

**Rule 1. Location, Address and Business Hours**

(a) Address. The location of and mailing address for the Office of the Tax Division of the Superior Court of the District of Columbia is: Tax Division, Superior Court of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

(b) Business hours. Except on legal holidays, the Office of the Deputy Clerk of the Superior Court for the Tax Division shall be open for business Monday through Friday from 9:00 a.m. to 4:00 p.m.

**COMMENT**

In section (b) the term "legal holidays" refers to those holidays listed and provided for in Superior Court Rule of Civil Procedure 6(a).

**Rule 2. Criminal Proceedings**

The Superior Court Rules of Criminal Procedure shall govern criminal proceedings in the Tax Division.

### **Rule 3. Rules of Court**

(a) Applicable Civil Division Rules. Except where inappropriate or inconsistent with the Rules of this Division, the following Superior Court Rules of Civil Procedure are applicable to actions brought in the Tax Division of the Court:

Rule 5 (e) (2) (A) - (C), (E) – (H); 5(f)	(Service and filing of pleadings and other papers)
Rule 6	(Time)
Rule 6-I	(Continuous session of Court)
Rule 7-I	(Stipulations)
Rule 9-I(c) & (d)	Verifications and affidavits
Rule 11	(Signing of pleadings, motions, and other papers; sanctions)
Rule 12-I (k)	(Motions for summary judgment)
Rule 13	(Counterclaim and cross-claim)
Rule 15	(Amended and supplemental pleadings)
Rule 16-II	(Failure to appear for conference)
Rule 17	(Parties plaintiff and defendant; capacity)
Rule 23, 23-I and 23.2	(Class actions)
Rule 24	(Intervention)
Rule 25	(Substitution of parties)
Rule 26-34 and 36-37	(Depositions and discovery)
Rule 28-I	(Depositions and outside forum jurisdiction)
Rule 39-I	(Appearance at trial)
Rule 39-II	(Number of counsel)
Rule 42(a)	(Consolidation)
Rule 43	(Evidence)
Rule 43-I	(Record made in regular course of business; photographic copies)
Rule 44	(Proof of official record)
Rule 44-I	(Proof of statutes, ordinances, and regulations)
Rule 44-I	(Determination of foreign law)
Rule 45	(Subpoena)
Rule 46	(Exceptions unnecessary)
Rule 53	(Masters)
Rule 53-I	(Auditor- Master Fees)
Rule 53-II	(Deposit for expenses)
Rule 54(a) & (b)	(Judgments)
Rule 54-II	(Waiver of costs)
Rule 56	(Summary judgment)
Rule 60	(Relief from judgment or order)
Rule 61	(Harmless error)
Rule 62	(Stay of proceedings to enforce a judgment)
Rule 62-I	(Supersedeas bond)
Rule 63	(Inability of a judge to proceed)
Rule 63-I	(Bias or prejudice of a judge)
Rule 65	(Injunctions)

Rule 65.1	(Security: Proceedings against sureties)
Rule 77(a), (b) & (d)	(Superior Court and Clerk)
Rule 79	(Books and records kept by clerk and entries therein)
Rule 79-1	(Copies and custody of papers filed)
Rule 80	(Stenographer; stenographic report or transcript of evidence)
Rule 82	(Jurisdiction unaffected)
Rule 83-l	(Amendments of or additions to Superior Court Rules of Civil Procedure)
Rule 101	(Appearance and withdrawal of attorneys)
Rule 102	(Disciplinary proceedings against attorneys)
Rule 103	(Employees not to practice law)
Rule 201	(Recording of Court proceedings; release of transcripts)
Rule 202	(Fees)
Rule 203	(Free press-Fair trial)

(b) Personal representation. In civil proceedings, any individual taxpayer may appear pro se; no corporation shall appear as a petitioner except through a member in good standing of the District of Columbia Bar; and any partnership, joint venture, association, trust, estate, or receiver may appear by an authorized representative.

#### COMMENT

With respect to motions for summary judgment that are analogous to motions filed under SCR Civ 12-l(k), the time limit for filing and responding to such motions is governed by Tax Rule 9. With respect to service of motions for substitution of parties or of any other motion, Tax Rule 5 controls the service of such motions.

Section (b) was revised to be consistent with the practice in the Civil Division to make clear that corporations shall be represented by counsel.

