

## Tax Court Floats Rule Allowing More Electronic Filings

By **Michael Macagnone**

*Law360, Washington (January 13, 2016, 12:17 PM ET)* -- The U.S. Tax Court could soon use a whole lot less paper, as the chief judge on Monday proposed rule changes allowing for more electronic filings, potentially removing long-standing restrictions that required petitions in paper form.

The Tax Court will still accept paper filings and the announcement encouraged filers to avoid sending their petitions on the last possible day in case of technical difficulties. Specifically, the proposal would change the definition of “papers” filed with the court, tweak current timeliness, electronic filing and signature rules and allow for electronic filing of petitions.

“These proposed rules amendments are designed to pave the way for the electronic filing of petitions and other papers that are not filed electronically at the present time,” the announcement said.

In one of the biggest changes, the proposed rules would eliminate restrictions on the use of “telegram, cablegram, radiogram, telephone call, electronically transmitted copy telegram, faxed copy or similar communication” in filing initial petitions and set out specific rules for electronic filings.

Brian Kittle, a leader of Mayer Brown LLP's tax controversy practice, said he was glad to see the change in the tax court's rules, although he cautioned that it appears that the so-called "mailbox rule," that allows documents mailed in time to be considered timely, may not apply to electronically filed petitions.

"I personally think this is a welcomed step in the right direction and I think this will help everyone from pro se filers up through major corporations," Kittle said.

In addition, Skadden Arps Slate Meagher & Flom LLP tax partner David Foster said the changes could provide relief for pro se taxpayers who previously had difficulty navigating the Tax Court's rules on mailed submissions. Foster also noted that the proposed rules lay out general changes, but don't go into specifics of how the system will handle sensitive information.

"I'm generally very pleased, it doesn't take anything away that people were able to do before and people are able to do more than they were previously," Foster said.

The proposed changes come after a push late last year from the Internal Revenue Service and the American Bar Association, among others, to modernize proceedings at the court. The rules did not go as far as the IRS suggested in its November letter, requiring electronic filing for all taxpayers represented by counsel, as they still allow the option for paper filings with the court's clerk.

In a November letter to the court, the ABA's taxation section applauded a move to more electronic filings, but urged caution in handling sensitive information and cases.

"The section commends the Tax Court's movement towards e-filing and electronic case management; however, the Section asks that the Tax Court first study whether the system includes sufficient safeguards to ensure the security of documents that are e-filed under seal," the letter said.

In particular, the letter asked the court to handle confidentiality issues seriously, as missteps with electronic filings could inadvertently spill the beans on sealed proceedings.

"Given that it is sometimes necessary to re-title or correct other errors in e-filing, the section is concerned that there is too great a chance that a document, which should be filed under seal, would not be due to technology glitches or simply a lack of familiarity with the procedures," the letter said.

The letters from the IRS and ABA touched on more than a dozen proposed tweaks to various Tax Court rules, spanning from electronic filings to subpoenas and permissive interventions, however Monday's announcement is the first change to emerge since then.

Monday's proposed changes do include provisions for verification of signatures, as well as the possibility of filing with exceptions to the general rules, but did not lay out any additional provisions for confidential filings.

Officials from the IRS and the ABA could not be immediately reached for comment Wednesday.

The comments on the proposed rule changes are open until Feb. 12, according to the announcement, but did not provide a date for the rules to go into effect.

--Editing by Rebecca Flanagan.

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