed in days instead of months.
2. We reduced the time for noting an appeal from 90 days to 60 days; and from 120 days to 90 days in case of a second appeal.
3. We provided that the filing of certain motions should terminate the running of the time for noting an appeal. This was the almost unanimous view of the members of our Committee.

4. We provided for termination rather than suspension, following the provisions of Rule 73(a) of the Civil Rules.

5. We added a provision for an extension of time for noting the appeal in certain prescribed cases of excusable neglect, following the suggestion of Judge Miller. We took this provision from Section 2107 of Title 28, United States Code. It appears as an addition to paragraph (a) of our Rule.

6. You will notice the new provision in regard to the record when two appeals are filed.

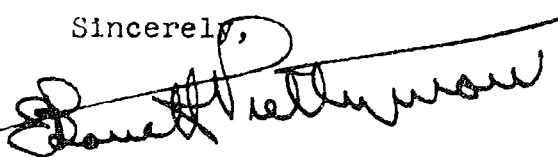
7. You will notice the provision for the record in cases where appeals are filed in two circuits.

8. We have not provided that a copy of the docket entries shall accompany the original record. This would involve preparation by the Clerk, and probably a fee. We saw no useful purpose for this document.

9. You will note that authority for the Tax Court to dismiss an appeal for cause has been stricken.

10. You will note that the phraseology of the opening provision of the Rule has been somewhat revised. This was in accordance with the suggestion of Dean O'Meara.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Barrett Prettyman". The signature is written in dark ink and is positioned below the word "Sincerely,". A long, thin horizontal line is drawn across the signature, extending from the left margin towards the right.

E. Barrett Prettyman

RULE _____

REVIEW OF DECISIONS OF THE TAX COURT
OF THE UNITED STATES; HOW TAKEN;
NOTICE OF APPEAL; RECORD

(a) Review of a decision of the Tax Court of the United States may be had by any party to the proceeding upon the filing of an original and two conformed typewritten copies of a notice of appeal with the Clerk of the Tax Court within sixty days after the decision of the Tax Court is entered.

Upon a showing of excusable neglect based on failure of a party to learn of the entry of the decision, the Tax Court may extend the time for noticing an appeal for not more than thirty days from the expiration of the original time herein prescribed.

{b} If a notice of appeal is filed by one party,

~~another party to the same proceeding may file a notice of~~

appeal with the Clerk of the Tax Court within ninety days

~~after the expiration of the time prescribed in this rule.~~

visions of this rule where appropriate shall apply with respect to that notice of appeal.

(c) The running of the time for appeal is terminated by a timely motion for retrial, further trial, reconsideration, or to vacate or revise a decision, made pursuant to Rule 19(e)(f) of the Rules of Practice of the Tax Court of the United States. The full time for appeal fixed in this Rule commences to run and is to be computed from the entry of an order disposing of such a motion, or from the entry of a decision, whichever is later. The running of the time for appeal is not terminated or suspended by a second or successive such motion or by any motion other than those above mentioned.

(d) Filing means the deposit of the notice of appeal in the office of the Clerk of the Tax Court in Washington, D. C., between the hours of 8:45 a.m. and 5:15 p.m. (District of Columbia time) on Mondays through Fridays, but not including legal holidays in the District of Columbia; or the deposit of the notice of appeal in the United States mail, addressed to the Clerk of the Tax Court of the United States, Box 70, Washington 4, D. C., *postage prepaid, in which event the postmark date stamped on the cover in which the document is mailed shall*

be deemed to be the date of filing, or, if mailed by registered or certified mail, the date of registration or certification shall be deemed to be the date of filing.

(e) When the last day of the period for filing falls on a Saturday, Sunday, or legal holiday in the District of Columbia, the period for filing shall extend to and include the next succeeding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia.

(f) The notice of appeal shall be signed by the party taking the appeal or his attorney of record and shall be headed and captioned as the proceeding is headed and captioned in the Tax Court.

(g) The notice of appeal shall state the party taking the appeal, the court to which the appeal is taken, shall designate the decision or part thereof from which the appeal is taken and shall state the date of the entry of such decision. A suggested form for a notice of appeal is attached to this rule.

(h) Notification of the filing of the notice of appeal shall be given by the Clerk of the Tax Court by mailing a copy

thereof to each party to the action other than the party or parties taking the appeal, but his failure so to do shall not affect the validity of the appeal. Notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record or, if the party is not represented by counsel, then by mailing a copy to the last-shown address of the party on any paper filed with the Tax Court in the proceeding in which the appeal is taken. Such notification shall be sufficient notwithstanding the death of the attorney or of the party.

(i) The Clerk of the Tax Court, within forty days after a notice of appeal is filed, shall certify and transmit to the Clerk of the Court of Appeals as the record on appeal the original record in the Tax Court (including but not limited to the pleadings, the transcript of the trial, stipulations, if any, the briefs, the exhibits, the findings of fact and opinion, and the decision), with the exception of such omissions as are agreed upon by written stipulation of the parties filed within fifteen days or any extension thereof by the Tax Court, after the filing of the notice of appeal.

If an appeal is filed under paragraph (b) the record transmitted by the Clerk of the Tax Court on the initial appeal shall constitute the record on the second appeal; Provided that if the party filing the second appeal desires to include in the record matter which the parties to the initial appeal have stipulated be omitted, he shall file with his notice of appeal an original and at least two conformed copies of a typewritten statement designating such additional matter. The Clerk of the Tax Court shall forthwith serve a copy of this statement upon all other parties and they may file within ten days thereafter designations of additional matter. The Clerk of the Tax Court shall thereupon certify and transmit as part of the record on appeal the matter thus designated by the parties, and shall include the second notice of appeal. The entire record thus transmitted shall constitute the record on both appeals.

If appeals are taken from a decision of the Tax Court to more than one Court of Appeals, the original record shall be transmitted to the Circuit Court of Appeals designated in the notice of appeal first filed. Provision for the record in the other appeal or appeals shall be made upon appropriate

application by the appellant or appellants by the Court of Appeals to which such appeal or appeals are taken.

(j) In all cases the Tax Court, in its discretion and with or without motion or notice, may extend the time for filing the record on appeal, if its order for extension is made before the expiration of the period for transmitting the record on appeal as originally prescribed or extended by a previous order; but the Tax Court shall not extend the time to a day more than three months from the date of filing of the first notice of appeal.

(k) The Tax Court may dismiss an appeal prior to the docketing thereof in the Court of Appeals upon stipulation of the parties filed with the Tax Court or upon the motion of the appellant.

(l) After the appeal has been disposed of, the original Tax Court record shall be returned to the Clerk of the Tax Court.