**Rule 4. Form and Style of Papers, Filing of Document, Fees**

(a) Form and style. Filings shall include a caption in the form shown in Rule 6(b), omitting all prefixes and titles (such as "Mrs.", "Dr.", etc.). A docket number shall be placed on all documents filed in the proceedings after the petition and shall be referred to in all papers in the proceedings. The name of any estate, trust, or other beneficiary for whom petitioner may act shall precede petitioner's name, e.g., "Estate of John Doe, deceased, Richard Roe, Executor." All papers filed by or on behalf of a party shall set forth the name, full residence address and telephone number of the party, unless that party is represented by counsel. If a party is represented by counsel, all pleadings or other papers shall set forth the name, office address, telephone number, e-mail address, and Bar number of the attorney. The names, addresses, and telephone numbers so shown shall be conclusively deemed to be correct and current. It is the obligation of the attorney or unrepresented party whose address, telephone number or e-mail address has been changed to immediately notify the Clerk of the Tax Division and all other attorneys and unrepresented parties named in the case of this change.

(b) Filing. During business hours, documents shall be filed with the Deputy Clerk for the Tax Division. See also Civil Rule 77(a).

(c) Fees. The fee for filing a petition shall be \$ 120 payable upon filing of the petition. In addition to the filing fee in civil tax cases, the Deputy Clerk shall assess costs or fees according to the civil fee schedule as prescribed in Civil Rule 202.

**COMMENT**

While the Court may accept documents during hearings or trials, such filings are discouraged and should not be regarded as a normal or usual practice.

## **Rule 5. Service**

(a) Method. The petitioner shall serve a copy of a pleading (except the initial petition), motion, notice, or other document upon the respondent by mailing, electronic means, or delivery of such copy to counsel appearing for the District of Columbia, counsel for any other party, and any other person as ordered by the Court.

The respondent shall serve a copy of a pleading, motion, notice or other document upon the petitioner or any other party by mailing, electronic means, or delivery of such copy to the petitioner, any other party, or the attorney of record for petitioner or other party as provided in subsections (b) and (c) of this Rule.

Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service by electronic means is not effective if the party making service learns that the attempted service did not reach the person to be served.

(b) Attorney of record. Service upon any attorney of record shall be deemed service upon the party, but, where there is more than one attorney for a party, service shall be made only upon the party's attorney whose appearance was first entered of record, unless the first attorney of record, by writing served and filed, designates another attorney to receive service, in which event service shall be so made.

(c) No attorney of record. If a petitioner has no attorney of record, service shall be made upon the petitioner.

(d) Proof of service. Proof of service of papers required or permitted to be served (other than those for which a method of proof is prescribed elsewhere in these Rules or by statute) shall be filed before any action is to be taken thereon. The proof shall show the date and manner of service on the parties and may be by written acknowledgement thereof, by affidavit of the person making service or delivery, by certificate of a member of the Bar of this Court, or by other proof satisfactory to the Court. Failure to make such proof will not affect the validity thereof. The Court may at any time allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

(e) Filing. All papers after the petition required to be served upon a party, other than motions, oppositions, proposed orders and points and authorities shall be filed with the Court either before service or within 5 days after service; however, the clerk shall not accept for filing deposition transcripts, interrogatories, requests for documents, requests for admission, and responses thereto except as set forth in the last sentence of this paragraph. The party serving such a discovery paper or noticing a deposition must, however, file with the Court a Certificate Regarding Discovery which shall indicate the title of the discovery paper served and the date on which it was served. The requesting party must retain the original discovery paper and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts which have been made at the party's request. Such discovery papers and deposition transcripts must be retained until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided. Discovery papers and deposition transcripts may be filed, without leave of Court, if they are appended to a motion or opposition to which they are relevant and may otherwise be filed if so ordered by the Court *sua sponte* or pursuant to a motion.

**Rule 6. The Petition: Contents, Service, and Docketing**

(a) The petition.

(1) A civil proceeding is initiated by filing a petition with the Tax Division. A party not filing under Civil Rule 5(e) shall file a signed original and two conformed copies of a petition.

(2) A petition not substantially in accordance with section (b) may be accepted by the Court, provided the filing fee is paid and such petition contains at least sufficient information to show the jurisdiction of the Court and the alleged errors of which the petitioner complains. Upon notification by the Court to do so, the petitioner shall file within such time as the Court shall direct an amended petition conforming substantially to section (b).

(b) Contents. The petition shall be substantially as follows:

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

_____,	)	
	)	
Petitioner,	)	
	)	
v.	)	TAX DOCKET NO. ....
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Respondent.	)	

The petition shall include the following numbered paragraphs:

(1) The petitioner's name and the address of the petitioner's principal office or residence.

(2) The amount of tax in controversy, the nature of the tax, and the year(s) or the period(s) covered thereby.

(3) In each case, the petitioner shall allege the facts relied upon to demonstrate that the jurisdictional requirements for the filing of petitions in the Tax Division have been met: In the case of a petitioner seeking review of an assessment of real property alleged to be exempt from taxation, the date of mailing of the denial of exemption; in all other cases, the date of payment of the amount owed (tax plus penalties and interest, if applicable), the date of the filing of a claim for refund, or the date of the mailing of the notice of disallowance of such claim, the date of the notice of deficiency assessment, or the date of the filing of an appeal with the Board of Real Property Assessments and Appeals.

(4) In separately lettered subparagraphs, clear and concise assignments of each and every error which the petitioner alleges to have been committed by the assessing authority.

(5) In separately lettered subparagraphs, a clear and concise statement of facts upon which the petitioner relies as sustaining each assignment of error, except those assignments of error in respect of which the burden of proof is upon the respondent.

(6) A prayer setting forth the relief sought by the petitioner.

(7) The signature of petitioner or petitioner's counsel.

The following additional information shall be appended to the petition and to each of the conformed copies:

(A) If the appeal is for redetermination of a deficiency, (i) a copy of the statement of taxes due or the notice of assessment, and notice of deficiency, if any, and (ii) if a statement of reasons has accompanied the notice of assessment or notice of deficiency, so much thereof as is material to the issues set out in the assignments of error; or

(B) If the appeal is from the denial of a claim for refund, a copy of the notice of the denial thereof.

The petitioner may append to the petition such other statements or documents as are material.

(c) Service of the petition. The Clerk shall serve a copy of the petition upon the Attorney General for the District of Columbia and the Department of Finance and Revenue.

(d) Docketing of petition. Upon receipt of the petition by the Clerk, the case shall be entered upon the docket and assigned a number and the parties shall be notified thereof.

(e) Amendment. An amended petition may be filed with the Tax Division without leave of Court at any time before an answer is filed. Such amended petition shall conform to the requirements of Rule 4 and shall be served in accordance with Rule 5(a).

## COMMENT

1. In paragraph (3) describing the contents of the petition, the date of mailing the denial of exemption is required when the taxpayer seeks review of an assessment of real property alleged to be exempt from taxation. Prior payment of the tax is not jurisdictional in this instance. See D.C. Code § 47-1009. In such cases, the statute of limitations, which is six months, begins to run from the mailing of the denial of exemption.

2. In all other cases, whether suits for redetermination of a deficiency assessment or suits for refund of an overpayment, payment of the tax is required in order to invoke the jurisdiction of the Tax Division. See, *e.g.*, D.C. Code § 47-3303. Hence, the Rule requires that the petition in these cases include the date of payment of the tax.

3. In suits for refund of an overpayment, not only is the date of payment of the tax required, but also the date of filing of the claim for refund and the date of disallowance of the claim, if any.

4. In suits challenging an assessment, equalization or valuation of real property an appeal to the Board of Real Property Assessments and Appeals is usually a prerequisite to the jurisdiction of the Tax Division. See, *e.g.*, D.C. Code § 47-825.1(j). Hence the Rule makes reference to such appeal.

5. In section (e) only amendments which may be made without motion or Court order are discussed.



**Rule 7. The Answer: Time of Filing, Contents, and Service**

(a) The answer: When filed. The respondent shall file with the Tax Division and serve its answer within 60 days after service of the petition. Whenever under Rule 6(a)(2) the Court directs the filing of an amended petition or whenever under Rule 6(e) an amendment is filed, the time for filing an answer shall begin after service of such petition or amendment. However, if prior to the filing of the answer a motion in lieu of a pleading has been filed, the respondent shall file its answer as follows: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the answer shall be filed within 30 days after service of notice of the Court's action; or (2) if the Court grants a motion for a more definite statement, the answer shall be filed within 30 days after service of the more definite statement; or (3) within such time as is fixed by order of the Court.

(b) Contents. The answer shall advise the petitioner and the Court fully of the nature of the defense. Each material allegation of fact contained in the petition shall be admitted or denied or a statement shall be made indicating why it can neither be admitted nor denied. In addition, the answer shall include a statement of any facts upon which the respondent relies for defense or for affirmative relief.

Paragraphs and subparagraphs of the answer shall be separately numbered or lettered to correspond with the paragraphs of the petition.

**Rule 8. The Reply: Time of Filing, Contents, and Service**

(a) The reply: When filed. Within 30 days after service upon the petitioner of an answer in which affirmative relief is requested, the petitioner shall file and serve a reply, unless a motion in lieu of a pleading has been filed by petitioner. If such a motion has been filed, the petitioner shall file the reply as follows: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the reply shall be filed within 20 days after service of notice of the Court's action; or (2) if the Court grants a motion for a more definite statement, the reply shall be filed within 20 days after service of the more definite statement; or (3) within such time as is fixed by order of the Court.

(b) Contents. Each material allegation of fact contained in the answer shall be specifically admitted or specifically denied or a statement shall be made indicating why it can neither be admitted nor denied. In addition the reply shall include a statement of any facts upon which the petitioner relies for defense.

Paragraphs and subparagraphs in the reply shall be separately numbered or lettered to correspond with those of the answer.

## **Rule 9. Motions**

(a) Time of filing. Motions may be filed with the Tax Division at any time up through the conclusion of the trial, unless otherwise directed by the Court. Any motion to alter or amend a judgment shall be filed no later than 30 days after entry of the judgment.

(b) Form and contents. All motions or responses of either party, except those made orally during hearing or trial, shall be made in writing in the form and style prescribed by Tax Division Rule 4. Such motions or responses shall fully set forth the relief requested and, if applicable, a brief statement of facts and a statement of points and authorities in support thereof. A proposed order shall be filed with each motion or response. The proposed order shall contain a list of all persons with their current addresses to whom copies of the Court's order shall be sent. If a motion is consented to by all parties, that fact shall be indicated in the title of the motion.

(c) Response. Any response by the nonmoving party shall be filed and served upon the movant within 15 days after service of the motion, unless otherwise ordered by the Court.

(d) Disposition.

(1) Hearing: When allowed. A party may specifically request an oral hearing by endorsing at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested"; but the Court in its discretion may decide the motion without a hearing. If the judge assigned to the case determines to hold a hearing on the motion, that judge shall give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing and the amount of time afforded to each party. If a pending motion is resolved by the parties, the movant must immediately notify the Judge's Chambers by telephone.

(2) The Court may dispose of any motion with or without a hearing or may postpone disposition until the trial on the merits.

(3) If a party fails to appear at a hearing on a motion, the Court may hear the matter ex parte.

(e) Miscellaneous.

(1) The filing of a motion shall not constitute cause for postponement of a trial from the date set.

(2) If an order of the Court to file amended pleadings is not complied with within 15 days of the date of the service of the order or within such other time as the Court may order, the Court may strike a pleading to which such an order of Court has been directed or may enter such other order as it deems just.

## **Rule 10. Status Conferences**

- (a) Initial conference. A status conference shall be held as soon as practicable after respondent's answer to the petition is filed. At that conference, the Court will explore the likelihood of early resolution through settlement or alternative dispute resolution techniques and the Court may enter such scheduling orders as it deems appropriate.
- (b) Other conferences. The Court may schedule such other conferences as it deems appropriate.
- (c) Continuance of status hearing. In the event that a case is scheduled for a status hearing and the matter is settled in principle, is scheduled for mediation, concerns a legal issue which is pending before the D.C. Court of Appeals, or is consolidated with another case which is scheduled for a status hearing at a later date, the parties may agree to continue the hearing. The Deputy Clerk shall then set a new time and date for such hearing.
- (d) Any scheduling order entered may be modified by the Court for good cause shown.

### **COMMENT**

Consistent with Civil Rule 16(b), Section (a) sets forth a policy in favor of settlement of civil tax litigation by alternative dispute resolution (ADR) at an early stage in the case. Thus, all unrepresented parties and counsel must attend a conference early in the case at which the Court will explore the possibilities of settlement or alternative dispute resolution.

In a typical case, the Court will require the parties to attend a conference after mediation or ADR, at which the Court may establish a firm schedule for completion of the case.

Section (d) makes clear that the parties may not deviate from the scheduling order without permission from the Court.

**Rule 11. Pretrial Conference**

(a) In any case in which the Court deems it appropriate, the Court may require the parties to participate in a conference preparatory to trial on the merits. The conference will generally be held by the judge who will preside at trial and will not be recorded unless the judge orders that it be on the record.

(b) One week prior to the pretrial conference, each party shall file and serve a pretrial statement in the form prescribed by the Court. Except for the rebuttal or impeachment purposes, or for good cause shown, no party may offer at trial the testimony of any witness or any documentary evidence not listed in the pretrial statement of that party.

(c) At least one attorney who will participate in the trial for each party, and every unrepresented party, shall attend the pretrial conference. The issues to be tried and the possibility of admissions or stipulations concerning the proof of facts and authenticity or admissibility of documents shall be discussed. The Court shall set a date for trial and may make such order concerning the conduct of trial as it deems appropriate.

## **Rule 12. Trial and Exhibits**

(a) Trial date. The parties and their counsel must be prepared to commence the trial on the trial date or on either of the two succeeding Court days.

(b) Burden of proof. The burden of proof shall be upon the petitioner, except as otherwise provided by law. In respect to any new matter pleaded in its answer, the burden of proof shall be upon the respondent.

(c) Exhibits. A party, desiring return at its expense of any exhibit belonging to it, shall within 15 days after the expiration of the time to appeal from the final judgment or order make application in writing to the Deputy Clerk for the Tax Division, suggesting a practical manner of return. Otherwise, exhibits may be disposed of as the Court deems advisable.

### **COMMENT**

Like Civil Rule 16(h), section (a) provides that parties and counsel must be prepared to commence trial on the date set for trial or on either of the two succeeding Court days if the case must "trail" completion of other matters on the Court's calendar. If a case is thus trailed, the Court will generally permit greater flexibility in the order in which witnesses may be called in order to accommodate any rescheduling of witnesses which may be necessary.

Section (c) authorizes the Deputy Clerk to dispose of exhibits when the parties do not request that they be returned after the case is concluded.

**Rule 13. Failure to Appear for Conference or Trial**

(a) Absence at trial. The unexcused absence of a party or a party's counsel when a case is called for trial shall not be the occasion for delay. In the discretion of the Court, the case may be dismissed for failure to prosecute, or the trial may proceed and the case be regarded as submitted on the part of the absent party or parties.

(b) If counsel or an unrepresented party fails to appear at any conference scheduled by the Court or for trial, or fails to comply with any scheduling order entered by the Court, or fails to appear for or participate in good faith in any alternative dispute resolution session, the Court may dismiss the case with or without prejudice, or take such other action, including the award of attorney's fees and reasonable expenses, and the imposition of any such other penalties and sanctions, as it deems appropriate.

**COMMENT**

This Rule makes clear the authority of the Court to deal with the problem of parties who fail to appear for trial or at pretrial or status conferences, and prescribes sanctions for failure to comply with scheduling orders or to participate in an alternative dispute resolution session in good faith.

**Rule 14. Computations by Parties for Entry of Decision**

(a) Agreed computations. When the Court has entered its opinion determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount of the deficiency, overpayment or underpayment. If the parties are in agreement as to the amount of the deficiency, overpayment or underpayment to be entered as the decision pursuant to the Court's findings and conclusions, they or either of them shall file promptly with the Deputy Clerk for the Tax Division a proposed judgment evidencing their agreement.

(b) Procedure in absence of agreement. If, however, the parties are not in agreement as to the amount of the deficiency, overpayment or underpayment to be entered in accordance with the Court's findings and conclusions, either or both of them may file promptly with the Deputy Clerk for the Tax Division a computation of the deficiency, overpayment or underpayment believed by such party to be in accordance with the findings and conclusions. The opposing party may file a response. The court shall then determine the correct deficiency, overpayment or underpayment and enter its judgment. This section shall not be regarded as affording an opportunity for rehearing or reconsideration.